

Business in Spain

Labor and Social Security regulations



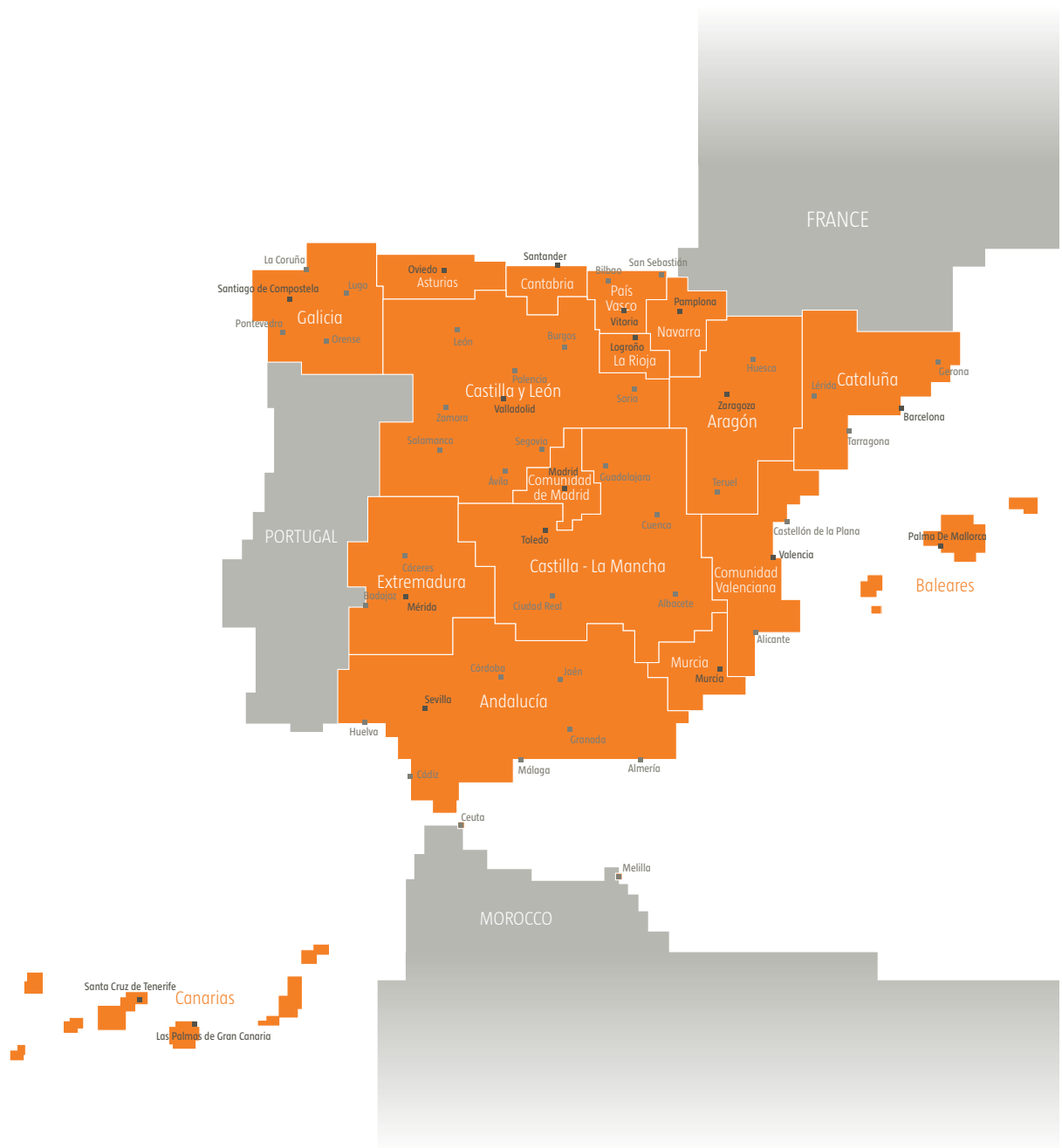
The Spanish labor market is harmonious; there are few labor disputes, since collective agreements are negotiated. In the last decade, labor law has become much more flexible and new incentives have been introduced to promote the hiring of people from certain social groups.

A new labor market reform will come into force shortly in order to increase productivity and flexibility.



Labor and Social Security regulations

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1. Introduction

1. INTRODUCTION

The basic law in the field of labor law is the Workers' Statute (Legislative Royal Decree 1/1995), which defines the respective rights of employees and employers, general terms of labor employment contracts, procedures for dismissal and collective bargaining rules, among other aspects.

In addition, there are specific regulations for different industries and certain groups of employees such as commercial representatives and senior management personnel.

Another important source of labor law is collective labor agreements, which may be negotiated at the company level (or more reduced scope) or by industries at the state level or more reduced territorial scope.

Individual employment contracts also contain numerous mandatory provisions which govern labor relationships.

There are also detailed regulations affecting working hours and occupational health and safety in specific industries.

Also significant in this field is Legislative Royal Decree 5/2000 approving the Revised Law on Labor and Social Security Infringements and Penalties. The Legislative Royal Decree imposes for the most serious cases fines of up to €90,151.82 (in the legislation on prevention of occupational risks, there are fines of up to €601,012.10).

Additionally, on November 5, 1999, Law 39/1999 was published on the Reconciliation of the Work and Family Lives of Female Employees, signaling a major advance in promoting equality between men and women and introducing a range of measures designed to make family responsibilities compatible with the possibility of promotion and advancement at work. This Law has been implemented in part by Royal Decree 1251/2001 regulating benefits under the Social Security System for Maternity and for Risks during Pregnancy.

As regards temporary employment agencies, since Law 29/1999 the terms of employment enjoyed by employees of client companies have been applied as far as possible to the workers supplied to them to meet their temporary needs, so as to avoid biased and discriminatory practices.

Lastly, the most recent development has been the signing of an Agreement to improve Growth and Employment. Aware of the need to tailor labor and social security legislation in force to the current needs of the Spanish market, the Government and Labor Unions and Employers Organizations have successfully reached this

Agreement. Although the Agreement has not yet been formalized in a legal instrument, its main aspects are described below.

The most significant points of the reform focus on promoting the stability and quality of employment as the starting point for boosting productivity and competitiveness among enterprises. With this aim in mind, the Agreement has been structured into three areas.

First of all, measures are adopted to promote indefinite employment and the conversion of temporary contracts into permanent employment contracts, by means of social security rebates and reductions in employer contributions to the Wage Guarantee Fund (FOGASA) and to the contributions for unemployment. In this connection, the main measures are as follows:

- Reduction in employer contributions for unemployment (in the case of indefinite contracts, to 5.75 percent from July 1, 2006, and to 5.50 percent from July 1, 2008; and to 6.70 percent from July 1, 2006 in the case of all temporary contracts); and in the contribution rate to FOGASA (which is established at 0.2 percent as from July 1, 2006.)
- Extension of current time limits for the conversion of temporary contracts into indefinite contracts. The law also provides for the possibility of converting temporary contracts concluded through December 31, 2007 into indefinite contracts so that the termination of such contracts for objective dismissal which is subsequently adjudged to be without cause will give rise to the right to receive severance equal to 33 days pay per year of service.
- Modification of the system of incentives for indefinite contracts in the form of an extension of its scope of application to include young men of between 16 and 30 years of age, simplification of incentives, extension of the term of application of the social security rebates and the replacement of rebate percentages with fixed figures.

Second, measures are introduced with the aim of limiting the successive use of temporary contracts and to introduce transparency into the subcontracting of work and services between enterprises where they share a work place. It is also sought to encourage and improve the work done by the labor and social security inspection authorities by increasing its human and material resources. Particularly noteworthy is the setting of a maximum time limit of 24 months within a 30-month period for successive fixed-term contracts which can be signed between an enterprise and its employee, whether directly or through a temporary employment agency (if the period is longer, the worker will become a permanent employee.)

The third and final area focuses on the adoption of measures intended to boost the efficiency of jobseeker initiatives and the scope

1. Introduction

of action of the National Employment System, as well as the improved protection for workers given the lack of employment.

The Agreement has been reached at a particularly favorable time for labor relations. During 2005¹, labor unrest declined significantly, as 40.4% fewer workers went on strike than in 2004, which is equivalent to 83% less strike days than in 2004. Also noteworthy is the sound climate for collective negotiations, with 10.2% more collective labor agreements having been signed in 2005 than in 2004.

2. GENERAL RULES

The main general rules of Spanish labor law are summarized below:

2.1. Non-discrimination

The Spanish Workers' Statute generally prohibits discrimination in hiring or in the workplace based on sex, marital status, age, race, social status, religion or political ideology, joining a labor union or otherwise or on the basis of the different official languages in Spain. This protection is also expressly extended to foreigners (i.e., those other than Spanish or EU nationals) under Organic Law 4/2000, amended by Organic Law 8/2000 and also by Organic Law 14/2003 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.

It also prohibits discrimination because of physical or mental handicap if the candidate is otherwise suitable for the job in question.

Directive 2002/73/EC of the European Parliament and of the Council, of September 23, 2002, was published in 2002, amending Directive 76/207/EEC, on the application of the principle of equal access to work and working conditions of men and women. This new provision expressly defines the terms "direct discrimination", "indirect discrimination", "harassment" and "sexual harassment", all of which are prohibited because they violate the principle of equal treatment of men and women. The Member States are also encouraged to include in their respective laws the measures necessary to avoid discrimination at the workplace.

Law 33/2002, and Law 62/2003, notably introduce the principle of equal pay for men and women, thus amending Article 28 of the Workers' Statute, which previously only mentioned equal salary, and including the possibility of establishing compensation measures in favor of some groups.

¹ www.mtas.es

2.2. Minimum age

Persons under the age of 16 cannot work. There are also certain protective measures for persons under the age of 18, such as the prohibition against such persons working overtime or at night, or in certain hazardous or unhealthy activities or jobs.

2.3. Form of contract

In general the contract may be made verbally or in writing. However, in certain cases the contract should necessarily be made in writing (for example, part-time and temporary contracts and training contracts with a duration of more than four weeks).

If this requirement is not met, the contract is understood to be permanent and full time, unless otherwise evidenced.

3. CONTRACTS

3.1. Types of contract

According to the duration of employment, employment contracts may be made for an indefinite term or for a specific duration. In general, contracts are made for an indefinite term and their unfair termination entitles the worker to receive the severance established by law.

Temporary contracts are therefore generally "circumstance-driven"; i.e., except in certain specific cases, there must be circumstances justifying such temporary hiring. If the type of temporary contract does not conform to a cause established by law the contract is deemed to be permanent.

Outlined below are the main types of contracts and their principal features. Contracts for a specific duration should be differentiated from training contracts.

3.1.1. Contracts for a specific duration

The first group, according to the cause established by law, includes contracts for a specific project or service, casual contracts due to production overload or backlog and contracts to substitute employees entitled to return to their job. All these contracts should be made in writing and the cause for their temporary nature should be placed on record. Otherwise, the contract will be deemed to be made for an indefinite term, unless evidence of its temporary nature is provided.

If the employment contract is made for a term of more than one year, the party intending to terminate the contract should serve

Table 1

TYPES OF CONTRACT

Type	Cause	Term	Observations
Contract for a specific project or service	Performance of a specific independent and self-contained service or project within the company's business.	In principle uncertain. It will depend on the time of performance of the specific service or project.	It should mention the work and project clearly and precisely. Its termination entitles the employee to receive severance equal to 8 days' salary per year worked.
Casual contract due to production overload or backlog	To meet market needs, production overload or backlog.	Maximum of 6 months within a period of 12 months (may be extended by an industry-wide collective labor agreement for 18 months but it may never exceed 3/4 of that period, or the maximum term of 12 months).	It should mention the work and project clearly and precisely. Its termination entitles the employee to receive severance equal to 8 days' salary per year worked.
Contract to substitute employees entitled to return to their job	To substitute workers entitled to return to their job by provision of law, of a collective labor agreement or of an individual contract.	From the beginning of the period until the return of the replaced worker or expiry of the term established for the substitution.	One of the formalities is that it should contemplate the name of the replaced worker and the cause for his substitution.

notice at least fifteen days in advance or, as the case may be, give the advance notice established in the applicable Collective Labor Agreement.

3.1.2. Training contracts

Also set forth below are the main features of training contracts (Table 2).

3.1.3. Contract to promote hiring for an indefinite period

In relation to permanent employment, there is a type of contract to promote hiring for an indefinite period. It applies to the following groups:

a) Unemployed workers from any of the following groups:

- Young people aged 16 through 30.
- Unemployed women, if hired for jobs or occupations in industries with a lower proportion of female employees.
- The unemployed aged over 45.
- Unemployed workers who have been registered as job seekers for at least six months.
- The disabled.

b) Workers who, on the date of signing a new contract to promote hiring for an indefinite period, were employed at the same company under a temporary contract, including training contracts, arranged before December 31, 2003.

3. Contracts

Table 2

TRAINING CONTRACTS

Contract	purpose	duration	to be noted
Work experience contract	Contracts with persons with a university degree or high or middle-level professional qualifications or an officially recognized equivalent degree qualifying them to perform their profession.	Minimum of 6 months and maximum of 2 years. It may be extended twice, but always subject to the two-year limit. Once the term has expired, the same person may not be hired again under the same type of contract by the same or by another company.	As a general rule, not more than 4 years may elapse from the completion of the respective studies. The minimum salary to be paid will be between 60% and 75% of the salary established in the collective labor agreement for a worker holding the same or an equivalent post (first and second year of the contract).
Trainee contract	To acquire the necessary theoretical and practical training necessary for a certain post of work.	Minimum of 6 months and maximum of 2 years (it may be extended up to 3 years under a collective labor agreement). Once the term has expired, the same person may not be hired again under the same type of contract by the same or another company.	Made with workers from 16 to 21 of age who do not have the qualifications necessary to obtain a work experience contract. According to the workforce, a maximum number of trainee contracts is established. The employer undertakes to provide theoretical training that will never be less than 15% of the maximum working hours. The contract will be deemed ordinary if the theoretical training obligations are breached.

If a contract of this type is terminated on objective grounds and its termination is then adjudged to be unjustified, the worker will be entitled to severance equal to 33 days' pay per year worked, with periods of less than one year being prorated by month, and up to a maximum of 24 months' pay.

The 2006 Employment Promotion Program establishes that companies that employ on a permanent basis unemployed workers from among any of the groups contemplated in said provision, or that convert pre-existing temporary contracts into permanent contracts before January 1, 2006 are entitled to the stipulated

reductions in employer social security contributions for ordinary contingencies.

3.1.4. Part-time contracts

Employment contracts may be made full-time or part-time. Following the enactment of Law 12/2001 on Urgent Measures Reforming the Job Market in order to Increase and Improve the Quality of Employment, "part-time contract" is defined as a contract in which a number of hours of work has been agreed with the worker per week, month or year, less than the working hours of a

“comparable full-time worker” (this term means a full-time worker of the same company and workplace who performs identical or similar work).

Part-time workers have the same rights as full-time workers considering the existence of rights recognized proportionally, according to the time worked.

3.2. Trial period

Collective labor agreements may establish time limits for trial periods, which should always be stipulated in writing. Unless provided for in a collective labor agreement, trial periods cannot generally exceed:

- Six months for graduate specialists.
- Two months for other employees. At companies with fewer than twenty-five employees, the trial period for non-graduate specialists cannot exceed three months.

Training contracts also have their specific trial periods. Special employment contracts (domestic workers, senior executives, among others) have their own maximum periods.

3.3. Working hours

- Working hours are as specified in collective labor agreements or individual employment contracts.
- The maximum statutory working week is 40 hours of time actually worked, calculated on an annualized average basis. The irregular distribution of the working hours throughout the year may be agreed on by collective labor agreement, or by agreement between the company and the workers' representatives.
- Overtime can be compensated as time off within four months from the date on which the overtime was worked. If payment for overtime is agreed upon in the collective labor agreement or individual contract, the hourly overtime rate cannot be less than the normal hourly rate.
- Other than in exceptional cases, overtime (i.e., hours worked in excess of the maximum statutory or agreed working hours) is voluntary and, if paid, cannot exceed 80 hours per year.
- Overtime compensated with time off does not count towards the 80-hour annual ceiling.
- A minimum one and a half days off per week is mandatory (usually Saturday afternoon and all day Sunday, or all day Sunday and Monday morning) which may be accumulated for periods of up to fourteen days. Workers under 18 are entitled to two uninterrupted days off per week.

- Central Government, autonomous community authorities and the respective municipal authorities cannot designate more than 14 public holidays a year. The Government can move national holidays falling on a weekday to the following Monday and all public holidays that fall on a Sunday will be moved to the following Monday.
- An annual paid vacation which may not under any circumstances be less than 30 calendar days is obligatory. The worker should know the corresponding dates at least two months in advance.
- Employees are entitled to paid leave of absence in certain circumstances such as marriage (15 days), union duties, unavoidable public and personal duties, breastfeeding, childbirth, moving home, serious illness, hospitalization or death of relatives to the second degree of consanguinity, and so on.
- Directive 2003/88/EC of the European Parliament and the Council, of November 4, 2003, relating to certain aspects of working time, establishes safeguard provisions on working hours, particularly shiftwork and working at night (this Directive came into force on August 2, 2004). All the articles of the directive are governed by the general principle of conformance of the work to the worker.
- This Directive establishes, as a new feature, the obligation of the Member States to adopt the measures necessary for employers who regularly use night workers to report this to the competent authorities.

3.4. Wages and salaries

The official minimum wage is established by the Government each year, and is €540.90 per month or €7,572.60 per year for persons over 18 years of age (including 12 monthly and 2 extra payroll payments) for 2006.

However, the minimum wages for each job category are usually regulated in collective labor agreements.

Salaries cannot be paid at intervals of more than one month.

At least two extra payroll payments must be paid each year: one at Christmas and the other on the date stipulated in the relevant collective labor agreement (generally before the summer vacation period). Thus, an employee's gross annual salary is usually apportioned in 14 payroll payments; however, payment in 12 monthly installments can be agreed on in a collective agreement.

4. Termination of employment contracts

4. TERMINATION OF EMPLOYMENT CONTRACTS

4.1. Dismissals

An employment contract may be terminated for certain reasons which normally do not give rise to a dispute, such as mutual agreement, expiration of the contract term, death or retirement of the employee or of the employer, and so on.

In addition, the law regulates three principal grounds for dismissal of an employee:

- Collective layoff
- Objective causes
- Disciplinary action

The following table shows the causes and main features of the various types of dismissal (Table 3).

Table 3

CAUSES OF DISMISSAL

DISMISSAL	LEGAL CAUSES	OBSERVATIONS
Collective layoff	<p>Economic, technical, organization or production causes, whenever these affect, in a 90-day period, at least:</p> <ul style="list-style-type: none"> • The entire payroll, if the number of workers affected is more than 5 and the business of the company ceases entirely, • At least 10 workers in companies with less than 100 employees, • 10% of the employees in companies with from 100 to 300 workers, • More than 30 workers, in companies with 300 or more employees. 	<p>The termination is performed through an administrative procedure. Dismissals will only be possible if the Labor Authorities approve them by an administrative ruling.</p> <p>The procedure includes the obligation of granting a period of consultations with the workers' representatives and, if none, with the employees directly.</p> <p>The consultations are intended to reach an agreement for the termination of the contracts. Nevertheless, the Labor Authorities may approve the dismissals even if no agreement is reached.</p> <p>The statutory severance consists of 20 days' salary per year worked, up to a maximum of 12 months' salary or more if so agreed.</p>
Objective causes	<ul style="list-style-type: none"> • Ineptitude of the worker supervened or known after being hired by the company. • Inability of the worker to adapt to the changes in his job. • Objectively evidenced need to cancel posts of work due to economic, technical, organization or production reasons. • Justified by intermittent absences from work, reaching certain percentages of working days. • In indefinite-term contracts arranged directly by public authorities or by not-for-profit entities to implement certain public plans and programs for want of the appropriate allocation to enable them to continue. 	<p>The employer should serve at least 30 days' advance notice in writing.</p> <p>The advance notice may be replaced by payment of the salaries for said period.</p> <p>The severance (20 days' salary per year worked, up to a maximum of 12 months' salary) should be made available to the worker simultaneously with the written notice of dismissal.</p> <p>It may be appealed as if it were a disciplinary dismissal.</p>

Table 3

CAUSES OF DISMISSAL

DISMISSAL	LEGAL CAUSES	OBSERVATIONS
Disciplinary Action	<p><i>Serious and willful</i> breach of contract by the worker:</p> <ul style="list-style-type: none"> • Repeated and unjustified absenteeism. • Insubordination or disobedience. • Physical or verbal abuse towards the employer. • Breach of contractual good faith or abuse of trust. • Willful diminution in the ordinary job productivity. • Habitual drug or alcohol abuse which adversely affects job performance. 	<p>The employee must be given written notice of dismissal, stating the causes and effective date of dismissal.</p> <p>If a workers' representative or labor union delegate is dismissed, an adversary procedure should be instituted. If the worker is a labor union member, the union delegates should be granted a hearing. These safeguards may be increased by Collective Agreement.</p> <p>If these formalities are not met, a further dismissal may be performed in a term of twenty days by paying the employee the salaries that accrue in the meanwhile, with effects as of the date of the new notice.</p>

4.2. Classification of the dismissal

A worker dismissed for any objective cause or disciplinary action may appeal the decision made by the employer before the Labor Courts, although a conciliation hearing must first be held between the worker and the employer to attempt to reach an agreement. This conciliation hearing is held before an administrative body of conciliation and arbitration.

The dismissal will be classified in one of the three categories set forth below (Table 4).

Where a dismissal is declared to be unjustified, the employer must choose between reinstating the employee or paying him or her statutory severance. In any event, the employer must pay the salaries that accrue during the proceeding, which consist of the salaries that the employee ceases to receive from the date of dismissal until (i) notification of the judgment, (ii) until the worker finds other employment before a judgment is handed down, or (iii) until the date of deposit of the statutory severance (and salaries during the proceeding) at the relevant Labor Court if the dismissal is acknowledged to be unjustified and provided that the dismissed worker is informed of the deposit of both the severance pay and the salaries accrued during the proceeding.

However if the deposit is made at Court within 48 hours after the dismissal, no salaries will accrue during the proceeding.

If the worker has received unemployment benefits, the employer must deduct the benefits paid to the worker by the management entity, from the salaries accrued during the proceeding, and refund such amount to the management entity.

5. SENIOR EXECUTIVE CONTRACTS

As mentioned earlier, special rules apply to certain categories of employee, including most notably senior executives and their special labor relationships, which are governed by Royal Decree 1382/1985, of August 1.

A senior executive is an employee who has broad management authority in relation to the company's general objectives and exercises that authority independently and with full responsibility, reporting only to the company's supreme governing and managing body.

The terms of employment for such executives are subject to fewer constraints than those for ordinary employees.

5. Senior executive contracts

Table 4

CATEGORIES OF DISMISSAL

CLASSIFICATION	EVENTS	EFFECTS
Justified	Conforming to law.	Disciplinary dismissal. Validation of the dismissal, the worker is not entitled to severance pay. Objective dismissal: Payment of 20 days' salary per year worked, up to a limit of 12 months' salary.
Unjustified	No legal cause exists for the dismissal or the procedure adopted is incorrect.	The employer may either: <ul style="list-style-type: none"> • reinstate the worker, • or terminate his contract, paying severance of 45 days' salary per year worked, up to a maximum of 42 months' salary. <p>If the dismissed worker is a workers' representative, the choice will rest with him.</p>
Null	<ul style="list-style-type: none"> • Its cause is a form of discrimination. • It implies a violation of fundamental rights. • It affects pregnant workers during the period of suspension of the contract due to maternity, risk during pregnancy, adoption or fostering, reduction of working hours to care for children or handicapped persons or reduction for breastfeeding, and in certain circumstances female workers who have been the victims of gender violence. • Failure to comply with the formalities for objective dismissals (unless no advance notice is served). 	<ul style="list-style-type: none"> • Immediate reinstatement of the worker. • Payment of the unpaid salaries.

As a general rule, the parties (employer and senior executive) have a wide margin of maneuver in defining their relationship by contract.

months' pay, or such other severance as may have been agreed on.

Senior executives' contracts can be terminated without cause (i.e., contractual withdrawal by employer), serving notice at least 3 months in advance, in which case they are entitled to severance pay of seven days' pay per year worked, up to a maximum of six

The senior executive may freely cancel his contract by serving at least three months' advance notice.

In addition, the Law establishes certain grounds on which the senior executive can terminate his or her contract and receive the agreed-upon severance pay and, in the absence thereof, the

severance pay established for cases where the employer withdraws from the contract.

Alternatively, a senior executive can be dismissed on any of the grounds stipulated in general labor legislation (objective causes, disciplinary reasons).

If the dismissal is adjudged to be unjustified, the senior executive is entitled to 20 days' pay per year worked, up to a maximum of 12 months' pay, unless different terms of severance have been agreed on.

It should be noted that the statutory minimum severance for senior executives is lower than that for ordinary employees. However, in practice senior executive contracts usually provide for severance payments that are higher than the statutory minimum.

6. CONTRACTS WITH TEMPORARY EMPLOYMENT AGENCIES

In line with the general guidelines established by the European Union, Law 14/1994 regulated for the first time in Spain the activities of temporary employment agencies, which involve supplying manpower to their client companies to cover their temporary needs. This special situation of the client company with respect to the worker employed by the temporary employment agency is also regulated in Law 31/1995, of November 8, on the Prevention of Occupational Risks, which defines the liability of the client company with respect to workplace conditions.

The reform of the Law on Temporary Employment Agencies by Law 29/1999 provides greater legal certainty to the workers of companies of this kind, in their labor relationships with client companies and encourages job security and improves their pay. Accordingly, the Spanish Parliament has placed workers from temporary employment agencies on the same footing as employees of client companies in terms of minimum pay. Disclosure obligations to employee representatives are also extended.

Pursuant to Law 29/1999, a manpower supply contract (statutorily defined as a contract between a temporary employment agency and a client company under which workers are supplied to provide services at the latter) can be concluded in the same circumstances, subject to the same conditions and requirements, and for the same term as those relating to a temporary contract entered into by the client company pursuant to the Workers' Statute.

The latest reform introduced by Law 12/2001 in the area of contracts with temporary employment agencies permits a temporary employment agency to enter into an employment contract with a worker to cover successive manpower supply contracts with different client companies so long as the manpower supply contracts are fully stipulated when the employment contract is signed and, in all cases, they address one of the situations justifying the hiring of casual labor under Article 15.1.b) of the Workers' Statute (i.e., market circumstances, the accumulation of tasks or excess orders), with each supply of manpower having to be formalized in the employment contract.

The Temporary Employment Agency Law establishes various events in which companies are unable to enter into manpower supply contracts:

- To replace workers on strike at the user company.
- To perform activities and work subject to regulations because of their particular hazard to health or safety.
- When the company has cancelled the job positions that it intends to fill by unjustified dismissal or for the causes contemplated for termination of the contract unilaterally by the worker, collective dismissal or dismissal for economic causes in the twelve months immediately preceding the date of the manpower supply contract.
- To lend workers to other temporary employment agencies.

7. EMPLOYEE REPRESENTATION

Labor unions collectively represent workers' interests territorially (nationwide and so on) and by industry. Various employers' associations also exist whether nationally or otherwise.

At company level, personnel are represented by personnel delegates or workers' committees (depending on the number of employees at the company or the workplace) that may, or may not, belong to a labor union. At companies with more than ten workers, there is an automatic right to choose such representatives (although it is not obligatory for there to be representatives). The right to elect personnel delegates at companies that have between six and ten employees can be exercised if all the employees unanimously choose to be represented.

Furthermore, employees of Community-scale enterprises or Community-scale groups of enterprises are entitled, following a prior request, to establish a European workers' committee or a procedure to inform and consult workers. This right is recognized under Law 10/1997 (amended in some respects by Law 44/1999),

7. Employee representation

on the Rights to Inform or Consult Workers at Community-scale Enterprises and Community-scale Groups of Enterprises.

7.1. Functions of workers' committees and personnel delegates

The functions of workers' committees and personnel delegates are the same, and include the following:

- To receive quarterly information on the economic situation, output, sales and labor force variations at the company.
- To be notified of the balance sheet, income statement and annual report of the company, on the same terms as the shareholders.
- To issue a report on certain labor issues, such as redundancy procedures and professional training plans at the company, before the employer implements its decision in this connection.
- To issue reports on mergers, absorptions or changes in the legal form of the company, if they affect a certain number of jobs.
- To be informed of certain labor-related matters (standard contracts, penalties for very serious infringements, absenteeism, and so on).
- To monitor compliance with labor regulations.

There are also certain statutory safeguards established regarding the dismissal of, or imposition of penalties on, employee representatives.

7.2. Collective labor agreements

Collective labor agreements are negotiated between employers or employers' associations and employee representatives, and are mandatorily binding on the parties. Collective labor agreements have a sectorial scope (governing a certain industry) and a functional scope (they may be negotiated at the State level or at a lower territorial level and at the company level). Collective bargaining has become a decisive factor in the reform of Spanish labor legislation.

Such agreements are generally entered into for one or two years, although they can be extended for longer periods.

8. ACQUISITION OF A SPANISH BUSINESS

Certain labor law provisions are particularly relevant when acquiring or selling a going concern in Spain. For example, if a

business is transferred, both the seller and the buyer are jointly and severally liable for a period of three years after the transfer, for any labor claims which arose prior to the transfer.

When a business is transferred, the new employer subrogates to the former employer's labor and social security rights and obligations, including pension commitments, as provided in the legislation specific thereto and, in general, to as many employee welfare and supplementary obligations as the former employer may have entered into.

The seller and buyer must previously inform their respective employees of certain aspects of the future transfer.

Specifically, the information must comprise at least the following:

- Proposed date of transfer.
- Reasons for the transfer.
- Legal, economic and social consequences of the transfer for the employees.
- Measures envisaged for the employees.

If there are no elected representatives at the affected companies, the information must be supplied directly to the employees affected by the transfer.

There is also an obligation (applicable to both the seller and the buyer) to arrange for a period of consultations with elected employee representatives where, as a result of the transfer, labor measures are adopted for the personnel affected.

The consultation period will address the measures envisaged and their consequences for the employees and must be arranged sufficiently in advance of the date on which such measures are to be taken.

If the change in ownership results in significant changes in business activities, philosophy or management, senior management personnel may be entitled to terminate their employment within three months following the occurrence of these changes and to receive severance equal to seven days' pay per year worked, up to a maximum of six months' pay, or such severance as may have been agreed on.

9. RELOCATION OF WORKERS UNDER A CROSSBORDER WORKING ARRANGEMENT

Law 45/1999, of November 29, introduced several measures to monitor and provide protection for relocations of workers under crossborder working arrangements.

There are a number of minimum terms of employment that employers in the European Union, and in the European Economic Area (the EU plus Norway, Switzerland, Iceland and Liechtenstein) must guarantee to their employees relocated temporarily to Spain, except for merchant navy firms in respect of their sailing personnel, irrespective of the law applicable to their employment contracts. Nevertheless, Additional Provision No. 4 of Law 45/1999 provides for the possibility of extending its scope to third countries by virtue of international agreements.

In this connection, it should be borne in mind that in 2004 ten new Member States joined the European Union, in what was the biggest enlargement in its history. The new EU Member States are: the Czech Republic, Cyprus, Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Malta and Poland.

This Law applies to relocations for a limited time period in the following cases:

- Within the same company or within a group of companies.
- Under international services contracts.
- When the workers of a temporary employment agency are posted to a client company in another EU Member State.

The only exceptions to the above are in the case of employee relocations during training periods and those relocations that last less than eight days, unless they involve workers employed by temporary employment agencies.

The minimum terms of employment to be guaranteed by employers in the above countries in accordance with Spanish labor legislation are: (i) working time, (ii) pay (which must be at least that provided for the same post under the relevant legal provision, regulation or collective labor agreement), (iii) equality of treatment, (iv) the rules on underage work, (v) prevention of occupational risks, (vi) nondiscrimination against temporary and part-time workers, (vii) respect for privacy, for dignity rights, and the freedom to join a union and (viii) rights of strike and assembly. However, if employees relocated to Spain enjoy more favorable terms in their country of origin, those terms apply.

The employers in such cases are also required to perform certain obligations and disclose certain information to the competent labor authorities for monitoring and coordination purposes.

Specifically, they should report the relocation to the Spanish Labor Authorities before the worker starts to work and regardless of the duration of the relocation.

The legislation on labor infringements and penalties classifies a series of events in this respect. Formal defects in the reporting of worker relocations to Spain constitute a minor infringement, while the reporting of the relocation after it has taken place is a serious infringement. Failure to report the relocation and misrepresentation or concealment of the data contained in the report are considered to be gross infringements.

Failures to meet the minimum working conditions mentioned above, which are classified according to the penalties applicable to Spanish employers, are considered to be administrative infringements.

10. VISAS AND WORK AND RESIDENCE AUTHORIZATIONS

Organic Law 8/2000 (of December 22) on the Rights and Freedoms of Foreigners in Spain and their Social Integration, together with the recent Organic Law 14/2003, on the same matter, clarify and even amend certain of the provisions introduced by the previous Organic Law 4/2000 (of January 11), in an attempt to provide greater guarantees for a policy to ensure the integration of nationals from third countries who reside legally on Spanish soil, and encouraging nondiscrimination of this group in Spanish economic, social and cultural life.

Laws 8/2000 and 14/2003, introduce the following main new features: (i) they clarify the definition of "foreigner" (non-Spanish national or non-Community national); (ii) they extend to foreign nationals the constitutional safeguards in Article 13 of the Spanish Constitution on civil liberties; (iii) they introduce enforcement measures to combat illegal immigration, as well as measures to combat human trafficking, and enable certain activities linked to this traffic to be monitored.

Foreigners included in the Community system may reside and work (as self-employed or employed workers) in Spain with no need to obtain work authorization.

Foreigners to whom the Community system does not apply require administrative approval to be able to work and reside in Spain. Employers who intend to hire a foreigner who is not authorized to work in Spain (to whom the Community system does not apply) should previously obtain an authorization from the Ministry of Labor and Social Affairs. Nevertheless, lack of a work permit will not render the employment contract void with

10. Visas and work and residence authorizations

regard to the rights of the foreign worker and will not prevent him from obtaining the benefits to which he may be entitled.

The Law on the Status of Foreigners currently in force was implemented by regulations approved under Royal Decree 864/2001. However, the new implementing regulations, approved under Royal Decree 2393/2004, were published on January 7, 2005, and entered into force one month after their publication in the Official State Gazette.

10.1. Nationals from non-EU countries

Under Spanish labor legislation, non-EU nationals intending to work in Spain must obtain a special work visa and a work and residence authorization. The Spanish labor authorities grant different types of work authorization depending on the type of work and its duration.

The types of work authorization currently in force are as follows:

- The duration of initial authorizations for employed work and residence will be of one year and can be restricted to a certain geographical area and type of work. After the one-year period, initial authorizations can be renewed for a two-year period. Once renewed, an authorization will allow its holder to engage in any type of work anywhere in Spain. Work authorizations are granted taking into account the employment situation in Spain (that is, the need for labor and the level of unemployment for the jobs offered). Every quarter the Spanish National Employment Institute publishes a catalog of jobs that are difficult to fill which provides a breakdown by province of the occupations for which foreigners can be hired.

In addition, the Decision of December 30, 2005, of the Office of the Secretary of State for Immigration and Emigration approves the annual contingent of foreign workers (that is, the projections of non-EU-national and nonresident labor that the domestic market will need, distinguishing between industries and provinces).

- However, there are certain preferential situations, such as foreigners who have Spanish family ties, workers necessary to assemble and repair imported machinery, or senior executives. In these cases, the domestic employment situation does not have to be certified. Authorizations for self-employed work and residence are granted for an initial one-year period and can be renewed on expiry for further two-year periods.

Where a worker has resided legally and continuously in Spain for five years and has renewed his or her work and residence permits (whether for self-employed or employed work), he or she may

obtain a permanent residence permit. After obtaining such a permit, the worker must apply for a resident alien identity card, which will be renewed every five years.

Other types of work authorization are as follows (Table 5).

10.2. Nationals from EU Member States

Nationals from other Member States of the European Union, the European Economic Area and Switzerland do not need to obtain a work authorization as an employee or as a self-employed worker, because EU legislation on the free movement of workers applies fully. They are therefore entitled to perform any activity both as employees and as self-employed workers, in the same terms as Spanish citizens.

Since Royal Decree 178/2003, of February 14, came into force, self-employed workers or employees, students or beneficiaries of the right to permanent residence, provided that they are citizens of the European Union Member States or of other States included in the European Economic Area, and certain of their relatives may reside in Spain with no need for a residence card. It will suffice for them to hold a valid national identity card or passport.

Other foreign citizens included in the Community system should obtain a residence card.

There is currently a transitional legal regime in place for citizens from certain States that recently joined the European Union (Slovakia, Slovenia, Estonia, Hungary, Lithuania, Poland, and the Czech Republic).

11. SOCIAL SECURITY SYSTEM

As a general rule, all employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel, civil servants who reside and/or perform their duties in Spain are required to be registered with, and pay contributions to, the Spanish Social Security System. Even unemployed persons (subject to certain conditions) must pay contributions to the Social Security System.

There are certain Bilateral Agreements on Social Security between Spain and other countries, which regulate the effects on Spanish public benefits of periods of contribution to the Social Security Systems of other States. The Agreements also determine the State in which Social Security contributions are to be paid in cases of relocations and temporary or permanent assignments abroad.

Table 5

TYPES OF WORK AUTHORIZATION

AUTHORIZATION TYPE	SCENARIO	DURATION
Frontier workers	Employed or self-employed work authorization for workers residing in the frontier area of a neighboring State to which they return each day. Its validity is restricted to this territorial area.	Five years at most, renewable on expiry.
Temporary work	Permitted types of work: <ul style="list-style-type: none"> • Seasonal work for 9 months at most within a period of 12 consecutive months. • Project work or services (assembly of industrial plants, infrastructure, etc.). • Senior management, professional sportsmen and women, artistes in public performances, and such other groups as may be determined by legislation. • Training and trainee work. 	The term of the contract, subject to a one-year limit (except in the case of seasonal authorizations), and not renewable, except for the renewals provided for in labor legislation.
Crossborder work	Granted to foreigners who work for a company established in a country that does not belong to the EU or the European Economic Area, and who are assigned temporarily to Spain in the following cases: <ul style="list-style-type: none"> • Execution of an agreement between the foreign company and the company established in Spain that will receive the services. • Temporary assignment of workers between companies of a Group (including training). • Temporary assignment of highly qualified workers to supervise or advise on construction work or services that Spanish companies perform abroad. 	One year at the most, renewable for another year at the most.

Since January 1, 1986, the date of Spain's accession to the EU, EU Social Security legislation applies to Spain. Two EU Regulations (Regulation Nos. 1408/71 and 574/72, as amended by Regulation No. 1249/92) ensure that the workers to whom they are applicable are not adversely affected from a Social Security standpoint by moving from one Member State to another (Switzerland is included for these purposes).

The following basic rules apply in such cases:

- Workers are subject only to the Social Security legislation of one Member State. As a general rule, the applicable Social

Security legislation will be that of the country in which the worker carries on his activity. There are some exceptions to this general rule.

- If a worker of one EU Member State is temporarily relocated to another Member State to work for his company in that other Member State, the worker will remain subject to the Social Security legislation of the first Member State, provided that the foreseeable duration of the work to be done does not exceed 12 months and he or she is not sent to replace another employee who has completed the period of time for which he or she was relocated. This 12-month period can be

11. Social Security system

extended for an additional period of the same duration. After that it may be extended again if the competent authorities of both States so agree.

- If certain requirements are met, the time during which a worker of one Member State contributes to the Social Security System of another Member State will count as a period of contribution to his or her own country's Social Security System for the purpose of determining if the grace periods required for his or her future benefits under his or her own national Social Security System are met.

There are different contribution programs under the Spanish Social Security System:

- General Social Security program.
 - There are other situations within the general Social Security program qualifying for special treatment, namely:
 - Artists.
 - Railroad workers.
 - Sales representatives.
 - Bullfighting professionals.
 - Professional soccer players.
 - Special Social Security programs for:
 - Agricultural workers.
 - Seamen.
 - Self-employed workers.
 - Civil servants and military personnel.
 - Domestic personnel.
 - Coal miners.
 - Students.

Classification under these programs depends on the nature, conditions and characteristics of the activities carried on in Spain.

Unless one of the special programs applies, the general Social Security program. Under this program, Social Security contributions are paid partly by the employer and partly by the employee. Personnel are classified under a number of professional and job categories for the purpose of determining their Social Security contribution. Each category has maximum and minimum contribution bases, which are generally reviewed from year to year. Employees whose total compensation exceeds the maximum base, or does not reach the minimum base, must

bring their contributions into line with the contribution base for their respective category.

For 2006, the maximum contribution base is €2,897.70 per month for all professional categories and groups. The minimum bases have been increased according to the professional categories and contribution groups, from January 1, 2006 vis-à-vis those in 2005, by the same percentage as the increase in the official minimum wage.

Therefore the situation for the general Social Security program in 2006 is as follows:

Table 6

CONTRIBUTION PROGRAMS

Category	Minimum Base (Euros/month)	Maximum Base (Euros/month)
Engineers and graduates	881.10	2,897.70
Technical engineers and assistants	731.10	2,897.70
Clerical and workshop supervisors	635.70	2,897.70
Unqualified assistants	631.20	2,897.70
Clerical officers	631.20	2,897.70
Messengers	631.20	2,897.70
Clerical assistants	631.20	2,897.70

Category	Minimum Base (Euros/day)	Maximum Base (Euros/day)
Foremen classes 1 and 2	21.04	96.59
Foremen class 3 and craftsmen	21.04	96.59
Laborers	21.04	96.59
Workers under 18 years of age	21.04	96.59

The contribution rates applicable to employers and employees in the General Social Security Program in 2006 are shown in Table 7.

The total employer contribution rate is increased by higher percentages for occupational accident and occupational disease contingencies, depending on how hazardous the employee's work is, in accordance with the system of scales established by

Table 7

CONTRIBUTION RATES EMPLOYERS/EMPLOYEES

	Employer (%)	Employee (%)	Total (%)
General contingencies	23.6	4.7	28.3
Unemployment			
• General rule (1)	6.0	1.55	7.55
• Full-time fixed-term contracts	6.7	1.6	8.3
• Part-time fixed-term contracts	7.7	1.6	9.3
Professional training	0.6	0.1	0.7
Wage Guarantee Fund	0.4	—	0.4
Total general rule	30.6	6.35	36.95
Total full-time fixed-term contracts	31.3	6.4	37.7
Total part-time fixed-term contracts	32.3	6.4	38.7

(1) It includes: indefinite-term contracts (including part-time indefinite-term contracts and indefinite-term contracts for seasonal work), and fixed-term contracts (in the form of training contracts, relief and substitute contracts, except for contracts under which reductions are received pursuant to Royal Decree-Law 11/1998), and any type of contract made with disabled workers who have been recognized as having a degree of disability of not less than 33% percent of their physical or mental capacity.

Royal Decree 2930/1979, the percentages of which will be reduced by 10%.

It is worth noting the recent legislative reform brought about by Law 36/2003, of November 11, on economic reform measures with regard to the Social Security program for self-employed workers. Before this Law, these workers were only covered for temporary incapacity from the fifteenth day after the date of the leave. Law 36/2003 has extended this protection to make it equivalent to that established for employees, so that self-employed workers' benefits are on an equal footing with the benefits of the general Social Security program. The maximum contribution base for 2006 in the Special Social Security program for self-employed workers is, like that of the General program,

€2,897.70 per month. The minimum contribution base for 2006 is €785.70 per month.

For their part, executive directors who receive compensation and who do not have actual control of the company should be included under the General Social Security program for employees as workers "treated as" employees (i.e., without entitlement to unemployment benefit or the Wage Guarantee Fund).

12. PREVENTION OF OCCUPATIONAL RISKS

Under Law 31/1995, amended by Law 54/2003, on the Prevention of Occupational Risks and its implementing legislation, employers must ensure the health and safety of their employees, which does not only mean complying with the legislation and remedying situations of risk, but also planning preventive action from the outset of their business activities and planning ongoing action to perfect the existing protection levels. This includes the obligation to perform risk assessments, adopt measures in emergency cases, provide protective equipment and to ensure the health of employees, which includes ensuring that pregnant or breastfeeding women do not perform tasks which may put them or their unborn children/babies at risk.

All employers must have a prevention service to provide advice and assistance in prevention tasks, for which the employer should nominate one or more workers. In companies with fewer than six workers, this service may be provided directly by the employer, provided that it customarily conducts its business at the workplace and has the necessary capacity to do so. It is also possible for a prevention service to be organized externally or outsourced. Prevention services are fully governed by Royal Decree 392/1997, which implements Law 31/1995.

The Prevention Delegates, as employee representatives with specific risk prevention duties, supervise, monitor and advise on any measure in this area.

Furthermore, at companies with more than 50 employees, a Health and Safety Committee must be established and employers must consult this Committee regularly on employee health and safety procedures.

A failure to comply with these obligations may give rise to liability at administrative, labor, criminal and civil law. The Ministry of Labor and Social Affairs may impose substantial fines in the case of very serious infringements.

Apart from Law 54/2003, which amends Law 31/1995 and the Labor Infringements and Penalties Law and reforms the

12. Prevention of occupational risks

legislative framework for the prevention of occupational risks, bringing Spanish law into line with EU regulations on health and safety at work, the entry into force of Royal Decree 171/2004 in April 2004 should also be highlighted. The Royal Decree implements Article 24 of Law 31/1995 on the Prevention of Occupational Risks with regard to the coordination of business activities and also Royal Decree 2177/2004, which amends Royal

Decree 1215/1997 establishing the minimum health and safety requirements for the use of work equipment by workers in temporary work at a height.

Increasingly stringent regulations on the prevention of occupational risks are being implemented in Spain and the EU to afford greater protection to workers.

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