



# DECENT WORK CHECK

## **SPAIN** 2022

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## WageIndicator Foundation - [www.wageindicator.org](http://www.wageindicator.org)

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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## Bibliographical information

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# INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

*The text in this document was last updated in December 2022. For the most recent and updated text on Employment & Labour Legislation in Spain in Spanish, please refer to: <https://tusalarario.es/>*

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Royal Decree No. 2/2015 enacting the Workers' Statute, last amended by Royal Legislative Decree 2/2015 of 23 October
2. Royal Legislative Decree No. 5/2000, on Offenses and Penalties in the Social Order
3. Law 31/1995 on Prevention of Occupational Risks
4. Royal Decree 1561/1995
5. Royal Decree 1620/2011 of 14 November 2011 regulating the special labour relation of domestic workers
6. Royal Decree 2001/1983 on working day, public holidays and rest days
7. General Law on Social Security, as revised by the Royal Legislative Decree 1/1994 of 20th June
8. Royal Decree No. 295/2009 on Cash benefits of the Social Security System concerning Maternity, Paternity, Risk during Pregnancy and Risk during Breastfeeding
9. Royal Decree 773/1997 of 30 May on personal protective equipment
10. Legislative Decree No. 8/2015 Consolidating the General Law on Social Security
11. Law 14/1986 of 25 April, General Health
12. Law 16/2003 of cohesion and quality of the National Health System
13. Organic Law 3/2007 of 22 March for effective equality between women and men
14. Organic Law 10/1995, of November 23, of the Penal Code
15. Freedom of Association Organic Law 11/1985
16. Royal Decree 17/1977 of 4 March, 1997 on labour relation
17. Law 31/1995. of 8 November on Prevention of Occupational Risks

*The text in this document was last updated in December 2022. For the most recent and updated text on Employment & Labour Legislation in Spain in Spanish, please refer to: <https://tusalarario.es/>*

# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

**Spain has ratified the Convention 95, 117 and 131.**

### ***Summary of Provisions under ILO Conventions***

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## Regulations on work and wages:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute, last amended by Royal Legislative Decree 2/2015 of 23 October
- Ley sobre Infracciones y Sanciones en el Orden Social (Real Decreto Legislativo 5/2000)/Royal Legislative Decree No. 5/2000, on Offenses and Penalties in the Social Order
- Ley 31/1995, de 8 de noviembre, de prevención de Riesgos Laborales/Law 31/1995 on Prevention of Occupational Risks

## Minimum Wage

In Spain the Government annually fixes the inter-occupational minimum wage by Royal Decree following a period of consultation with the most representative trade unions and employers' associations. Wage rates are also fixed through collective agreement. The minimum wage legislation applies to workers from all occupations: agriculture, industry, services. Government fixes minimum wage taking into account the inflation rate, economic development and productivity, cost of living, needs of workers and their families and Level of wages and incomes in the country. The minimum wage legislation applies to workers from all occupations: agriculture, industry, services. The minimum wage legislation does not apply to certain workers, including public servants, executive directors, unpaid family workers, voluntary workers. Also, all workers are entitled to two bonuses per year, one of them on the occasion of Christmas and the other in the month that is set by collective

agreement or by agreement between the employer and the workers' legal representatives. The amount of these bonuses will also be set by collective agreements.

Any omission or action performed by the employer in violation of labour legislation or collective agreements is considered a labour offence. An authorised labour inspector may carry out inspection work to ensure compliance with labour legislation and collective agreements. Fines depend on the seriousness of the crime and may range between 60 euros and 37,920 euros.

Sources: §1, 11(1-2), 26(3), 27 & 31 of the Royal Decree No. 2/2015 enacting the Workers' Statute enacting; §5 & 40 of the Royal Legislative Decree No. 5/2000, on Offenses and Penalties in the Social Order

## Regular Pay

Wage means all economic benefits, in cash or in kind, that the employee obtains (from the employer) for the rendering of services. This benefit should be enough to cover the worker's needs, and those from his family. The employer may pay an employee his or her salary in cash, by cheque, or by direct credit transfer into the employee's bank account. The employer must give the employee an individual receipt for the salary payment, which must adhere to the Official Form of the Ministry of Labour and Social Affairs. Wages are generally paid on a monthly basis, and never for longer periods. The employer must provide the employee with a payslip clearly stating the details of the company and the worker, the wage, deductions (including the worker's Social Security contributions and IRPF (income tax) deductions). The employer is responsible for making all contributions

and therefore deducts the correct amount for the income tax (IRPF) and Social Security contributions due under the law. The amount deducted for IRPF depends on pay and personal and family circumstances (children and people dependent on the worker). The payment of salaries has to be punctual and documented on the date and in the place agreed on or in accordance with practices and customs. The periodic wage payment period may not exceed one month. The worker and, with his/her authorization, his/her legal representatives, have the right to receive advances to the account of work already done, without being obliged to wait for the appointed day of payment. An employer is obliged to pay 10% interest on late salary payment.

The Statute of Workers requires that the payment of wages is reflected in a pay slip. The pay slip must clearly reflect the payments (base salary, allowances, wages in kind, non-wage payments, etc.) and deductions (taxes, social security contributions, etc.) and must follow the model established in the collective agreement of reference. In the absence of a collective agreement, the pay slip must be in the format approved by the Order No. ESS/2098/2014.

Sources: §26 & 29 of the Royal Decree No. 2/2015 enacting the Worker's Statute



# 02/13 COMPENSATION

## ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Spain has ratified the Convention 01 only.**

### *Summary of Provisions under ILO Conventions*

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

## Regulations on compensation:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Royal Decree 1561/1995

## Overtime Compensation

The normal working hours are 09 hours a day and 40 hours a week, averaged over a reference period of twelve months. The maximum overtime limit is 80 hours per year. Collective agreements or individual contracts shall determine if the overtime will be paid, in no case at a lower rate of the ordinary working hours, or compensated with time off. In the absence of any such agreement, overtime will be compensated with equivalent rest periods within the following four months the overtime was worked. Compensation procedure is determined by Collective agreements or individual contracts. The provisions of overtime work provided by the Royal Decree No. 1 enacting the Worker's Statute, applies to domestic workers. For part-time workers overtime is paid at the rate of 15% of the normal hours specified in the contract of employment. Collective agreements can authorize a higher limit, to a maximum of 60% of normal hours. In any case, the total hours worked cannot exceed the normal hours of full-time workers and the rules on rest periods must be respected. Overtime is voluntary. For Night workers, Overtime work is prohibited.

The Royal Decree Law 8/2019, which has amended the Workers' Statute Act, requires employers to record the daily working of employees to prevent the development of precarious employment and non-payment of compensation in cases of overtime.

Sources: §10 Chapter III of Social Protection Measure; §34 & 35 of the Royal Decree No. 2/2015 enacting the Workers' Statute  
<https://www.boe.es/buscar/doc.php?id=BOE-A-2019-3481>  
<https://www.andersentaxlegal.es/en/publications-and-news/royal-decree-law-82019-of-8th-march-on-urgent-measures-for-social-protection-and-the-fight-against-job-insecurity-in-the-workplace.html>

## Night Work Compensation

Night work is work performed between 10pm and 6am. A worker who performs work for at least 3 hours during the abovementioned night hours or night period is one-third of his working time is considered a night worker. Workers cannot perform more than 8 hours during night averaged over a period of 15 days. Night workers cannot work overtime. Government after the proposal of the Minister of Labour and Social Affairs and after consultation with trade unions and employers' representatives, may establish limitations or extensions to these limits, for those sectors and jobs which have special characteristics and require more or less hours of work. Night work has a compensation fixed in the collective agreement unless the salary is established considering that the work is night work or rest time has been agreed as compensation. Night workers are entitled to a health assessment before they start night work and subsequently at periodic intervals. The safety and health of night workers must be protected to the extent required by the nature of the work. Night workers with health problems related to the fact that they are performing night work are entitled to be transferred to another post during the day work. For Pregnant women

and women who have recently given birth, the working conditions and hours of work, including night work must be so adjusted that they do not affect the health of expectant or nursing mothers. If such measures of adaptation are not adequate or are impracticable, the female employee may be transferred to another job or function, while in some cases it may even prove necessary to suspend her contract.

The maximum working hours for night workers whose work involves special hazards or major physical or mental stress are 8 hours in the course of a 24-hour period. The types of work involving special risks or significant mental or physical stress are defined in a collective agreement or agreement between the enterprise and workers' representatives. The maximum working hours for such night workers may be exceeded only in the case where it is necessary to prevent and repair damages or where the irregularities in the shift are not attributable to the enterprise.

Sources: §36(1-4) & 34(7) of the Royal Decree No. 2/2015 enacting the Workers' Statute; §26 of the Law No.31/1995 on Prevention of Occupational Risks amended by Law No. 39/1999 of 5 November on reconciliation of work and family life for workers; Royal Decree 1561/1995

## Compensatory Holidays / Rest Days

According to Art.36(3) of Workers' Statute, companies that by the nature of their activity do the work in shifts, including Sundays and holidays, may restrict a teams of workers who carry out their activity for full weeks, or hiring staff to complete the necessary work for one or more days a week. In case when national holidays occur on Sunday or any other weekday, the

Government can move it to the Monday. (Royal Decree No. 1 enacting the Workers' Statute Art.36(3), Art. 37(2)). Article 47 of Royal Decree 2001/1983 clearly provides that if a worker works on a weekly rest or public holiday, he/she must be provided either the compensatory holiday or increased pay at the rate of 175% of the normal rate of pay. "Where, exceptionally for technical or organizational reasons, workers could not enjoy the public holiday or weekly rest day, the company is bound to pay the employees, in addition to the wages for the week, at least 175% of the normal wages for the hours worked on weekly rest or public holiday unless a compensatory rest is provided".

Source: §36(3) & 37(2) of the Royal Decree No. 1 enacting the Workers' Statute; §47 of Royal Decree 2001/1983

## Weekend / Public Holiday Work Compensation

If Sunday or Public holiday work is considered in the definition of overtime work, employees are eligible overtime payment, which cannot be less than the rate of ordinary working hours, or compensated with time-off. If there is no agreement in this regard, overtime is compensated with equivalent rest periods within the following four months the overtime was worked. Compensation procedure is determined by Collective agreements or individual contracts. (Royal Decree No. 1 enacting the Workers' Statute Art.35(1)). Article 47 of Royal Decree 2001/1983 clearly provides that if a worker works on a weekly rest or public holiday, he/she must be provided either the compensatory holiday or increased pay at the rate of 175% of the normal rate of pay. "Where, exceptionally for technical or

organizational reasons, workers could not enjoy the public holiday or weekly rest day, the company is bound to pay the employees, in addition to the wages for the week, at least 175% of the normal wages for the hours worked on weekly rest or public holiday unless a compensatory rest is provided".

Source: §35(1) of the Royal Decree No. 1 enacting the Workers' Statute; §47 of Royal Decree 2001/1983

# 03/13 ANNUAL LEAVE & HOLIDAYS

## **ILO Conventions**

Convention 132 (1970) on Holidays with Pay Convention  
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.  
In addition, for several industries, different Conventions apply.

**Spain has ratified the Conventions 14, 106 and 132 only.**

### ***Summary of Provisions under ILO Conventions***

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

## Regulations on annual leave and holidays:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Real Decreto 1620/2011, de 14 de noviembre, por el que se regula la relación laboral de carácter especial del servicio del hogar familiar/Royal Decree 1620/2011 of 14 November 2011 regulating the special labour relation of domestic workers
- Real Decreto 2001/1983, de 28 de julio, sobre regulación de la jornada de trabajo, jornadas especiales y descansos/Royal Decree 2001/1983 on working day, public holidays and rest days

## Paid Vacation / Annual Leave

Employees are entitled to annual paid leave of at least 30 calendar days per year. The actual number of days will be set within the applicable collective agreement, and employees cannot opt to take payment in lieu of paid time off. The time during which holiday should be taken is to be agreed between the employee and employer; however, if they are unable to do so, the Labour Court will make the determination, and that decision shall be binding and final. Annual leave generally should be taken in the year in which it is earned and, only in exceptional circumstances, may be carried forward to the next year. Compensation should not be paid in lieu of holiday other than in the final year of employment when the employee leaves before taking his or her accrued holiday entitlement. Domestic workers are entitled to enjoy an annual leave with a total duration of 30 calendar days, that may be split in two or more

periods, provided that at one of them shall have a duration of at least 15 consecutive calendar days. If the holiday period set in the company holiday calendar coincides with a temporary incapacity arising from pregnancy, childbirth or natural breast-feeding, or with the period of suspension of the work contract, the worker has the right to enjoy holidays on a date other than that of the temporary incapacity or at the period of suspension of contract even when the calendar year to which the annual leave corresponds may have finished.

Sources: §38(1-2) of the Royal Decree No. 2/2015 enacting the Workers' Statute; §9(7) of the Royal-Decree 1620-2011

## Pay on Public Holidays

Public holidays are paid rest days of religious or secular or institutional nature. Public holidays shall not exceed 14 a year, of which two will be local holidays. Public holidays in Spain are not celebrated in every region, each municipality in Spain is allowed to have a maximum of 14 public holidays per year. Out of these, a maximum of nine Spain holidays are chosen by the national government and at least two of these are selected locally.

National holidays in Spain may include January 1 New Year's Day, January 6 Epiphany, February 28 Regional Holiday, March 19 Joseph's Day, March or April Good Friday, April 23 Regional Holiday, May 1 Labour Day, May 2 Regional Holiday, May 17 Galician Literature Day, June 24 St. John's Day, July 25 St. James, August 15 Assumption, September 2 Municipal Holiday, September 8 Regional Holiday, September 11 National Day of Catalonia, October 12 National Day, October 25 Day of the Basque Country, November 1 All Saints'

Day, December 6 Constitution Day, December 8 Immaculate Conception and December 25 Christmas Day. These holidays of Spain may be replaced by the autonomous communities with another date. There may also be additional dates celebrated as regional public holidays, which can vary from region to region.

The regions can add a 15th public holiday (though it is unpaid). Collective agreements may raise the number of public holidays.

Sources: §37(2) of the Royal Decree No. 2/2015 enacting the Workers' Statute; Resolución de 16 de octubre de 2018, de la Dirección General de Trabajo, por la que se publica la relación de fiestas laborales para el año 2019

Sources: §34(3, 4 & 7) and 37(1) of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Weekly Rest Days

A weekly rest period is provided under the Workers' Statute. Every worker is entitled to enjoy a weekly rest/uninterrupted period of one and a half days (36 hours) which should include, as a general rule, Saturday afternoon (or Monday morning) and full Sunday. Weekly rest can be accumulated over a two-week period. Young workers are entitled to uninterrupted days of weekly rest.

The Workers' Statute has provisions on daily rest breaks of at least 15 minutes when the working day exceeds 6 hours. The daily rest break for the young workers (under 18) is 30 minutes after four and half hours of consecutive work. The daily rest period on completion of daily work is 12 hours under the law. free time of at least 24 hours within a seven-day period, on the condition that they have performed work during the preceding week.



# 04/13 EMPLOYMENT SECURITY

## **ILO Conventions**

Convention 158 (1982) on employment termination

**Spain has ratified the Convention 158.**

### ***Summary of Provisions under ILO Convention***

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).



## Regulations on employment security:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute

## Written Employment Particulars

The employment contract may be in writing or verbal, but either party may request a written employment contract at the start or at any time during the course of the employment relationship. Due to their particular characteristics, certain types of contract must be in writing. These include part-time contracts, permanent seasonal contracts, temporary contracts for a specific project or service, fixed-term contracts lasting more than four weeks, Placement and training contracts and teleworking contracts. Employers are required to provide written employment particulars to all employees especially when contract is not made in writing: identity of the employer and the worker, starting date, duration of contract, the professional category and the characteristics of the post and the tasks to be performed, working conditions such as the amount of pay and the working times, the workplace, duration of holidays etc, the probationary period and the collective agreement applicable.

Once the contract has been signed by both parties, the employer must inform the Public Employment Services of the content and any extensions to the contract. Although the terms and conditions of the employment may be changed during the term of employment, employers must comply with the requirements and procedures laid down in the labour laws.

Source: §8-16 of the Royal Decree No.

2/2015 enacting the Workers' Statute

## Fixed Term Contracts

A fixed-term contract may be entered into in any of the following situations: people with either a university degree or medium- or high-level professional training, or those without a specific professional qualification may enter into an apprenticeship employment contract; worker may be hired to carry out a specific job or service; worker may be hired to meet the temporary increase in the workload; replacement of workers on maternity leave or other leave; fixed-term contract for the first employment of young people under the age of 30 with no work experience or work experience of less than three months; and the "handover" contract, whereby an employee is recruited to cover the hours of an older employee who is working part time in the period up until retirement.

The maximum number of FTC depends on the reason for which the contract was concluded. If it is concluded to address temporary increase in the workload, the fixed-term contract can be extended or renewed only once, within the maximum duration (6 months in any 12-month period which can be extended to 12 month in any 18-month period by collective agreement). For the specific task or service contracts, maximum duration is 36 months allowing for a further 12 month extension. There is no limit on the successive fixed term contracts within the maximum time duration. The maximum duration of the training and apprenticeship contracts is one year (minimum) to three years (maximum). There is no limit on the duration of contract for a worker with disability. For professionalizing contracts, the duration ranges between 6 months to 2

years. The maximum duration of a replacement contract for workers near retirement, the contract duration is time left until the replaced worker reaches the age of 65 up to a maximum of 48 or 52 months, according to the age of a worker who retires. Fixed-term employees are not to be discriminated against compared to indefinite employees, except if there is an objective justification for doing so. A fixed-term employment that is entered into without justification is made in fraud of the law and, as such, leads to an indefinite employment.

Sources: §15(1b) Royal Decree No. 2/2015 enacting the Workers' Statute; Law 35/2010 of 17 September 2010

## Probation Period

The maximum duration of the probationary period is set in accordance with the provisions of collective agreements. However, in the absence of a collective agreement, the duration of probationary period may not exceed six months for skilled technicians, or two months for other workers. In enterprises employing fewer than 25 workers the probation period may not exceed three months for workers who are not skilled technicians. During the probationary period, the employee will have the same rights and obligations as a permanent employee except with respect to termination. Either party may terminate the relationship during this period without the usual notice provisions applying, and without the payment of any compensation whatsoever. A new type of employment contract, created in 2012, the Permanent Employment Contract to Support Entrepreneurs available exclusively to SMEs with less than 50 employees sets the duration of trial period to 1 year.

Sources: §14 of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Notice Requirement

Dismissals may be classified as disciplinary dismissals and objective dismissals. Reasons for disciplinary dismissal include a serious and negligent breach of contract by the employee like repeated and unjustified absenteeism or lack of punctuality; or a lack of discipline or disobedience at work; or a verbal or physical offence against the employer, fellow employees or their relatives; or a breach of contractual good faith; or a continued and wilful reduction in normal or agreed efficiency and output; or regular drunkenness or drug addiction if this has a negative effect on the employee's work. On the other hand, the objective dismissals may be based on ineptitude towards work; or a lack of adaptation to technical modifications relevant to his role; or redundancy due to financial, technical, organisational or production related reasons; or absenteeism, even if legitimate and intermittent, when the degree of absenteeism reaches certain legal quotas. There is generally no statutory notice period that an employer has to observe while terminating an employee. Where an employer dismisses an employee, and notice periods apply only where laid down by agreement between the parties, an applicable collective agreement or a company policy.

However, individual dismissals on objective grounds are subject to a notice period of 15 days while no notice is required for dismissals on disciplinary grounds. Where notice periods apply, the employer can also decide to pay in lieu of notice.

In the case of termination of fixed-term employment contracts with a duration exceeding one year, the employer must generally give a minimum notice period of 15 days in advance of the termination date.

If an employee resigns (whether hired under an open-ended or fixed-term contract), he or she must give the employer the notice defined by an applicable collective agreement or by custom and practice in the workplace concerned (generally, the notice period ranges from 15 days to one month, though some collective agreements require notice period of three months).

In 2020, article 52(d) of the Workers' Statute was repealed. Under this, an employer had the right to objectively dismiss a worker who had accumulated numerous absences from work, even if they were justified. This ground for objective dismissal has now been removed.

Sources: §51(1), 53(1c), 54 & 55 of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Severance Pay

In the event of dismissal for an objective reason (economic/organizational reasons, worker's capacity and other objective reasons), severance pay is paid to the worker at the time the written contract termination notice is delivered to the worker.

Severance/Redundancy pay is equal to 20 days' wages per year of service with a maximum of 12 months' wages. In the event of less than one year service, a pro-rated severance pay is given to the worker (like 10 days wages for 6 months) (art. 53(1) ET). On

the other hand, if a worker is dismissed for disciplinary reasons, he is not entitled to severance pay.

In accordance with the Workers' Statute, upon termination of a fixed term contract by expiry of the term or completion of the work, the worker is entitled to a severance payment (not applicable to contracts concluded for training purposes or to replace employees temporarily absent from work).

As for permanent contracts drawn up by firms of less than 25 employees, where contracts are extinguished on grounds of objective reasons – also regarding collective dismissals- the Wage Guarantee Fund (FOGASA) pays part of the compensation due to worker – equivalent to 8 days pay per year of service, with the periods of up to 1 year prorated by months- the WGF is not responsible for any compensation if the extinct decision is declared unfair and so the employer must pay in such cases full severance pay.

In the event of unfair dismissal, the severance pay is as follows:

- i. for employees whose contracts started on or after 12 February 2012, the payment is set at 33 days' pay per year of service with the employer, up to a maximum of 24 months' pay.
- ii. for employees whose contracts started before 12 February 2012, the payment is set at 45 days' pay per year of service with the employer before 12 February 2012, and 33 days' pay per year of service with the employer from 12 February 2012. The total payment may not usually exceed 720 days' pay, though may be as high as 42 months' pay for employees with lengthy service before 12 February 2012.

At the end of a temporary contract, except for the interim and training contracts, the worker is entitled to compensation amount equivalent to the proportionate share of the amount that would result from paying twelve days of salary for each year of service. The compensation is calculated as follows:

- i. Eight days salary for each year of service for temporary contracts concluded until 31 December 2011
- ii. Nine days salary for each year of service for temporary contracts concluded from January 1, 2012
- iii. Ten days salary for each year of service for temporary contracts concluded from January 1, 2013.
- iv. Eleven days' pay for each year of service for temporary contracts concluded from January 1, 2014
- v. Twelve days salary for each year of service for temporary contracts concluded from January 1, 2015

Source: §33(8), 49(1c), 51-56, 49(1c) and Thirteenth Transitory provision of the Royal Decree No. 2/2015 enacting the Workers' Statute

# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

**Spain has ratified both the Conventions 156 and 165.**

### ***Summary of Provisions under ILO Convention***

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

## Regulations on family responsibilities:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute

## Paternity Leave

In cases of child birth, adoption or foster care, the worker is entitled to suspend his contract for four consecutive weeks, that can be extended in the event of multiple childbirth, adoption or fostering by two days for each child after the second child. To qualify for this leave the worker gives advance notice to the employer, in good time, of the intention to exercise this right. Payment is made at the rate of 100% of earnings, paid by the Social Security Fund with the same ceiling as for Maternity leave and financed by social insurance contributions from employers and employees, except for the first two days that are paid by employers in the private sector or the self-employed. Government has delayed the implementation of extended 04 weeks leave till 2015.

The currently applicable paternity leave, however, is only 15 days extended by two days per child in the case of multiple births (or adoption or fostering) or if the child has a disability; and from 15 to 20 days for large families or households with a disabled person. The first two days of the 15-day leave have to be used at the time of birth. The remaining 13 days of Paternity leave can be used during or immediately after the end of maternity leave. In the public sector, the 15-day paternity leave has to be taken as a whole at the time of birth. Fathers can also use Paternity leave part time with employer's agreement.

Until 31 December 2016, the above 15-day paternity leave was available to fathers. With effect from 01 January 2017, the paternity leave is now four consecutive weeks, extendable by two days for each child from the second child. There is two days of birth leave that is used by fathers at the time of birth. The four-week paternity leave can be taken during maternity leave or immediately after the end of maternity leave and on a full time or part-time basis (if provided under the collective agreement or individual agreement with the employer). Workers on paternity leave enjoy the same protection against dismissal as those on maternity leave.

Under Law No 06/2018, paternity leave was extended to 5 weeks. In line with Royal Decree-Law 6/2019, the paternity leave is increased to 8 weeks in 2019 (applicable from 1 April), 12 weeks in 2020 (applicable from 1 January) and 16 weeks in 2021 (applicable from 1 January). In 2021, paternity leave and maternity leave will be equal in length. During 2019, the first two weeks must be taken immediately after child birth and the biological father may transfer four weeks to the other parent. From 1 January 2020, the first four weeks of paternity leave must be taken immediately after child birth and the biological mother may transfer up to 2 weeks of her leave to the other parent. From 1 January 2021, the maternity leave and paternity leave are both equal in length, i.e., 16 weeks. The first 6 weeks must be taken after the child birth and are compulsory for both parents.

The two days of paid leave for the birth of a child is eliminated in 2019.

Source: §48bis of the Royal Decree No. 2/2015 enacting the Worker's Charter (Amended by the Act 9/2009)



## Parental Leave

Workers are entitled to unpaid parental leave of no more than 3 years to take care of their biological or adoptive child, counted from the date of the child's birth or the date of adoption. Each successive child entitles the worker to a new period of leave which marks the end of the current period of leave. When both parents work for the same company, the employer may prevent the concurrent exercise of their parental leave on the grounds of business risks. During the first year, return to the same job position is protected; after the first year, job protection is restricted to a job of the same category. There are no limits to the number of periods of leave that can be taken until the child is three years, with no minimum period. Since 2000, a number of regional governments have introduced flat-rate benefits. However, these benefits have been reduced or abolished since 2009 as a consequence of the fiscal crisis. Parental leave is unpaid leave however workers taking leave are credited with social security contributions, which affect pension accounts, health cover and new maternity or paternity leave entitlements, for the first two years in the private sector and for the whole period in the public sector.

Workers have the right to request adaptations of the duration and distribution of the workday, in the organization of working time to realize their right to the reconciliation of family and work life. Such adaptations however must be reasonable and proportionate in relation to the needs of the worker and the organizational or productive needs of the company. Working parents may also request such adjustments in working time until children turn 12. Both parents can take

6 weeks leave simultaneously. The employee is entitled to have one-hour absence from the work in case of the premature birth of the son or daughter.

Sources: §46(3) of the Royal Decree No. 2/2015 enacting the Workers Statute; Act 26/2015 on Parental leave for adoption and fostering

## Flexible Work Option for Parents / Work-Life Balance

Workers are entitled to a reduction of their working time (by between an eighth and a half), with a proportional reduction in wages, if they are directly responsible for a child under eight years (in private sector) or twelve years (in public sector) of age, people with disabilities or family members in certain specific circumstances. Employees may decide, within their usual work schedule, the extent and period of the working time reduction. It is defined as an individual right, and there is no payment (although some regional governments have introduced payments for parents reducing working hours), but workers taking this 'part-time leave' are credited with up to two years full-time social security contributions (which affect pension accounts, and new leave entitlements). In cases of premature births and children who, for whatever reason, remain hospitalized after childbirth, the mother or father have the right to be absent from work for an hour every day. Parents are also entitled to reduce their working hours to a maximum of two hours, with a proportional reduction in salary.

Sources: §37(4) of the Royal Legislative Decree 2/2015 enacting the Workers' Statute

# 06/13 MATERNITY & WORK

## **ILO Conventions**

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

**Spain has ratified the Convention 103 only.**

### ***Summary of Provisions under ILO Convention***

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.



## Regulations on maternity and work:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Ley General de la Seguridad Social, Real Decreto Legislativo 1/1994, de 20 de junio / General Law on Social Security, as revised by the Royal Legislative Decree 1/1994 of 20th June
- Real Decreto 295/2009, de 6 de marzo, por el que se regulan las prestaciones económicas del sistema de la Seguridad Social por maternidad, paternidad, riesgo durante el embarazo y riesgo durante la lactancia natural/Royal Decree No. 295/2009 on Cash benefits of the Social Security System concerning Maternity, Paternity, Risk during Pregnancy and Risk during Breastfeeding

## Free Medical Care

The National Health System provides health care to all people, financed by the Social Security, including among others, the services of women care: a) early care and health monitoring of pregnancy. b) preparation for childbirth, c) visit to the doctor during the first month postpartum, d) the detection of risk groups and early detection of gynaecological cancer and breast cancer, according to the programs established by the health services, e) treatment of the pathological complications of menopause, according to programs of health services. Hospitalisation is possible in hospitals of the National Health System (Sistema Nacional de Salud) or hospitals operating under agreement with this system.

Source: §14(2) of the Royal Decree 2766/1967 of 16 November, to issue regulations on health protection benefits and management of medical services in the General Social Security; §1, 2(1), Annex 1 (2.1) of the Royal Decree 63/1995 of 20 January, to issue regulations of health benefits in the National Health System

## No Harmful Work

It is the employer's responsibility to assess risks at workplace. For all activities liable to involve a specific risk of exposure to process or agents, the employer has to determine the nature, degree and duration of exposure in order to assess any risk to the health of pregnant women, women who have recently given birth, as well as of the foetus. If the assessment reveals a risk to the safety or health or an effect on pregnancy or breastfeeding of a worker, the employer has to take the necessary measures to ensure that exposure of that worker to such risk is avoided (through temporary adjustment of hours). In case the adaptation in working conditions or work times is not possible or not enough to prevent the risks, she should be transferred to another job compatible with her state, provided that a certified doctor should confirm that. If transferring the worker to another post is not technically or objectively feasible, or cannot reasonably be required on duly justified grounds, the law provides for the suspension of the employment contract. During the suspension of the contract of employment, women are entitled to cash benefits from the social security system until the maternity leave starts; worker's health gets better; or the child reaches nine months of age. The arduous work (manual lifting, carrying, pushing or pulling of loads); work involving exposure to biological, chemical

or physical agents; and work involving physical strain (prolonged periods of sitting, standing, exposure to extreme temperatures, vibration) are prohibited for pregnant workers and breastfeeding mothers.

Sources: §26 of the Act No. 31/1995 on the Prevention of Risks at Work; §135 of the Royal Decree No. 1/1994 on Social Security General Act; §48(5) of the Royal Decree No. 2/2015 enacting the Workers' Statute; §4(1) of the Royal Decree 39/1997 to issue regulations on Prevention Services; §7 of the Royal Decree No. 783/2001 to issue regulations on protection against ionising radiations

## Maternity Leave

The general total duration of maternity leave is 16 consecutive weeks in which six weeks are obligatory and must be taken following the birth, while the remaining ten weeks can be taken before or after birth. In case of multiple births, 2 weeks for each child after the second child. Except for the 6 weeks of compulsory leave, if the child is premature or has to be hospitalised after birth, leave can be taken after the end of hospitalisation. By consolidating an entitlement to reduced working hours, mothers can in practice extend Maternity leave by two to four weeks. If after maternity leave the mother still needs medical care as a result of the birth of her child and she is unable to work, she will be in situation of temporary incapacity and entitled to sickness benefits from the health insurance scheme. If the child is premature or has to be hospitalised after birth, the mother or the father are entitled to be absent from work for one hour every day. They also have the right to reduce their working hours up to two hours a day with

the proportional reduction of their remuneration. Employed mothers have the right to transfer up to ten of their 16 paid weeks of Maternity leave to the father on condition that they take six weeks after giving birth, that their partner fulfils contributory requirements, and that the transfer does not endanger their health. Leave can be completely transferred or partly transferred, so both parents share full or part-time leave simultaneously. If the mother dies, the father can take the Maternity leave entitlements, independently of the mother's previous employment situation and entitlements. Maternity leave is not reduced in the case of child's death.

Sources: §48(4) & 37(4bis) of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Income

All workers are entitled to maternity leave cash benefits, whether employees or self-employees if affiliated in any social security scheme and have made the contributions required. The qualification conditions to be entitled to cash maternity benefits are determined both by the age of the worker and the length of its contribution to the general social security scheme. a) if the worker is under 21 years old on the date of the birth/adoption/foster care: no minimum contribution period is required. b) if the worker is between 21 and 26 years old: minimum contribution period of 90 days in the 7 years immediately prior to the time when the leave start or, alternatively, 180 days of contributions in all the worker's working life prior to the date. c) if the worker is over 26 years old: minimum contribution period of 180 days in the 7 years immediately prior to the moment

when the leave starts or alternatively, 360 days in all the worker's working life prior to the date. In the case of part-time workers, contributions will be calculated according to the number of hours worked and by calculating their equivalence in theoretical contribution days. To be entitled to cash maternity benefits, employees should be affiliated to the general social security scheme and have made contributions for 180 days in the 5 years preceding the date of birth, adoption or foster care. All workers are entitled to maternity benefits from the first day of initiation of maternity leave, and its duration will correspond to the duration of the enjoyed rest period. In general, 16 consecutive weeks, that is extended by 2 weeks for each child after the second child, in cases of multiple birth, adoption or fostering. The amount of cash benefit is 100% of the contribution basis up to a ceiling of €3,606.00 a month for the whole duration of maternity leave. A flat-rate benefit (€532.51 per month or €17.75 per day) is paid for 42 days to all employed women who do not meet eligibility requirements.

Sources: §7, 86 & 133 of the Royal Decree No. 1/1994 on Social Security General Act; §3-4 & 8 of the Royal Decree No. 295/2009 on Cash benefits of the Social Security System concerning Maternity, Paternity, Risk during Pregnancy and Risk during Breastfeeding

## Protection from Dismissals

A contract of employment is suspended in the case of maternity leave and adoption. After the legal grounds of suspension have ceased to exist, the worker is entitled to his or her reinstatement in the job. Dismissal is null and void if it is based on any of the grounds of discrimination prohibited by the

Constitution or the law and which violate fundamental rights and freedoms of the worker. The same apply when dismissal occurs during maternity leave, risk during pregnancy, adoption or foster care, or during pregnancy, breastfeeding or parental leave. Dismissal is allowed if there is evidence that it is not based on grounds related to pregnancy or maternity/paternity.

As applicable from 1 April 2019, termination of employment contract during the probationary period is void from the start of an employee's pregnancy until the start of maternity leave.

Sources: §45(1d), 48(4), 53(4a, 4b & 4c.) & 55(5a & 5b) of the Royal Decree No. 2/2015 enacting the Worker's Charter

## Right to Return to Same Position

A contract of employment is suspended in the case of maternity and adoption with the reservation of position and job. After the legal grounds of suspension have ceased to exist, the worker is entitled to his or her reinstatement in the job. During parental leave, the employee preserves all his/her seniority rights. The post the worker occupied has to be kept open for one year from the date that parental leave commences. After one year, a post of the same professional group or category shall be reserved for the employee on parental leave.

Sources: §45(1d) & 48(4) of the Royal Decree No. 2/2015 enacting the Worker's Charter

## Breastfeeding/ Nursing Breaks

Women workers are entitled to a break of one hour, without loss of pay, which may be

divided into two breaks to nurse their child until 9 months of age (12 months in public sector). The duration of the break will be increased proportionally in the event of multiple births. They may reduce their normal working hours by 30 minutes instead of taking the breaks. The worker may as well take the accumulated time reduction entitlement as full working days in accordance with the terms laid down in a collective agreement or in an individual agreement based on the former. The father is also entitled to these breaks or to reduce his working hours by 30 minutes.

In line with Royal Decree-Law 6/2019, breastfeeding breaks are replaced with infant care leave. The length of infant care leave is also 9 months. Employee (either parent) is entitled to one-hour break (or two half hour breaks) or a half-hour reduction in his or her working hours for the same purpose. The leave can also be accumulated into full days in accordance with the terms of the collective bargaining agreement or as agreed between the worker and company. The infant care leave may be taken by both parents. When both parents take infant care leave, they may do so until the child is 12 months old. However, it entails a proportional reduction in salary.

Sources: §37(4) of the Royal Decree No. 2/2015 enacting the Workers' Statute

# 07/13 HEALTH & SAFETY

## **ILO Conventions**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

**Spain has ratified both the Conventions 81 and 155.**

### ***Summary of Provisions under ILO Conventions***

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

## Regulations on health and safety:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Law 31/1995. of 8 November on Prevention of Occupational Risks
- Royal Decree 773/1997 of 30 May on personal protective equipment

## Employer Cares

Health and safety at work is a right to which all employees are legitimately and legally entitled, and that right is accorded to Spanish employees by various legislative provisions and by the involvement of public health and safety authorities. Employers are also required to protect employees from occupational risks. Employers must guarantee the health and safety of their employees in all aspects of their work by taking necessary preventative action and adopting and regularly updating appropriate health and safety measures. These should be aimed at avoiding risks; evaluating those that are inevitable and taking measures to reduce or eliminate them; adapting the work to the worker (particularly with respect to monotonous and repetitive work) especially in terms of the design of workplaces and the choice of work equipment and work/production methods; keeping up with technological advancement; planning prevention; putting collective protection before individual protection; tackling risks at source; planning prevention and integrating in this planning, as a coherent whole, technology, work organisation, working conditions, workplace relationships and the influence of environmental factors and providing workers with appropriate supervision. Employers must carry out risk assessments,

not only to identify the risks and hazards to which their employees are exposed, but also to enable them to devise a policy on how to minimize or eliminate those risks.

Royal Decree No. 231/2017 provides incentives to employers for reducing workplace accidents and allows reduction of social security contributions. The reduction in the contributions must be requested by the employers and must be preceded by a proposed report.

Sources: §19(1-2) of the Royal Decree No. 2/2015 enacting the Workers' Statute; Law 31/1995. of 8 November on Prevention of Occupational Risks; Royal Decree 899/2015; Royal Decree 901/2015; Royal Decree 598/2015 on Health and safety at work; Order ESS/256/2018, of 12 March 2018 explaining provisions of Royal Decree No. 231/2017

## Free Protection

All employer should take necessary measures to ensure that work equipment is suitable for the work' to be performed and suitably adapted to this purpose, in such a way as to ensure the safety and health of workers using them. When the use of work equipment can present a risk especially for safety and health of workers the employer should take the necessary measures in order to nullify the risk. Employers must provide their workers personal protective equipment suitable for their work and ensure effective use of it as and when required. The personal protective equipment must be used when the risks cannot be avoided or sufficiently limited by technical means of collective protection or by measures, methods or procedures of work organization. Employers are required to provide this personal protective



equipment free of cost to the workers, maintain and replace it when necessary as well as ensure its effective usage.

Sources: §17 of the LAW 31/1995 of 8 November on Prevention of Occupational Risks; §3 of the Royal Decree 773/1997 of 30 May on personal protective equipment

## Training

The employer is obliged to provide a practical and relevant training in health and safety for workers hired, or when they change jobs or have to apply a new technique that may cause serious risks to the worker or his colleagues, or third parties, either with their own services or with the involvement of relevant government services. Employers have a responsibility to consider their employees' professional skill and experience in matters of health and safety before entrusting them with tasks, and they must ensure that only those who have the necessary knowledge or expertise are assigned to jobs that involve specific risks or hazards. The worker is obliged to follow those teachings and practices especially within working hours and also at other times. Employers must inform their employees of any risks (both of a general nature and particular to specific jobs), the protection and prevention measures that are applicable to them, and any other emergency measures in place within the company. In addition, the employer must provide each employee with theoretical and practical training in health and safety issues in accordance with their particular job and the risks associated with it. The employer also must analyze possible emergency situations and adopt such measures as are necessary in terms of first aid, fire fighting and evacuation, appointing specific staff to these tasks,

providing them with the necessary training, and periodically checking that the adopted measures are working correctly. Employers are also required to organize trainings on the use of personal protective equipment and other relevant information like the risks against which the equipment protects, and the maintenance of this equipment.

Sources: §19(4) of the Royal Decree No. 2/2015 enacting the Workers' Statute; §18 & 19 of the Law 31/1995 of 8 November on Prevention of Occupational Risks; §8-10 of the Royal Decree 773/1997 of 30 May on personal protective equipment

## Labour Inspection System

Under Spanish employment law, the Employment and Social Security Inspector has an important role to play in supervising and monitoring occupational health and safety measures. He or she has the authority to require employers to remedy any breaches of the regulations on the prevention of occupational risks, and to order immediate cessation of work if the breach gives rise to serious and imminent danger to employees' health and safety at work. The Inspectorate of Labour and Social Security is a public service that is responsible for exercising the enforcement of the rules of social order and require the relevant responsibilities. This legislation is very broad and includes, among other matters, relating to labour relations, social security, employment or conditions of safety and health at work. A new law regulating the labour inspection has been enacted on 21 July 2015 which replaces the Law 42/1997. The relevant legislation on labour inspection is as follows: Royal Legislative Decree 5/2000 of 4 August, the revised text of the Law on Offences and Penalties in the Social Order; Royal Decree

138/2000 of 4 February, Regulation on the Organization and Functioning of the Inspectorate of Labour and Social Security; and Royal Decree 928/1998, of 14 May, amending the General Regulation on procedures for the imposition of penalties for violations of social order and liquidation records for contributions to Social Security.

Sources: §19 of the Royal Decree No. 2/2015 enacting the Workers' Statute; §9 & 43 of the Act n.31/1995 on Occupational Hazard Prevention; Act No. 23/2015 on the Labour Inspectorate



# 08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

## **ILO Conventions**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

**Spain has ratified the Convention 102 only.**

### ***Summary of Provisions under ILO Conventions***

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

## Regulations on sick leave & Employment Injury Benefits:

- Real Decreto Legislativo 8/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social/ Legislative Decree No. 8/2015 Consolidating the General Law on Social Security
- Ley 14/1986, de 25 de abril, General de Sanidad / Law 14/1986 of 25 April, General Health
- Ley 16/2003 de cohesión y calidad del Sistema Nacional de Salud / Law 16/2003 of cohesion and quality of the National Health System
- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute

## Income

To be entitled to paid sickness leave, a worker has to have attained a period of contribution of at least 180 days in the last 5 years (article 130 of the General Law on Social Security). In case of accident, the minimum period of contribution is not needed.

The maximum duration of sick leave is 12 months (365 days), which can be extended to another 6 months (180 days) if cure is foreseen in this last period of time (article 128 of the General Law on Social Security).

During the first 3 days of illness, worker is usually paid by the employer, although the law doesn't provide for that. From day 4 to day 20 included, he/she will get 60% of his/her normal wage, while after day 21 he/she will get 75% of normal wage. From day 4 to day 15 included, the wage has to be paid by the employer, after day 16 it is be

paid by the INSS (Social Security System). Collective agreements can give better provisions.

## Medical Care

Healthcare services are provided to all registered workers and their families, to pensioners and to unemployed persons by the National Healthcare System - Sistema Nacional de Salud (SNS), which covers medical treatment at home, in a health centre and in a hospital. The national health insurance system also covers hospitalisation and emergency care in an emergency medical centre, and provides medicines, surgical prostheses, orthopaedic equipment and ordinary wheelchairs. Dental prostheses and eyeglasses are not covered. Medical care is generally free of charge, although dental care is not fully covered. Medicines are free of charge for some categories (beneficiaries of non-contributory pensions, unemployed persons who have exhausted the unemployment allowance and those receiving benefits for accidents at work or occupational diseases), others usually have to pay part of the cost.

Sources: Law 14/1986 of 25 April, General Health and Law 16/2003 of cohesion and quality of the National Health System

## Job Security

The sick worker has the right to maintain the job during illness. The maximum duration of sick leave is 12 months (365 days), which can be extended to another 6 months (180 days) if cure is foreseen in this last period of time.

Source: §48(1) of the Worker's Statute; §128 of the General Law on Social Security

## Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

The Spanish social security system does not make separate provision for accidents at work and occupational diseases, but these receive specific benefits in addition to non-work-related accidents or diseases.

There is no minimum qualifying period for access to benefits under work injuries.

The benefit for permanent disability is set according to the percentage of disability. In case of partial disability of at least 33% in the usual job, the benefit is lump-sum compensation equal to 24 times of the calculation basis (average earnings of the insured worker). For total permanent incapacity to perform usual job, the benefit is a pension equal to 55% of the corresponding calculation basis. For persons 55 years of age or over who have difficulty finding work, the amount of the pension is increased to 75% of the calculation basis. The pension may, at the request of the beneficiary, be redeemed by a lump-sum payment equal to 84 times the monthly pension.

For absolute permanent incapacity to perform any kind of work, the benefit is a pension equal to 100% of the calculation basis.

A supplementary benefit is provided in case of severe invalidity.

Temporary disability benefit due to work accident is the same as sickness benefit,

with the exception that the first three days are included in the benefit and the amount is 75% of the normal wage even in the first 20 days. A lump-sum benefit may also be granted in case of permanent bodily injury, mutilation or deformation resulting from an accident at work or occupational disease that diminishes physical integrity without causing permanent incapacity.

In case of fatal injury leading to death of a worker, survivor's pension is paid. Widow(er) is entitled to 52% of the calculation basis (which depends on the employment status of the deceased and the cause of death). Under certain conditions (when the person has dependents and a certain level of income), the rate can be increased up to 70%. The pension's payments cease if the surviving spouse remarries (with certain exceptions). The amount of the pension for each orphan child under the age of 21 is 20% of the wage of the deceased worker. If there is no surviving spouse, the amount of that entitlement is added to the orphan's pension (i.e. an increase of 52 or up to 70%).

Under certain conditions a pension for family members is also provided. It amounts to 20% of the calculation basis. Similar rules apply to the temporary allowance for family members, which is paid for a maximum of 12 months.

The sum of all survivors' benefits should not exceed 100% of the calculation basis (with certain exceptions).

Death grant to cover part of the funeral expenses is always paid.

Source: General Law on Social Security

# 09/13 SOCIAL SECURITY

## **ILO Conventions**

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

**Spain has ratified the Convention 102 only.**

### ***Summary of Provisions under ILO Conventions***

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

## Regulations on social security:

- Real Decreto Legislativo 8/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social/ Legislative Decree No. 8/2015 Consolidating the General Law on Social Security

## Pension Rights

Persons who have reached the statutory retirement age and have paid the necessary number of years of social security contributions (15 years at least, two of which in the 15 years immediately preceding their retirement) are eligible for old-age pension. The retirement age limit is 65, but it will increase up to 67 by 2027. In 2019, the retirement age is 65 years for those with 36 years, 9 months and more of contributions. The retirement age is 65 years and 8 months for those who have less than 36 years and 9 months of contributions. Full pension is payable with the contributions of 36 years and 9 months.

There is an option of early pension for workers who have fulfilled at least 33 years of contributions, who have been registered for 6 months with an employment agency and who are involuntarily unemployed: they can retire at the age of 61. Workers who have paid 35 years of contributions and have the right to a pension exceeding the minimum pension amount may retire voluntarily 2 years before the legal age of retirement.

Arduous workers can also benefit from a slightly more favourable system. Different retirement ages are also set if the activity carried out is considered dangerous, difficult or unhealthy and for persons with at least 65% disability.

For fifteen years of insurance contributions, the pension amounts to 50% of the calculation basis. The percentage increases progressively until reaching 100% after 35.5 contribution years. Employees over the legal age of retirement with more than 15 contribution years who continue working are entitled to a 2-4% increase of the pension amount for each complete additional contribution year.

Elderly persons living on low incomes that have never paid social security contributions, or have not done so for long enough to be eligible for a contributory pension may be entitled to a non-contributory old-age pension.

New legislation is approved that recognises the right to a (retirement, widow and permanent disability) pension supplement for mothers of two or more children. Amount of supplement, in accordance with this legislation, is as follows: if the woman has had two children, her pension will be increased by 5%; if the woman has had three children, her pension will be increased by 10%; if the woman has had more than three children, her pension will be increased by 15%; and if the application of the pension supplement implies that the resulting pension is greater than the maximum pension established in the social security system, the supplement will be reduced to half the amount.

Source: Title II, Chapter VII of the General Law on Social Security; §60 of General Law of Social Security (Royal Legislative Decree 8/2015, of 31 October 2015); [http://www.seg-social.es/wps/portal/wss/internet/Trabaja\\_dores?1dmy&urile=wcm%3apath%3a%2FPOIN\\_Contenidos\\_en%2FInternet%2F4983%2F10935%2F10963%2F28393%2F28396%2F28472%2F](http://www.seg-social.es/wps/portal/wss/internet/Trabaja_dores?1dmy&urile=wcm%3apath%3a%2FPOIN_Contenidos_en%2FInternet%2F4983%2F10935%2F10963%2F28393%2F28396%2F28472%2F)

## Dependents' / Survivors' Benefit

The Law provides for survivors' benefit, payable provided that the deceased worker was registered with a social security scheme or was in an equivalent situation and had paid contributions for at least 500 days in the five calendar years before his or her death. The contributions are not required for the orphan's pension.

Survivors include widow(er) – in some cases, also unmarried partner - divorced spouse, children under 21 years of age (or 24 when they earn only the minimum wage), other members of the deceased's family, if they were dependent on him/her, are not entitled to a public pension and lived with the deceased for at least two years prior to the death.

Widow(er)'s pension is 52% of the calculation basis, which depends on the employment status of the deceased and the cause of death. When the beneficiary has dependants and a certain level of income, this percentage may be increased up to 70%. The payment ceases if the surviving spouse remarries.

Orphans receive 20% of the corresponding calculation basis. If there is no surviving spouse, the amount of that entitlement is added to the orphan's pension. Under certain conditions a pension for family members of 20% of the calculation basis is provided. Similar rules apply to the temporary allowance for family members, which is paid for a maximum of 12 months.

The total amount of survivors' benefit can't exceed 100% of the deceased's pension (with certain exceptions).

Death grant to cover part of the funeral expenses is always paid.

Source: General Law on Social Security

## Unemployment Benefits

Persons who are unemployed but are able and willing to work, or who have been made redundant, or whose working hours (and corresponding wages) have been reduced by at least 10% as a result of downsizing, are entitled to unemployment benefits. Unemployment benefits are of two types: contributory unemployment benefits and special unemployment assistance, which is paid to job-seekers who meet certain special conditions (their income is less than 75% of the monthly guaranteed minimum wage, they have been signed up with an employment agency for one month and they have not refused a suitable job offer or a vocational training programme, plus other specific conditions).

Registered workers are entitled to contributory unemployment benefits if they are legally unemployed and have paid social security contributions for at least 360 days in the six years before becoming unemployed. The amount of the unemployment benefit depends on the number of dependants, within minimum and maximum levels. For total unemployment, the benefit is 70% of the calculation basis (average of the contribution basis for the six preceding months) for the first 180 days and 50% after that. The duration of the benefit depends on how long the person has been paying social security contributions in the six years before and it goes from 4 months up to 2 years.



Those who do not meet the requirements of unemployment benefit still might receive unemployment subsidy. The age to access unemployment subsidy/allowance has been reduced from 55 to 52 years.

RDL 8/2019 provides bonus to such employers which employ long term unemployed workers. A long-term unemployed worker is such a worker who is registered at the employment office for at least twelve of the eighteen months prior to hiring. The bonus to such employers is equivalent to a monthly reduction in the employer's Social Security contribution or its daily equivalent per worker hired of 108.33 euros/month (1.300 euros/year). In the case of long-term unemployed women, the bonus is increased to 125 euros/month (1,500 euros/year). The bonus is available for three years if such long-term unemployed worker is kept on job for three years.

Source: §280 & 285 Chapter 1 of Social Protection Measures; Title III of the General Law on Social Security; <https://www.boe.es/buscar/doc.php?id=BOE-A-2019-3481>

## Invalidity Benefits

To be entitled to disability benefit, the insured must have a permanent loss of at least 2/3 of his/her working capacity and be registered with a social security scheme when the incapacity occurs. This second condition does not apply if the worker has paid contributions for at least fifteen years, three of them within the ten years prior to the incapacity. There is no minimum contribution period when the incapacity results from an accident.

In case of partial disability, the benefit is lump-sum compensation equal to 24 times of the calculation basis (average earnings of the insured worker).

When the incapacity is due to a non-occupational disease, the worker must have paid social security contributions for a set number of years, depending on his or her age. When the disabled person reaches pension age and its requisites, the invalidity benefit is turned into old-age pension.

For total permanent incapacity to perform usual job, the benefit is a pension equal to 55% of the corresponding calculation basis. For persons 55 years of age or over who have difficulty finding work, the amount of the pension is increased to 75% of the calculation basis. The pension may, at the request of the beneficiary, be redeemed by a lump-sum payment equal to 84 times the monthly pension.

For absolute permanent incapacity to perform any kind of work, the benefit is a pension equal to 100% of the calculation basis.

A supplementary benefit is provided in case of severe invalidity.

Source: Title II, Chapter V of the General Law on Social Security



# 10/13 FAIR TREATMENT

## **ILO Conventions**

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

**Spain has ratified the Conventions 100 and 111.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

## Regulations on fair treatment:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres/organic Law 3/2007 of 22 March for effective equality between women and men

## Equal Pay

In accordance with article 4 of Royal Decree No. 2/2015, wage conditions of employees should be agreed without any form of discrimination. Both women and men have the right to equal wages. The employer is obliged to pay the same wage, both by base salary as per the salary supplements for the delivery of equal work or for work of equal value without any discrimination on grounds of sex. The Anti-Discrimination rule also requires that workers get equal treatment in all employment matters including remuneration irrespective of their sex, sexual orientation, religion or belief, race, national or ethnic origin, age, and disability. Under article 28 of Workers' Statute, employers are required to pay men and women workers equally without any discrimination on the basis of gender. Article 5 of the Organic Law 3/2007 of 22 March for effective equality between women and men also prohibits discrimination between workers on the grounds of sex in all employment related matters including remuneration. In accordance with article 1 of the Royal Decree No. 1717/2012, of 28 December 2012 fixing Inter-professional Minimum Wage (SMI) for 2013, the minimum wage is fixed regardless of the age or sex of the worker. In

line with Royal Decree-Law 6/2019, amending Workers' Statute, requires equal pay for work of equal value and prohibits wage discrimination on ground of sex. The law for the first time defines 'work of equal value'.

Employers are required to keep a record of workers' average wages as well as other remuneration in the enterprise. The record must be accessible to the worker representatives or works councils. Enterprises with more than 50 workers must justify wage gap where average salary of workers of one gender is at least 25% higher than the workers of opposite gender.

Sources: § 2, 28 (1,2 & 3) of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Sexual Harassment

Harassment means any conduct related to the sex of a person with the purpose or effect of violating his/her dignity and of creating an intimidating, degrading, or offensive environment. Sexual harassment means any form of verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, degrading or offensive environment. The basic employment rights of the workers include respect for their privacy and due regard to their dignity, including protection from harassment on any of the discriminatory grounds.

Harassment/bullying and sexual harassment are considered discrimination on the grounds of gender. The disciplinary dismissal can occur and employment contract of the worker may be terminated by a decision of the employer due to

harassment on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation and sexual or gender harassment. Under article 184 of the Penal Code, a person may be punished (with imprisonment of three to five months and fine of six to ten months' wages) as guilty of sexual harassment when asking for favours of a sexual nature, for oneself or a third party, in the scope of a employment relation and with such behaviour creating for the victim an objective and serious intimidating, hostile or humiliating situation. The punishment is higher (imprisonment term of five to seven months and fine of ten to fourteen months wages) when the harasser took advantage to superior position in the employment relationship. Higher punishments are awarded if victim was in a vulnerable condition due to age, illness or some other reason.

Plan II of equality between men and women resolution is divided into six main areas: equal opportunities in access to public employment, equality of working conditions and career development, training in and awareness of equality, reconciliation and family responsibilities, equality of pay, and eradication of gender violence and victim support.

Sources: §4(2e) & 54 (2g) of the Royal Decree No. 2/2015 enacting the Workers' Statute; 54(2g); §7 of the Organic Law 3/2007 of 22 March for effective equality between women and men; §184 of the Penal Code; Equality between men and women (II Plan for equality between women and men in the Central Government) Resolution of 26 November 2015

## Non-Discrimination

Under the Workers Statute, discrimination is prohibited on the grounds of sex, marital and family status, sexual orientation, racial or ethnic origin, social status, language, age, unfavourable health state or health disability, belief or religion, political or other conviction, and trade union membership (or non-membership). Discrimination on the basis of sex means discrimination on the grounds of pregnancy or maternity as well as discrimination on grounds of sexual or gender identification. Discrimination on the ground of race, national or ethnic origin means discrimination on the ground of relationship with a person of particular race, nationality and ethnic origin. In accordance with article 14 of the Spanish Constitution, Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance. Discrimination could be both direct and indirect. Sex based direct discrimination is also prohibited under the Spanish Constitution. Direct discrimination is also prohibited under the Workers' Statute. Part time workers have the same rights as full time workers.

Dismissals of workers are declared null and void if the dismissal occurs within 12 months (previously nine months) from the date of childbirth, adoption or custody and they have re-joined the work after taking necessary leave.

Source: §35(1) of the Spanish Constitution; §4(2)(c), 17, 28, 53(4), 55(5) & 68(c) of the Workers' Statute

## Equal Choice of Profession

Women can work in the same industries as men as no restrictive provisions could be located in the laws. Constitution grants everyone the right to a free choice of profession or trade, as well as the right to engage in entrepreneurial or other gainful activity.

The Royal Decree Law 6/2019 requires employers to treat women and men equally in employment and occupation related matters. The companies have to develop an equality plan as per the number of employed workers.

Source: §45 and 46 in the drafting by Royal Decree-Law 6/2019; §4(1)(a) of the Royal Decree No. 2/2015 enacting the Worker's Charter; §35 of the Spanish Constitution; <https://www.boe.es/buscar/act.php?id=BOE-A-2019-3244>

# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Spain has ratified the Conventions 138 and 182.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## Regulations on minors and youth:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute

## Minimum Age for Employment

Persons under 16 years of age are prohibited from working by Spanish law. A work contract concluded with a minor, less than 16 years of age, will be considered null and void. Any breach of the rules governing the employment of minors by the employer is a very serious offence. The participation of persons less than 16 years of age in public entertainment events is authorised in exceptional cases by the employment authorities, provided it does not endanger that person's physical health or professional and personal development.

Source: §6(1 & 4) of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Minimum Age for Hazardous Work

Minimum Age for Hazardous Work is set as 18 years. People over 16 and less than 18 years of age, require the consent of their parents or guardian to start employment. In any case, persons under 18 years of age are not allowed to work at night, work overtime or engage in any other activities considered by the Government to be unhealthy, difficult, detrimental or dangerous. Employers may only employ young employees between ages 16 to 18 for such works that are appropriate to their physical and mental development, which do not jeopardize their morality and should provide them with increased care at work. Workers younger than 18 years are considered adolescent workers. The daily

working time limit of young employees is 8 hours including any training periods (under 18 years). Where young workers are employed by more than one employer, the total hours are included in this limit. They should also get daily rest break of 30 minutes minimum, when the working day exceeds 4 hours and a half. Young workers are also entitled to two consecutive days of weekly rest.

Source: §6(2-3), 7, 34(3-4) & 37(1) Royal Decree No. 2/2015 enacting the Workers' Statute

# 12/13 FORCED LABOUR

## **ILO Conventions**

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

**Spain has ratified both Conventions 29 & 105.**

### ***Summary of Provisions under ILO Conventions***

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.



## Regulations on forced labour:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal/ Penal Code

## Prohibition on Forced and Compulsory Labor

Labour exploitation is prohibited under the Penal Code as well as the immigration law. In accordance with article 311 of the Penal Code, those who imposed on workers (by deception or exploiting their vulnerability) such service and work conditions that may impair social security are punished with imprisonment of six months to six years and a fine of six to twelve months' wages. Article 312 prohibits workforce smuggling and recruitment of undocumented workers in labour conditions below the standards permitted and awards punishment of two to five years imprisonment and a fine of six to twelve months. Under article 313, those who make people to migrate by fake documents or other deceptions are also awarded punishment as provided under article 312. Under article 173 of Penal Code, a person, who by using his superior position in an employment relationship, inflicted a degrading treatment on the other seriously injuring his moral integrity is punishable with imprisonment of six months to two years. A person who is guilty of human trafficking for imposition of forced labour or services, slavery or practices similar to slavery or servitude or begging practices; sexual exploitation including pornography; and removal of body organs is punishable with a sentence of five to eight years.

Source: §173, 177-bis& 312 of the Penal Code

## Freedom to Change Jobs and Right to Quit

According to Art.4 (1a) of Royal Decree No. 2/2015 and article 35 of the Constitution, workers have complete freedom in choice of profession or trade. There is no provision in Spanish legislation which restrict the workers to change or quit job. Workers should serve the notice as specified in a collective agreement or as the custom requires. The usual notice period is 15 days.

Sources: §35 of the Spanish Constitution; §49(1) of the Royal Decree No. 2/2015 enacting the Workers' Statute

## Inhumane Working Conditions

The normal working hours are 09 hours a day and 40 hours a week, averaged over a reference period of twelve months. The maximum overtime limit is 80 hours per year.

For more information on this, please refer to the section on compensation.

# 13/13 TRADE UNION

## **ILO Conventions**

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

**Spain has ratified both Conventions 87 & 98.**

### ***Summary of Provisions under ILO Conventions***

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

## Regulations on trade unions:

- Ley del Estatuto de los Trabajadores (Real Decreto 2/2015)/Royal Decree No. 2/2015 enacting the Workers' Statute
- Ley Orgánica 11/1985, de 2 de agosto, de Libertad Sindical/Freedom of Association Organic Law 11/1985
- Real Decreto-ley 17/1977, de 4 de marzo, sobre relaciones de trabajo/Royal Decree 17/1977 of 4 March, 1977 on labour relation

## Freedom to Join and Form a Union

Employees are free to form trade unions and join unions of their choice, and may not be expelled from a union on discriminatory grounds. The workers right to freedom association in trade unions is a fundamental right recognised in the Spanish Constitution which provides that every worker, with certain exceptions, has the right to decide whether to join a union or not. This fundamental right is regulated by the Freedom of Association Organic Law (11/1985) and the Workers Statute. This right is connected to the rights of workers' information, consultation and participation through their representatives. All employees (except senior executives, i.e., general managers) are represented by the elected representatives and there is no distinction between blue and white collar representatives.

Employers have no obligation to promote unions however they cannot stifle unions. It is on the employee to start the process of elections. Freedom of association and representation include the following rights: right to associate freely with any of the unions (or with none); right to found unions without previous authorization; right to

choose employee representatives; and right to participate in union activities.

In accordance with the Organic Law 9/2015, the National Police is entitled to a special system of freedom of association, because members of the Police can establish their own unions, but cannot join general unions. Facilities and guarantees for the exercise of trade union activities are also regulated in this updated law, and responsibilities are established for the activities of these trade unions. The Police may also appoint representatives for safety and health at work and can participate in the Police Council, a body of equal representation of management and staff that aims, among other functions, to mediate and conciliate in collective action measures and participate in the establishment of working conditions.

Source: §7 & 28 of the Spanish Constitution; Freedom of Association Organic Law (11/1985) and the Workers Statute

## Freedom of Collective Bargaining

The Spanish constitution guarantees the right to collective bargaining. If the agreement complies with certain statutory requirements, it will be classified as a "statutory collective agreement," and will be applicable to all employees and employers within the bargaining unit whether or not: (1) the employer is a member of the employers' organization signing the agreement; and 2) the employee is affiliated with the union. Collective agreements may be entered into either on an enterprise level or on a branch or sectoral level. Employment terms and conditions shall be governed not only by the Workers' Statute Act and other regulations in force from time to time, but

also by the provisions of a collective agreement. The company shall apply the collective agreement of the industry or activity to which it is mainly devoted.

If an agreement does not comply with all statutory requirements, it still will be legally binding, but only on those who belong to the organizations that negotiated and signed it ("extra statutory collective agreements"). Royal decree 7/2011 reforms the collective bargaining by giving a greater priority to company-level agreements over sectoral multi-employer (whether national, regional or provincial) in matters such as basic pay and pay supplements, overtime, working time and shift work distribution, occupational categories, type of contracts and work-life balance measures.

Economic and Social Council, envisaged under the Spanish Constitution of 1978, is established under the 1991 law and has been operational since 1993. It is a bipartite plus consultative body and issues mandatory opinions on draft legislation regarding socioeconomic and labour policies in the country. It may also prepare reports on economic and social matters at the request of the government or its own initiative. Its opinions, however, are not binding. The Council, though autonomous in its functions, is attached to the Ministry of Employment and Social Security. The Council is composed of 61 members appointed by the government and divided in three groups. There is one president, 20 members from trade union organizations (Group 1), 20 members from employer organizations (Group 2), and 20 members from Group 3. Group 3 is composed of other interest organizations including agricultural professional organizations (3 members), organizations from maritime-fisheries sector (3 members), consumer

rights organizations (4 members), cooperative associations (4 members) and 6 experts from the social, economic and labour fields. The members of the Council are appointed for a term of 4 years based on the recommendations of the representative organizations.

Sources: §4(1c) of the Royal Decree No. 2/2015 enacting the Workers' Statute; Ley De Creación Del Consejo Económico Y Social 1991

## Right to Strike

The Spanish Constitution recognises workers' right to strike. Strikes are agreed by a simple majority of the company's workers and must be communicated in writing to the companies concerned and to the labour authorities five days in advance (ten days for essential public services). Workers cannot be subject to sanctions for going on strike and nor can they be replaced by other workers. During the strike, the contract is considered to be suspended; workers are not entitled to wages and they will be in a special agreement situation with the Social Security. The freedom of workers who do not wish to join the strike to work will be respected. Likewise, some workers may be obliged to continue their work if they have to provide the company with safety or maintenance services (Minimum Services). Employers cannot call in temporary agency workers or recruit employees on fixed-term contracts to replace striking employees.

Sources: §28 of the Spanish Constitution; §4(1e) of the Royal Decree No. 2/2015 enacting the Workers' Statute; Royal Decree 17/1977 of 4 March, 1997 on labour relations

# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

## Check

Decent Work Check Spain is a product of WageIndicator.org and  
www.tusalario.es



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 06/13 Maternity &amp; Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child   |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 08/13 Sick Leave & Employment Injury Benefits

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 09/13 Social Security













- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 10/13 Fair Treatment



- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion  |  | <input type="checkbox"/> | <input type="checkbox"/> |

\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.






	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





## 11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

## 12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Spain scored 47 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.