

Chapter

Labor and social security regulations

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Labor and social security regulations

Spanish labor legislation has been subject to different modifications during the last years mainly to modernize and make flexible the labor market. The most significant and ambitious has been Law 3/2012, of July 6, 2012, on urgent measures to reform the labor market, which was intended to establish a clear labor and employment law framework that contributed to more efficient

management of employment relationships and facilitated job creation and stable employment. Likewise, amongst other relevant laws, stands out Law 14/2013 of September 27, 2013 on support to entrepreneurs and their internationalization, that established measures to encourage multiactivity and self-employment, and the entry of investment and talent in Spain.

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1. Introduction

Employment contracts are generally regulated by the provisions of Legislative Royal Decree 2/2015, of October 23, approving the Workers' Statute (WS).

A major characteristic of Spanish labor legislation is that important employment issues can be regulated through collective bargaining, by means of collective labor agreements, that is, agreements signed between workers' representatives and employer representatives that regulate the employment conditions in the chosen sphere (areas within a company, company-wide or industry-wide).

Spanish labor legislation has been adapted and updated through legislative modifications in order to be more flexible and to improve the labor market in terms of employability and investment.

2. Contracts¹

2.1. General aspects

This section deals with the main aspects to be considered when hiring workers in Spain.

In general, discrimination in hiring or in the workplace on the grounds of gender, marital status, age, race, social status, religion

or political ideology, membership of a labor union or otherwise, or on the basis of the different official languages in Spain is prohibited.

The minimum employment age is 16 years old and there are certain special rules applicable to the employment of persons under the age of 18 (who, for example, cannot work overtime or at night).

2.2. Types of contract

Contracts can be made verbally or in writing, unless there are express provisions that require a written contract (for example, temporary contracts, part-time contracts and training contracts). If this formal requirement is not met, the contract is understood to be permanent and full-time, unless evidence is provided to the contrary.

Companies must provide the workers' statutory representatives (if any) with a basic copy of all contracts to be made in writing (except for senior management contracts). The hiring of workers must be notified to the Public Employment Service within ten days of the contracts being made.

There are various different types of contract, including indefinite-term, temporary, fixed-term, training, distance work and part-time contracts.

In the website of the National Public Employment Service² any can access a virtual assistant for employment contracts which, based on four basic types of employment contracts (indefinite-term, temporary, training and work-experience contracts), suggests and prepares the type of employment contract that best suits the characteristics of each new hire.

The principal features of these types of contracts are explained below.

2.2.1. Fixed-term contracts

Spanish legislation sets out specific grounds for the execution of fixed-term or temporary contracts.

All temporary contracts must be made in writing and must specify the reason for their temporary nature in sufficient detail. Otherwise, or if the ground for the temporary contract does not truly correspond to one of the legally-established grounds, the contract will be deemed to be made for an indefinite term, unless evidence of its temporary nature is provided.

If the fixed-term employment contract is made for a term of more than one year, the party intending to terminate the contract must serve notice at least fifteen days in advance or, as the case may be, give the advance notice established in the applicable collective labor agreement.

¹ <https://www.sepe.es/>
<http://www.empleo.gob.es/index.htm>

² <http://www.sepe.es/contratos/>

Table 1

Type	Ground	Term	Observations
Contract for project work or services	Performance of a specific independent and self-contained project or service within the company's business.	In principle, uncertain. It will depend on the time taken to perform the project or service, with a maximum of 3 years, which may be extended for a further 12 months under a nationwide industry collective agreement or under an industry collective agreement of a more limited scope.	<p>The temporary grounds for the contract must be stated clearly and precisely. For contracts entered with after 2014, their termination entitles the employee to receive a severance equal to 12 days' salary per year worked (for contracts entered into in 2014, their termination entitles the employee to receive a severance equal to 11 days' salary per year worked).</p> <p>When the maximum periods established for any temporary contract have elapsed, workers will acquire the status of indefinite-term employees of the company.</p>
Casual contract to cover temporary demand for production	To meet market demand or backlogs or work or orders.	Maximum of 6 months within a 12-month period (may be extended under an industry-wide collective labor agreement to an 18-month period but may not exceed 3/4 of that period in length, or the maximum term of 12 months).	When workers have been hired for more than 24 months within a 30-month period, with or without interruption, for the same or different position at the same company or group of companies, under two or more temporary contracts, whether directly or through temporary employment agencies, using the same or different types of fixed-term contract, the contract will be automatically converted into an indefinite-term contract.
Contract of first youth employment	To acquire the first professional experience.	Minimum length of 3 months and up to 6 months which can be extended by a sector-wide Collective Business Agreement up to 12 months.	<p>These contracts are regulated by the provisions applicable to contracts to cover temporary demand for production.</p> <p>The employees must be up to 30 years old, unemployed and must not have professional experience or it must be less than 3 months.</p> <p>The contract can be entered into full time or part-time as long as the work time is at least 75% of the work time of a comparable employee.</p>
Relief contract	To substitute workers entitled to return to their job due to a statutory provision, or the provisions of a collective labor agreement or individual agreement.	From the beginning of the period until the return of the substituted worker or expiry of the term established for the substitution.	One of the formal requirements is that the contract must state the name of the substituted worker and the grounds for the substitution.

2.2.2. Training contracts

Table 2

Contract	Purpose	Term	Other information of interest
Work experience contract	Hiring of university graduates or workers with higher or advanced vocational training qualifications (first degree, master’s degree or doctorate) or officially recognized equivalent qualifications, or workers holding a vocational qualification certificate (<i>certificado de profesionalidad</i>) entitling them to work in their profession.	Minimum of 6 months and maximum of 2 years. Sick leave, leave due to risk during pregnancy, maternity leave, leave for adoption or custody for adoption or fostering, leave due to risk during breastfeeding and paternity leave all toll the duration of the contract.	As a general rule, no more than 5 years may have elapsed since completion of the relevant studies, or 7 years if the contract is made with a disabled worker. The minimum salary is 60% (during first year) and 75% (during second year) of the fixed salary established in the collective labor agreement for a worker with a similar or identical position.
Trainee and apprenticeship contract	Contract targeted at young people who lack the occupational qualifications recognized by the vocational training system or education system required for a work experience contract for the position or occupation for which the contract is made.	Minimum of 1 year and maximum of 3 years. Term may be modified by a collective labor agreement but may not be less than 6 months or more than 3 years. Sick leave, leave due to risk during pregnancy, maternity leave, leave for adoption or custody for adoption or fostering, leave due to risk during breastfeeding and paternity leave all toll the duration of the contract.	Although there are special cases, as a general rule, this contract is aimed at workers of between 16 and 25 years of age (while the Spanish unemployment rate remains above 15%, the upper age limit is extended to 30 years). This age limit is not applicable where the contract is with disabled workers or socially excluded personnel. Compensated employment at a company must be alternated with training activities at a vocational training center or educational center. Part-time contracts cannot be made. Workers cannot work overtime (except to prevent or repair extraordinary and urgent damage), at night or in shifts.

2.2.3. Part-time contracts

An employment contract will be a part-time contract when a number of hours of work has been agreed with the worker per day, week, month or year which is less than the working hours of a “comparable full-time worker”, that is, a full-time worker at the same company and workplace who performs identical or similar work.

Part-time workers have the same rights as full-time workers, although at times, according to their nature, such rights will be recognized proportionally, according to the time worked.

Part-time workers cannot work overtime, except to prevent or repair losses and other urgent and extraordinary damages.

However, supplementary hours (hours worked in addition to those agreed in the contract, the performance of which is agreed beforehand) can be carried out. Supplementary hours may not

exceed 30% of ordinary working hours (except where they are increased up to 60% in a collective labor agreement).

However, the employer is allowed to offer the employee hired indefinitely on a part-time basis no less than 10 weekly hours (on an annual basis), supplementary hours which are voluntary, which may not exceed 15% of the ordinary hours of the employment contract (30% if agreed in the applicable collective labor agreement).

The total ordinary hours and supplementary hours may not exceed the statutory limit for part-time work.

2.2.4. Distance work (telework)

A distance work or telework arrangement may be reached provided it is formalized in writing (whether in the initial contract or a subsequent agreement).

Where work is predominantly carried out at the worker’s home or a place chosen by the worker, it is considered as distance work.

2.2.5. Indefinite-term employment contract in support of entrepreneurs

This is a new type of full-time or part-time, indefinite-term employment contract available to companies with less than 50 workers. It may be used until the Spanish unemployment rate falls below 15%.

The contract carries a trial period of one year and may not be used by companies that have dismissed workers on objective grounds held to be unjustified or implemented collective layoffs in the preceding six months. This contract is also eligible for tax incentives and reductions in social security contributions for certain groups of workers, provided that the company employs the worker for at least 3 years and that the level of employment reached at the company

using this contract is maintained for at least one year from the date of the contract.

(For further information on the requirements to be met to qualify for reductions, see section 2 on State Incentives for Training and Employment in Chapter 4).

2.3. Trial period

Employers can assess a worker's abilities by agreeing on a trial period during which the employer or the worker can freely terminate the contract without having to allege or prove any cause, without prior notice and with no right to any indemnity in favor of the worker or the employer.

Where a trial period is agreed (provided that the worker has not performed the same functions before at the company under any type of employment contract, in which case the trial period would be null and void), it must be put in writing. Collective labor agreements may establish time limits for trial periods which, as a general rule and in the absence of any provision in the collective labor agreement, cannot exceed:

- Six months for college and junior college graduate specialists.
- Two months for all other employees. At companies with fewer than twenty-five employees, the trial period for employees who are not college or junior college graduate specialists cannot exceed three months.
- One month in the case of temporary fixed-term employment contracts agreed for a time-period of less than six months.

Training contracts, indefinite-term employment contracts in support of entrepreneurs and special employment contracts (domestic workers, senior managers, among others) have their own specific trial periods.

2.4. Working hours

The following table summarizes the fundamental legislation governing working hours:

Table 3

Item	Regulation
Maximum working hours	The maximum working hours are those agreed in collective labor agreements or individual employment contracts. In general, the maximum working week is 40 hours of time actually worked, calculated on an annualized average basis, and the irregular distribution of working hours throughout the year may be agreed. In the absence of any agreement, the company may distribute 10% of the working hours on an uneven basis.
Overtime	Overtime is time worked in excess of the maximum ordinary working hours. Paid overtime may not exceed 80 hours per year. Overtime can be taken as time in lieu within four months of the date on which the overtime was worked. Overtime is generally voluntary.
Rest periods / public holidays / vacation / paid leave	A minimum of one and a half days off per week is mandatory, which may be accumulated by periods of up to 14 days. Official public holidays may not exceed 14 days per year. Workers are entitled to a minimum vacation period of 30 days, and cannot be paid in lieu of that period. Workers are entitled to paid leave in certain circumstances, such as marriage, performance of union duties, performance of unavoidable public or personal duties, breastfeeding, birth of children, relocation of main residence, serious illness or accident, hospitalization or death of relatives up to the second degree of kinship, etc.
Reduction in working hours	Workers may be entitled to a reduction in their working hours in certain cases, for example: to directly care for children under 12 or family members who cannot take care of themselves, and during the hospitalization and continuing treatment of a child in their care with cancer or any other serious illness that entails a long hospital stay and who requires direct, continuing and full-time care, until the child reaches 18 years.

2.5. Wages and salaries

The official minimum wage is established by the Government each year and amounts to €707.70 per month or €9,970.80 per year for persons over 18 years of age (including 12 monthly and 2 extra payroll payments) for 2017 (given the exceptional increase in the interprofessional minimum wage in 2017 compared to the established for 2016, there are special cases in which the previous salary, which amounted to €655.20 per month or €9,172.80 per year, continue being applicable).

However, the minimum wages for each professional group are usually regulated in collective labor agreements.

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

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

payments within the 12 ordinary monthly installments can be agreed on in a collective labor agreement.

3. Material modifications to working conditions³

Employers may make material modifications to the working conditions of their employees (working hours, timetable, salary, functions, among others) provided that there are proven economic, technical, organizational or production-related grounds and that the legally provided procedure is followed (15 days' advance notice where individual workers are affected or a consultation period with the workers' representatives in the case of collective modifications).

There is also a specific procedure to opt out of the working conditions established in the applicable collective labor agreement (whether at industry or company level) on economic, technical, organizational or production-related grounds. In this case, since the conditions were established by collective bargaining, a consultation period must be followed. The agreement must establish the new working conditions applicable at the company

and their duration, which may not extend beyond the moment at which a new collective labor agreement applies at the company.

4. Termination of employment contracts⁴

4.1. Dismissals

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

In the event of termination by the employer, there are three main grounds for dismissal of an employee:

- Collective layoff
- Objective grounds
- Disciplinary action

The following table summarizes the grounds and main features of the various types of dismissal:

³ <http://www.empleo.gob.es/index.htm>

⁴ <http://www.empleo.gob.es/index.htm>

Table 4

Dismissal	Legal grounds	Observations
<p>Collective layoff</p>	<p>Grounds:</p> <p>Economic, technical, organizational or production-related grounds, whenever these affect, in a 90-day period, at least:</p> <ul style="list-style-type: none"> • The entire payroll, if more than 5 workers are affected and the activity of the company ceases entirely; • 10 workers at companies with less than 100 employees; • 10% of the employees at companies with between 100 and 300 workers; • More than 30 workers, at companies with 300 or more employees. <p>According to the interpretation made by the Supreme Court, following the doctrine of the Court of Justice of the European Union, the above thresholds refer to the company as a whole and to each work center with more than 20 employees.</p> <p>Definition of legal grounds:</p> <ul style="list-style-type: none"> • Economic: where a negative economic situation transpires from the results of the company, in cases such as current or expected losses, or a persistent decline in ordinary revenues or sales. In all cases, the decline will be deemed persistent if for three consecutive quarters the level of ordinary revenues or sales in each quarter is lower than the figure recorded in the same quarter of the preceding year. • Technical: where there are changes in the methods or instruments of production, among others. • Organizational: where there are changes in the personnel working methods and systems or in the manner of organizing production, among others. • Production-related: where there are changes in the demand for the products or services that the company intends to place on the market, among others. 	<ul style="list-style-type: none"> • Collective layoffs must follow the legal procedure established under article 51 of the Workers' Statute. This procedure involves a period of negotiation with the workers' representatives of no more than 30 calendar days, or 15 days at companies with less than fifty employees, and the outcome and final decision must be notified to the labor authorities. • The employer must give 7 or 15 days' prior notice of its intention to start a collective layoff procedure, depending if the communication is issued to the workers' representatives or the own employees (in case there are no workers' representatives). • After notifying the decision to the workers' representatives, the employer would be entitled to individually notify the workers concerned of the layoffs. At least 30 days must elapse between the date on which the commencement of the consultation period is notified to the authorities and the effective date of dismissal. • If the collective layoff affects more than 50 workers (except at companies subject to insolvency proceedings), the company must offer the workers concerned an outplacement plan through an authorized outplacement company, of at least six months' duration, which must include professional guidance and training measures, personalized assistance and an active job search. • The statutory severance consists of 20 days' salary per year worked, up to a maximum of 12 months' salary, or more if so agreed. • In general (except at companies subject to insolvency proceedings), when workers aged 55 or over are affected, special agreements must be signed with the social security authorities. • In some cases, if workers affected in the collective layoff are aged 50 or over, an economic contribution must be made to the Public Treasury.

Table 4 (Cont.)

Dismissal	Legal grounds	Observations
Objective grounds	<ul style="list-style-type: none"> Ineptitude of the worker coming to light or not foreseen until after being hired by the company. Inability of the worker to adapt to changes made to his job. Before dismissing the worker, employers must offer the worker a training course to facilitate adaptation to such changes. Workers cannot be dismissed until a minimum period of two months has elapsed since the changes were made or the training was completed. In case of economic, technical, organizational or production-related reasons (see definition of the reasons under collective layoff). Intermittent absences from work, even where justified, accounting for 20% of the working hours in 2 consecutive months, provided that the total absences in the preceding 12 months accounted for 5% of working hours or 25% in any 4 months out of a 12-month period. In indefinite-term contracts arranged directly by public authorities or by not-for-profit entities to implement public plans and programs for want of the appropriate allocation of funds to enable the contracts to continue. 	<ul style="list-style-type: none"> The employer must serve at least 15 days' advance notice in writing on the worker (or pay the corresponding salary). Severance (20 days' salary per year worked, up to a maximum of 12 months' salary) must be made available to the worker at the same time the written notice of dismissal is served.
Disciplinary action	<p>Serious and culpable breach by the worker:</p> <ul style="list-style-type: none"> Repeated and unjustified absenteeism. Insubordination or disobedience. Physical or verbal abuse towards the employer. Breach of contractual good faith or abuse of trust. Willful reduction in job performance. Habitual drug or alcohol abuse which adversely affects job performance. Harassment by reason of race or ethnic origin, religion or beliefs, disability, age or sexual orientation, and sexual or gender harassment towards the employer or persons working at the company. 	<ul style="list-style-type: none"> The employer must serve written notice of disciplinary dismissal, stating the grounds and the effective date of dismissal. If a workers' representative or labor union delegate is dismissed, a disciplinary procedure in which all parties are heard (<i>expediente contradictorio</i>) must be followed. If the worker is a labor union member, the union delegates should be granted a hearing. These safeguards may be increased by collective agreement. If these formalities are not met, a further dismissal may be made in a period of twenty days by paying the employee the salary accrued in the meantime, with effect as of the date of the new notice.

4.2. Classification of the dismissal

A worker dismissed on any objective or disciplinary ground may appeal the decision made by the employer before the labor courts, although a conciliation hearing must first be held between the worker and the employer to attempt to reach an agreement. This

conciliation hearing is held before an administrative mediation, arbitration and conciliation body.

The dismissal will be classified in one of the three following categories: justified, unjustified or null.

Table 5

Classification	Events	Effects
Justified	Conforming to law.	Disciplinary dismissal: validation of the dismissal, meaning the worker is not entitled to severance pay. Objective dismissal: payment of 20 days' salary per year worked, up to a limit of 12 months' salary.
Unjustified	No legal ground exists for the dismissal or the procedure followed is incorrect.	The employer may choose between: <ul style="list-style-type: none"> reinstating the worker, in which case the worker will be entitled to back pay accrued from the date of dismissal until the notification of the decision or until the worker found a new job, if this occurred prior to the decision; or terminating the contract, by paying severance of 33 days' salary per year worked, up to a maximum of 24 months' salary (for contracts formalized before February 12, 2012, severance will be calculated at 45 days' salary per year of service for the time worked up to such date and at 33 days' salary per year of service for time worked thereafter, case in which the severance can be no more than 720 days of salary, unless the severance corresponding to the period prior to February 12, 2012 results in an amount of days above, case in which this shall be the maximum severance, notwithstanding the 42 monthly installments cap. <p>If the dismissed worker is a workers' representative or a union delegate, the choice will rest with the worker and back pay will accrue in all cases.</p>
Null	<ul style="list-style-type: none"> The alleged ground is a form of discrimination. It implies a violation of fundamental rights. It affects pregnant workers, during the period of holding in abeyance of the contract due to maternity or paternity, risk during pregnancy, adoption, custody for adoption or fostering, reduction in working hours to care for children or relatives or for breastfeeding, and, in certain circumstances, female workers who have been the victims of gender violence. It also affects workers who have gone back to work after the period of holding in abeyance of the contract due to maternity, adoption or custody for adoption or fostering, or paternity has ended, provided that no more than nine months have elapsed since the date of birth, adoption, custody for adoption or fostering of the child. 	<ul style="list-style-type: none"> Immediate reinstatement of the worker. Payment of salaries not received.

5. Senior management contracts⁵

Special rules apply to certain types of employee, including most notably the special senior management labor relationship governed by Royal Decree 1382/1985, of August 1, 1985.

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

The working conditions of senior managers are subject to fewer constraints than those for ordinary employees and, as a general rule, the parties (employer and senior manager) have ample room for maneuver in defining their contractual relationship.

The following provisions are established in relation to the termination of senior management employment contracts:

- Senior managers' contracts can be terminated without cause by serving notice at least 3 months in advance, in which case they are entitled to severance pay of seven days' pay per year worked, up to a maximum of six months' pay, unless different terms of severance have been agreed on.
- Alternatively, a senior manager can be dismissed on any of the grounds stipulated in general labor legislation (objective grounds, disciplinary action). If the dismissal is held to be unjustified, the senior manager is entitled to 20 days' pay in cash per year worked, up to a maximum of 12 months' pay, unless different terms of severance have been agreed on.
- In addition, the law establishes certain grounds on which the senior manager can terminate his or her contract and receive

the agreed-upon severance pay and, failing that, the severance pay established for termination due to employer withdrawal.

- Senior managers may freely withdraw from their contracts by serving at least three months' advance notice.

Although the statutory severance for senior managers is currently lower than that for ordinary employees, in practice, senior management contracts usually provide for severance payments that are higher than the statutory minimum.

6. Contracts with temporary employment agencies⁶

Under Spanish law, the hiring of workers in order to lend them temporarily to another company (the user company) may only be carried out by duly-authorized temporary employment agencies (ETT) and in the same scenarios in which temporary or fixed-term contracts can be made, including work-experience and apprenticeship contracts.

Therefore, the hiring of workers through ETTs can only be used in specific cases and is expressly prohibited in the following cases:

- To replace workers on strike at the user company.
- To perform work and activities subject to regulation because they pose a particular hazard to health or safety (such as jobs which involve exposure to ionizing radiation, carcinogenic, mutagenic or reprotoxic chemicals, or to biological agents).
- Where the company has abolished the job positions it intends to fill by unjustified dismissal or on the grounds provided for termination of the contract unilaterally by the worker, collective

dismissal or dismissal on objective grounds in the twelve months immediately preceding the hiring date.

- To lend workers to other temporary employment agencies.

Workers hired in order to be loaned to user companies will be entitled, during the period they provide services at the user company, to the basic working conditions and terms of employment (remuneration, working hours, overtime, rest periods, nighttime work, vacation and public holidays, among others) they would have enjoyed, had they been hired directly by the user company for the same position. The remuneration of the loaned workers must include all economic components, fixed and variable, linked to the position to be filled in the collective labor agreement applicable at the user company.

In addition to temporarily loaning workers to other companies, ETTs can also act as placement agencies where they meet the legal requirements to do so.

7. Worker representation and collective bargaining

Workers are represented by labor unions. At company level, workers are represented by directly-elected representatives (workers' delegates or works committees, which may or may not belong to a union) and by labor union representatives (workplace union branches and union delegates representing a labor union at the company).

Employers are not obliged to have workers' representatives if workers have not requested union elections. However, if requested by the workers, employers are obliged to allow union elections and appoint such representatives on the terms provided by law.

⁵ <http://www.empleo.gob.es/index.htm>

⁶ <http://www.empleo.gob.es/index.htm>

In general, the function of directly-elected workers' and labor union representatives is to receive certain information specified in the Workers' Statute in order to monitor compliance with labor legislation. They are entitled to participate in negotiations prior to the execution of collective procedures (such as material changes to working conditions, collective layoffs, etc.) and to request the issue of reports prior to full or partial relocation of facilities, mergers or any other modification to the legal status of the company, among others.

In addition, unions (within a company) or directly-elected workers' or labor union representatives can negotiate collective labor agreements with the employers' association (in the first case) or with the company (in the second case).

Collective labor agreements are agreements executed between the workers' representatives and the employers' representatives to regulate working conditions and terms of employment and are binding on the parties.

8. Non-employment relationships

8.1. Economically dependent self-employed workers

Although this is not strictly an employment matter, brief reference should be made to Law 20/2007, of July 11, 2007, on the Self-Employed Workers' Statute, which regulates the concept of economically dependent self-employed workers.

This concept defines independent professionals (self-employed workers) who pursue an economic or professional activity for profit, habitually, personally, directly and predominantly for one individual or legal entity, known as the client, on which they depend economically because they receive from that client at least 75% of their income from work performed and from economic or professional activities. Certain requirements must be met simultaneously by self-employed workers if they are to be treated as economically dependent self-employed workers.

The above Law establishes specific regulations on the terms on which self-employed workers provide services to their clients.

8.2. Internships without the statutory employment rights at companies

There are a number of cases in which a person can carry on activities at a company without such activities being treated as employed work:

- External academic placements for university students, defined as training completed by university students and supervised by their universities, with a view to enabling those students to apply and supplement the knowledge acquired in their academic training.
- Internships without the statutory employment rights at companies or business groups that enter into agreements with the Public Employment Service, aimed at young people (between 18 and 25 years of age) who, due to their lack of work experience, have difficulty finding employment. These internships can be taken by people in the above age group who have not had an employment relationship or other type of work experience of more than three months in the same activity, and may last between three and nine months. Interns will receive a grant from the company of at least 80% of the monthly Public Multi-Purpose Income Indicator (IPREM) in force at any given time (currently €532.51 per month).

9. Acquisition of a Spanish business

Certain labor law provisions are particularly relevant when acquiring or selling a going concern in Spain. For example, if a business is transferred, both the seller and the buyer are jointly and severally liable in the three years following the transfer for any labor obligations arising prior to the transfer.

When a business is transferred, the new employer is subrogated to the previous employer's labor and social security rights and

obligations, including pension commitments on the terms provided in the specific legislation and, in general, to as many supplementary employee welfare obligations as may have been entered into by the previous employer.

The seller and buyer must inform their respective workers' representatives in advance of certain aspects of the upcoming transfer. Specifically, the information provided must comprise at least the following:

- Proposed date of transfer.
- Reasons for the transfer.
- Legal, economic and social consequences of the transfer for the workers.
- Envisaged measures with respect to the workers.

If there are no workers' statutory representatives at the affected companies, the information must be supplied directly to the workers affected by the transfer.

There is also a binding obligation to hold a consultation period with the workers' statutory representatives where, as a result of the transfer, labor measures are adopted for the personnel affected. The consultation period will address the envisaged measures and their consequences for the workers and must be arranged sufficiently in advance of the date on which such measures are to be implemented.

In the case of business succession or a significant change in ownership, which results in the renewal of the governing bodies or changes to the content and purpose of its core activity, senior management personnel will be entitled to terminate their employment contract within the three months following the occurrence of such changes and to receive severance equal to seven days' pay in cash per year worked, up to a maximum of six months' pay, or such severance as may have been agreed on.

10. Practical aspects to be considered when setting up a company in Spain

In general, from a labor and social security standpoint, the following essential formalities must be performed in order to open a company or workplace in Spain.

Table 6

Formality	Basic aspects
Registration of the company with the Spanish social security authorities (obtainment of a social security contribution account code)	Registration must take place prior to commencement of activities. In general, companies register with the Social Security General Treasury by submitting the relevant official form and documentation identifying the company (deed of formation, document issued by the Ministry of Finance and Civil Service assigning the tax identification number and stating the economic activity of the company, powers of legal representation of the company, document of affiliation to the collaborator mutual insurance company, among others).
Notification of hiring of employees	The hiring of employees must be notified for social security purposes once the company has been registered with the social security authorities and before the workers start work. Notifications are generally made electronically, using the RED electronic document submission system.
Notification of opening of workplace	The commencement of activities at the workplace must be notified to the labor authorities within 30 days of its opening using the official form provided for such purpose in each Autonomous Community. An occupational risk prevention plan must usually also be attached.

11. Relocation of workers under a cross-border working arrangement within the EU and the EEA (“impatriates”)

11.1. Temporary cross-border working of local hiring

As a general rule, foreign employees temporarily posted to Spain under cross-border working arrangements can maintain the employment contract signed in their country of origin.

Both Regulation 593/2008 of the European Parliament and of the Council of June 17, 2008, on the law applicable to contractual obligations (Rome I) and Article 10.6 of the Civil Code, allow the parties to choose the applicable law, save for any mandatory matters under Spanish law.

Law 45/1999, of November 29, 1999 establishes that in certain temporary secondments a number of minimum working conditions must be observed.

This Law applies to workers relocated by employers from the European Union, and from the European Economic Area (the EU plus Norway, Iceland and Liechtenstein) in a cross-border working agreement for a limited time period in the following cases:

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

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

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

Employers in such cases must also notify postings to the Spanish Labor Authorities before the worker starts work and regardless of the duration of the posting (except for those lasting less than eight days).

The legislation on labor infringements and penalties classifies a series of infringements in this connection. Formal defects in notifying the relocation of workers to Spain constitute a minor infringement, while notification of the relocation after it has taken place is classed as a serious infringement. Failing to notify the relocation or any misrepresentation or concealment of the data contained in the notification are considered very serious infringements.

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

We will be under situations of local hiring instead of temporary transfers when companies without establishment in Spain hire workers in the country.

If it is not a temporary secondment, but rather, the provision of services in Spain has a vocation of permanence, the employer will sign an employment contract with the employee in accordance with Spanish regulation (“local hiring”). Foreign companies without an establishment in Spain hire locally without the need to establish

a Spanish company. The foreign company, however, will have to follow the steps set out in section 10 above, (Practical aspects to be considered when setting up a company in Spain), but referred to the foreign company.

11.2. Applicable Social Security

Council Regulations (EC) 883/2004 and 987/2009 on the coordination of social security schemes apply within the European Union, the Economic European Area, and Switzerland and ensure that the workers to whom they are applicable are not adversely affected from a social security standpoint by moving from one Member State to another.

There are a number of bilateral social security agreements between Spain and other countries, which regulate the effects on Spanish public benefits of periods of contribution to the social security systems of other States. These agreements also determine the State in which social security contributions are to be paid in cases of relocation and temporary or permanent assignments abroad.

The following bilateral agreements are currently in force:

Table 7

Bilateral Agreements with Spain	Persons to whom it applies
Andorra	Any nationality
Argentina	Any nationality
Australia	Any nationality
Brazil	Any nationality
Canada	Any nationality
Cape Verde	Spaniards and Cape Verdeans
Chile	Spaniards and Chileans
Colombia	Spaniards and Colombians
Dominican Republic	Spaniards and Dominicans
Ecuador	Spaniards and Ecuadorians
Japan	Any nationality
Morocco	Spaniards and Moroccans
Mexico	Spaniards and Mexicans
Paraguay	Any nationality
Peru	Any nationality
Philippines	Spaniards and Philippines
Republic of Korea	Any nationality
Russia	Spaniards and Russians
Tunisia	Spaniards and Tunisians
Ukraine	Spaniards and Ukrainians
Uruguay	Any nationality
USA	Any nationality
Venezuela	Spaniards and Venezuelans

Finally, the Multilateral Latin American Social Security Agreement is also applicable in Spain, an instrument coordinating the different social security legislation on pensions of the different Latin American States that have ratified it and signed the Implementation Agreement (currently Bolivia, Brazil, Chile, Ecuador, El Salvador Paraguay, Portugal and Uruguay, as well as Spain).

Workers posted to Spain under the relevant social security agreements or regulations who continue to be subject to the legislation of their country of origin and evidence this by way of the relevant certificate, generally will not be registered with the Spanish social security system for the period envisaged in same, according to the terms of the agreement.

On the contrary, when a worker is employed in Spain to carry out services in this country on a permanent basis, the general rule of registration into the Spanish Social Security System shall apply irrespective of the worker's nationality.

12. Visas and work and residence permits^{7,8}

EU nationals and their family members may live and work (as employees or self-employed workers) in Spain without needing to obtain a work permit. However, in general they must obtain the relevant EU citizen registration certificate or EU citizen family member residence card.

Non-EU nationals must obtain prior administrative authorization to be able to live and work in Spain.

⁷ [http://prie.comercio.es/es-ES/Paginas/Programa-de-Residencia-para-Inversores-y-Emprendedores-\(PRIE\).aspx](http://prie.comercio.es/es-ES/Paginas/Programa-de-Residencia-para-Inversores-y-Emprendedores-(PRIE).aspx)
http://www.empleo.gob.es/es/sec_emi/areas/inmigracion/index.htm

⁸ (We refer to Chapter 2, section 3 on the Tax Identification Number (NIF) and Foreigner Identity Number (NIE) regarding the procedure for obtaining a NIF for directors not resident in Spain).

With the approval of Law 14/2013, of September 27, 2013, to support entrepreneurs and their internationalization, new situations of visas and residence and work permits have been introduced, including the following noteworthy examples:

- Visa and residence permit for investors:

Non-resident foreigners seeking to enter Spain may apply for the relevant visa, provided they make a significant capital investment in the country. The following cases will be deemed to constitute a significant investment of capital:

- An initial investment for an amount equal to or greater than €2 million in Spanish public debt instruments, or for an amount equal to or greater than one million euros in shares in Spanish companies or deposits in bank accounts at Spanish financial institutions, or a million euros in investment funds, closed investment funds, capital risk funds constituted in Spain, or a million euros in bank deposits in Spanish financial institutions.
- The acquisition of real estate in Spain with an investment of an amount equal to or greater than €500,000 per applicant.
- A business project to be developed in Spain and deemed and evidenced to be of general interest, having regard to compliance with at least one of the following conditions:
 - Creation of jobs.
 - Making of an investment with a relevant socioeconomic impact in the geographic region in which the activity is to be pursued.
 - Relevant contribution to scientific and/or technological innovation.

- Visa and residence permit for entrepreneurs:

Provision is made for an entry and residence visa, as well as a residence permit, for any entrepreneurs pursuing an activity of an innovative nature in Spain with special economic interest for the country, obtaining a favorable report from the central government authorities.

When it comes to issuing the relevant assessment on the part of the central government authorities, special regard will be had, on a priority basis, to the creation of jobs in Spain. Moreover, regard will be had:

- To the professional background of the applicant.
- To the business plan, including an analysis of the market, service or product, and the financing.
- To the added value for the Spanish economy, innovation and investment opportunities.

- Visa and residence permit for highly qualified professionals:

Applications for this permit may be made by companies who need to recruit foreign professionals in Spain in order to develop a professional or labor relationship, and who fall within one of the following categories:

- Executive or highly qualified personnel, where the company or group of companies meet one of the requirements indicated in Article 71 a) of Law 14/2013 (average headcount during the three months prior to the application of 250 workers in Spain; annual net revenues in Spain in excess of €50 million or annual net equity in Spain above €43 million euros; gross average annual inbound foreign investment of not less than €1 million in the three years prior to submission of the application; companies with a stock value or position in excess of €3

million; belonging, in the case of Spanish SMEs, to an industry deemed strategic).

- Executive or highly qualified personnel forming part of a business project entailing, alternatively and providing the circumstance alleged is deemed and evidenced to be of general interest:
 - A significant increase in the creation of direct employment on the part of the company seeking to hire.
 - The maintenance of employment.
 - A significant increase in job creation in the industry or geographic region in which the labor activity is to be pursued.
 - An extraordinary investment with a relevant socioeconomic impact in the geographic region in which the labor activity is to be pursued.
 - The concurrence of reasons of interest for Spain's commercial and investment policy.
 - A relevant contribution to scientific and/or technological innovation.
- Graduates and postgraduates from prestigious universities and business schools.
- Visa and residence permit for training, research, development and innovation activities:

Any foreigners looking to enter Spain and to pursue training research, development and innovation activities at public or private entities may apply for the relevant entry visa or residence permit provided they fall within one of the following categories:

- The research personnel referred to in Article 13 and Additional Provision no. 1 of Science, Technology and Innovation Law 14/2011, of June 1, 2011.
 - Scientific and technical personnel performing scientific, development and technological innovation work at Spanish businesses or R&D&I centers established in Spain.
 - Researchers taken on under an agreement by public or private research bodies.
 - Lecturers hired by universities or higher education and research centers, or business schools established in Spain.
- Visa and residence permit for intra-company transfers:

An application for the relevant visa and residence permit may be made in the case of foreigners transferring to Spain under a labor or professional relationship or for professional training reasons, within a company or group of companies established in Spain, provided the following circumstances are evidenced:

- The existence of an actual business activity and, as the case may be, of the business group.
- Graduate qualification or the like or, where appropriate, at least 3 years' professional experience.
- The existence of a prior, ongoing professional relationship of 3 months with one or more group companies.
- Company documentation evidencing the transfer.

As a general rule, the visas referred will be valid for one year and must be issued by the Spanish Diplomatic Missions and Consulates.

The residence permits also provided for will be issued by the Large Businesses and Strategic Collectives Unit and granted by the Directorate-General of Migration. A decision on the application will be made in not more than twenty days and will be deemed to have been approved by administrative silence.

Residence permits will as a general rule have a one-year term and applications for two-year extensions may be made, provided the conditions giving rise to the right are maintained.

In addition there are the following administrative authorizations in place a summary of which can be found in the following table:

Table 8
ADMINISTRATIVE AUTHORIZATIONS

Authorization type	Scenario	Duration/requirements
Initial residence and employed work permit	Non-EU nationals intending to work in Spain must obtain a special work visa and a work and residence permit beforehand.	Granted for a period of one year and limited to a specific geographical area and occupation. After the one-year period, initial permits can be renewed for a two-year period. Once renewed, a permit will allow its holder to engage in any type of work anywhere in Spain.
Residence and self-employed work permit	Non-EU nationals intending to pursue a gainful activity for their own account must obtain a residence and self-employed work permit and the relevant visa.	Granted for a period of one year. After this period, they can be renewed for a two-year period. Where a foreign worker has resided legally and continuously in Spain for five years and has renewed his or her work and residence permits, he or she may obtain a long-stay residence permit.
Frontier workers	Employed or self-employed work permit for workers residing in the frontier area of a neighboring State to which they return each day. Its validity is restricted to the territory of the autonomous community or city where the worker has his residence.	Initial duration of a minimum of three months and a maximum of one year. It may be extended at the end of the initial period, and each successive renewal may not exceed one year.
Fixed-term employed work permits	Permitted types of work: <ul style="list-style-type: none"> Seasonal work: maximum of 9 months within a period of 12 consecutive months. Project work or services (assembly of industrial plants, infrastructure, etc.). Senior management, professional sportsmen and women, artists in public performances, and such other groups as may be determined by legislation. Training and professional work experience. 	The term of the contract or activity, subject to a one-year limit (except in the case of seasonal permits, which may not exceed 9 months within a period of 12 consecutive months). Non-renewable, except in exceptional circumstances.
Residence and work of highly qualified professionals in possession of an EU blue card	Granted to those who provide evidence of higher education qualifications (understood as those deriving from higher education lasting at least three years) or, exceptionally, have a minimum of five years' professional experience that could be considered comparable. Holders of EU blue cards that have resided for at least eighteen months in another EU country may obtain this authorization.	Duration of one year, renewable for two-year periods, unless a long-stay residence permit is applicable.

13. Social security system⁹

13.1. Introduction

As a general rule, all employers, their employees, self-employed workers, members of manufacturing cooperatives, domestic personnel, military personnel and civil servants who reside and/or perform their duties in Spain are required to be registered with, and pay contributions to, the Spanish social security system (except in specific cases of temporary secondments of employees, as indicated in section 11.2 above).

There are different contribution programs under the Spanish social security system:

- a) General social security program.
- b) There are other situations included within the general social security program that qualify for special treatment, namely:
 - Artists.
 - Railroad workers.
 - Sales representatives.
 - Bullfighting professionals.
 - Professional soccer players and other professional sportsmen and women.
 - Agricultural workers.
 - Domestic personnel.

c) Special social security programs for:

- Seamen.
- Self-employed workers.
- Civil servants and military personnel.
- Coal miners.
- Students.

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

As a general rule, employers and their employees will be subject to the general social security program.

13.2. Basic aspects of the General Social Security Program

In those cases in which the employees or employers are subjected to the General Social Security program, social security contributions are paid partly by the employer and partly by the employee. Personnel are classified under a number of professional and job categories for the purposes of determining their social security contributions. Each category has a maximum and minimum contribution base, which are generally reviewed on a yearly basis. Employees whose total compensation exceeds the maximum base, or does not reach the minimum base, must bring their contributions into line with the contribution base for their respective category.

For 2017, the maximum contribution base will be €3,751.20 per month for all professional categories and groups. Therefore the situation for 2017 under the general social security program (applicable to the great majority of workers) is as follows¹⁰:

Table 9

Category	Minimum Base (Euros/month)	Maximum Base (Euros/month)
Engineers and graduates	1,152.90	3,751.20
Technical engineers and assistants	956.10	3,751.20
Clerical and workshop supervisors	831.60	3,751.20
Unqualified assistants	831.60	3,751.20
Clerical officers	831.60	3,751.20
Messengers	831.60	3,751.20
Clerical assistants	831.60	3,751.20

Category	Minimum Base (Euros/day)	Maximum Base (Euros/day)
Class 1 and class 2 skilled workers	27.52	125.04
Class 3 skilled workers and specialists	27.52	125.04
Laborers	27.52	125.04
Workers under 18 years of age	27.52	125.04

The contribution rates applicable to employers and employees under the general social security program in 2017 are as follows:

⁹ http://www.seg-social.es/Internet_1/index.htm
<http://www.empleo.gob.es/index.htm>

¹⁰ Order ESS/70/2016, of January 29.

Table 10

	Employer (%)	Employee (%)	Total (%)
General contingencies	23.60	4.7	28.30
Unemployment			
• General rule ¹¹	5.50	1.55	7.05
• Fixed-term contracts	6.7	1.6	8.3
Professional training	0.6	0.1	0.7
Wage Guarantee Fund	0.2	-	0.2
Total general rule	29.9	6.35	36.25
Total fixed-term contracts	31.1	6.4	37.5

The total employer contribution rate is increased by additional percentages relating to the occupational accident and disease contingencies provided for in the State Budget Law which will depend, as a general rule, on the activity of the company, although a common percentage will be applied across the board in the case of some occupations or situations.

Employers deduct the employees' portion of contributions from their paychecks and pay them over, together with the employer's portion of contributions, to the social security authorities. Similarly, following the above-mentioned Royal Decree-Law 16/2013 of December 2013, employers must notify the Social Security General Treasury in each settlement period of the amount of all the remuneration items paid to their employees, irrespective of whether or not they are included in the social security contribution base and even if single bases are applicable.

¹¹ It includes: indefinite-term contracts (including part-time indefinite-term contracts and indefinite-term contracts for seasonal work), and fixed-term contracts (in the form of training contracts, hand-over and relief contracts and any type of contract made with disabled workers who have been recognized as having a degree of disability of at least 33% of their physical or mental capacity).

13.3. Applicable program to administrators or members of the Board of Directors

The administrators or members of the Board of Directors of a company could be included in the General Program ("RGSS"), in the General Program as "assimilated" or in the Special Program for Self-Employed Workers ("RETA").

The following table explains the different scenarios:

Table 11

Collective	Conditions and characteristics	Contribution scheme	Observations
	If the worker has the effective control of the company	RETA	
	They are employees of the company and the administrator post does mean carrying out the functions of direction and management.	RGSS	It is presumed, unless there is proof to the contrary, that the worker has the effective control of the company when any of the following circumstances exists: <ol style="list-style-type: none"> At least half the company capital for which they render their services is distributed amongst partners in the company with whom they live and with whom they are linked by marriage or by blood, affinity or adoption family ties of up to a second degree. Their participation in the company capital is equal to or greater than one third. Their participation in the company capital is equal to or greater than one fourth, if they have been attributed with functions of direction and management of the company.
Administrators or members of the Board of Directors	If the worker has not the effective control of the company	RGSS as assimilated to employees (excluding unemployment protection and that of the Salary Guarantee Fund).	
	The post as administrator means carrying out the functions of direction and management.		
	The post as administrator does not mean carrying out the functions of direction and management.	Non-affiliation in the Social Security system.	

14. Occupational risk prevention¹²

Employers must guarantee the health and safety of their employees but without merely complying with legislation and remedying risk situations, meaning that they have an obligation to perform risk assessments, adopt measures in emergency situations, provide protective equipment and to guarantee the health of employees,

including pregnant or breastfeeding women (ensuring they do not perform tasks which could put them or their unborn child/baby at risk).

All employers must have a risk prevention service to provide advice and assistance in prevention tasks and employers must appoint one or more workers to take charge of these activities. At companies

with less than ten workers, this service may be provided directly by the employer, provided that it habitually pursues its business at the workplace and has the necessary capacity to do so. An external risk prevention service may also be used in certain cases.

Failure to comply with occupational risk prevention obligations may give rise to administrative, labor, criminal and civil liability.

¹² <http://www.empleo.gob.es/index.htm>

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