



L&E GLOBAL

an alliance of employers' counsel worldwide

Suárez de Vivero

EMPLOYMENT LAW OVERVIEW

SPAIN 2021-2022

Suárez de Vivero / Proud Member of L&E GLOBAL

TABLE OF CONTENTS.

I.	GENERAL OVERVIEW	03
II.	HIRING PRACTICES	05
III.	EMPLOYMENT CONTRACTS	07
IV.	WORKING CONDITIONS	08
V.	ANTI-DISCRIMINATION LAWS	10
VI.	PAY EQUITY LAWS	12
VII.	SOCIAL MEDIA AND DATA PRIVACY	14
VIII.	TERMINATION OF EMPLOYMENT CONTRACTS	16
IX.	RESTRICTIVE COVENANTS	22
X.	TRANSFER OF UNDERTAKINGS	24
XI.	TRADE UNIONS AND EMPLOYERS ASSOCIATIONS	25
XII.	EMPLOYEE BENEFITS	29



I. GENERAL OVERVIEW

1. INTRODUCTION

As is the case in other European countries, Spanish labour law is very comprehensive and provides significant protection for employees. The labour law regulates individual and collective relationships between employees and employers, the scope of which extends to other related areas such as social security, health and safety at work, special employment relationships and procedural law.

2. KEY POINTS

- Non-EU citizens must obtain a work permit.
- In principle, employment contracts are presumed to be for an indefinite term. However, the number of fixed-term employment contracts are subject to some limitations.
- Minimum working conditions are largely set out in the Workers' Statute and applicable collective agreements.
- Employment contracts are automatically transferred with the business to the new employer. Employees' rights and obligations are also transferred.
- Termination can be based on objective grounds.
- Dismissals are void if the termination is discriminatory or involves protected employees.

3. LEGAL FRAMEWORK

The economic crisis of 2008 revealed the unsustainability of the Spanish labour model. The labour legislation was updated in 2012 to adequate itself in a time of crisis within the labour market. Royal Decree-Law 3/2012 of 10 February, on urgent measures to reform the labour market, significantly modified the institutional framework of Spanish labour relations.

The main sources of Spanish employment law include:

- The Spanish Constitution dated 17 December 1978.
- Royal Decree 2/2015 (the Workers' Statute).
- Royal Decree-Law 3/2012 of 10 February on urgent measures to reform the labour market.
- Law 3/2012 of 6 July 2012 on urgent measures to reform the labour market.
- Royal Decree-Law 16/2013 on measures to improve hiring.
- Law 5/2000 on Labour Infractions and Sanctions.
- Law 31/1995 on Work Risk Prevention.
- Law 3/2007 on Equality between Men and Women.
- Royal Decree 8/2015 on Social Security.
- Collective Bargaining Agreements, applicable to both the company and its workers.
- Employment contracts.
- Habits and common usage.
- General Principles of Law.

4. NEW DEVELOPMENTS

The most important new legislation from 2018 to 2020 includes the following:

- The Spanish Data Protection Act 2018 (Organic Law for the Protection of Personal Data and Guarantee of Digital Rights) came into force on 5 December 2018. This regulation adapts Spanish law to the model established by the EU General Data Protection Regulation ('GDPR').

- Royal Decree-Law 17/2019 of 25 January introduces a new article (Article 70 bis) in the General Regulation on the quotes and liquidation of social security rights, to establish the responsibility of the different administrations and public entities.
- Royal Decree-Law 20/2018 of 7 December on urgent measures for economic competitiveness in the sector of industry and trade in Spain, allows the manufacturing industry to apply the regulation of partial retirement under the fulfilment of certain requirements.
- Royal Decree-Law 6/2019 of 1 March, on urgent measures to guarantee equal treatment and opportunities for men and women in employment and occupation.
- Royal Decree-Law 8/2019 of 8 March, on urgent social protection measures and against precarious work during the working day.
- Royal Decree-Law 4/2020 of 18 February, derogates the objective dismissal due to non-attendance at work as established in article 52. d) of the consolidated text of the Workers' Statute.
- Royal Decree-Law 28/2020 of 22 September on remote working.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Foreign employees from outside the European community, including self-employed individuals, must obtain an administrative authorisation, or work permit, to work in Spain. The work permit may be requested at the Immigration Bureau.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

When a foreign employer wants to hire a local employee in Spain, it must take charge of all the obligations related to the employee, such as the social security contributions and the income taxes. There are essentially two ways that a foreign company can hire employees in Spain. First, there is a possibility of setting up a company (subsidiary or branch) in Spain and hiring employees through it. The set-up process consists of establishing a fixed base of business in Spain, to develop an activity, and grant a Public Deed before the Public Notary. Tax laws require a legal representative resident in Spain, as well as a Digital Certification, in order to work with the Spanish Tax Agency. The company in Spain will have several other obligations related to the following services:

- accountancy;
- corporate income tax;
- books of commerce and minutes;
- annual accounts;
- payment of social contributions.

Second, in contrast to the first option and only when certain requisites are met, the foreign company may have a legal representative in Spain (representation office). The legal representative in Spain must be a Spanish resident (individual or company) and it will be responsible for ensuring compliance with taxes, and the social contribution system payments of the foreign company in Spain, as these cannot be carried out directly by the foreign legal entity. The legal representative will usually take care of the payroll and the tax payment of the employees. In order to have a legal representative, the foreign employer will need to give a power of attorney appointing someone as its legal representative, residing in Spain. This POA must be validated by a public notary or by the Spanish consulate in the foreign country, stating that the company is validly constituted in accordance with its applicable law, translated into Spanish by a sworn translator and with the Hague Apostille. Additionally, the obtainment of a Digital Certification will be compulsory.

3. LIMITATIONS ON BACKGROUND CHECKS

Information regarding criminal records is confidential and public disclosure is prohibited as it could violate data protection regulations. Moreover, there is a general prohibition forbidding discrimination against any employee, for any reason, either before or after being hired. This is specifically provided for in article 14 of the Spanish Constitution, article 4.2 of the Workers' Statute and article 73.2 of the General Penitentiary Law. In addition, access to the Central Registry of Convicts will only be allowed for certain state agencies, judges and courts, as well as the judicial police, when there is such a requirement. Therefore, the employer cannot obtain such data unless the candidates or the employees provide the data voluntarily. The courts have understood that the request for and use of this information are contrary to the legal provisions, considering that these

practices represent a restriction on the access to the labour market. This is so, because in most cases the information provided is related to past events that are entirely unrelated to the job being offered, so the company's request could be disproportionate for the intended purpose. Consequently, for Spanish Courts, the request for background checks during the selection process and the exclusion of a candidate due to the information obtained from them, could be discriminatory.

As an exception to the general prohibition mentioned above, there are certain sectors whereby there exists a legal obligation that entitles the employer to request and proceed with background checks. Among these sectors, we find the Public Administration, the state/local police, the army, managing members of financial institutions, insurance agents, professionals who work with minors and casinos.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

By a series of strict regulations and case law on the prohibition of any type of discrimination as well as a prohibition, as a general rule, on requesting candidates to submit personal data that is not directly related to the needs of the job they are opting for. Especially in the selection process, the general position prohibits requests for personal information such as racial or ethnic origin, sexual orientation, health information, religious beliefs, persuasions or political views. Personal information along such lines of inquiry can only be requested when the need to know of such convictions is objectively and reasonably related to the nature of the job. Moreover, such personal data may only be collected when appropriate, in a relevant and non-excessive manner, and only as it relates in scope to the specific, explicit and legitimate purposes for which the information was obtained.

Another question is whether there is a legitimate need that would allow for an employer or HR representative to investigate a candidate's profile on social networks, in order to discover additional information about the candidate. This is a matter

that has not been regulated in Spain and therefore a candidate participating in a job interview could find himself in a "vulnerable" position of which the employer could take advantage of.

However, in principle, it is indeed legitimate for the employer to use such information as long as it is public, unrestricted and available to anyone. There are no general guidelines that can be used to guarantee that the fundamental rights of the candidate will in no way be breached when extracting information from social networks.

The employer is allowed to ask any question necessary, provided that it is reasonable and objective, and pertains to the job being offered. For example, requests for a candidate's minimum height and age could be necessary and objective for a flight attendant position.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

Generally, Spanish Labour Legislation allows for freedom of form when making a contract. Employment contracts can be verbal or in writing. However, during the term of a verbal contract, either of the parties may require that the verbal contract be reduced to writing. As an exception to the freedom of form, certain employment contracts must be in writing, including, but not limited to, temporary employment contracts, contracts involving special labour relations (such as those concerning lawyers, top managers or commercial representatives) and part-time contracts.

Notwithstanding the general freedom of form principle, when an employment contract's duration period is greater than four weeks, the employer, within two months from the commencement of the employment relationship, must provide the employee with the following information in writing:

- identification of the parties to the employment;
- date of commencement and estimation of the employment duration for temporary contracts;
- place where services are going to be rendered;
- professional group or category;
- base salary as well as other compensation or benefits, if any;
- total working hours;
- total number of holidays;
- notice periods;
- applicable collective agreement.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

In principle, employment contracts are presumed to be for an indefinite term. There are, however, a limited number of definite-term employment agreements. If the employee continues to work past the original term of the temporary agreement, the relationship becomes indefinite in time and the employee becomes entitled to the standard severance upon termination.

3. TRIAL PERIOD

In the event that no special provision is contained in an applicable collective bargaining agreement, notice periods cannot exceed six months for workers with an academic degree and for any other employees. However, the contract for entrepreneurs has established a trial period of one year.

4. NOTICE PERIOD

Spanish Labour Law requires that a party seeking to terminate an employment agreement provide the other party to the agreement with a minimum of fifteen (15) days' notice prior to termination. This rule does not apply to interim contracts. The parties to the contract may agree upon longer notice periods.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

Employers and employees are free to negotiate the terms and conditions of their employment relationship. However, employees have various minimum rights under the law, regardless of any contrary language in their employment agreement. These minimum working conditions are set forth in the Workers' Statute and the applicable collective agreement, among others.

2. SALARY

An employee's salary includes all amounts received by an employee in compensation for services rendered. Salary can be monetary or in kind, but the latter cannot be higher than 30% of the total amount received by the employee.

3. MAXIMUM WORKING WEEK

The maximum working week is forty (40) hours calculated as an average over a yearly period. A collective agreement, or failing that, an agreement between the employer and employee representatives, may establish the irregular distribution of working time throughout the year. In the absence of agreement, the company may distribute unevenly throughout the year, 10 percent of the workday. This distribution shall always respect the minimum daily and weekly rest periods.

4. OVERTIME

As a general rule, overtime hours are of voluntary acceptance by employees, with exceptions made for specific individuals and an applicable collective agreement. Structural overtime hours will be obligatory as they are meant to substitute unexpected leaves and meet higher production periods. Overtime hours can be compensated economically or with time for rest. If there is no agreement in this regard, it will be understood that the overtime hours must be compensated with resting time within the following four (4) months. According to statutory law, overtime cannot exceed eighty (80) hours per year. Those who have been compensated with periods of rest within the four (4) months following its completion will not be computed for this purpose. In addition, there is a form of overtime that is considered as force majeure, wherein overtime is required due to the need to prevent or repair accidents, or other extraordinary and urgent damages. This type of overtime is mandatory for the employees and will not be taken into account for the annual maximum limit.

5. HEALTH AND SAFETY IN THE WORKPLACE

The employer is guarantor of the health and safety in the workplace and, as such, it will need to take all necessary steps in order to protect its employees. The employer shall take the necessary measures to ensure that the use of the workplace does not create risks to the health and safety of its employees or, if this is not possible, so that these risks are minimised.

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

The prevention of labour risks should be integrated in the general management of the company, through the implementation and application of a plan for the prevention of labour risks. The essential instruments for the management and application of the risk prevention plan include the evaluation of labour risks and the planning of the preventive activity.

The process of assessing labour risks is aimed at estimating the enormity of the risks by obtaining the necessary information, so that the employer is able to make an appropriate decision regarding the need to take preventive measures, including decisions regarding the types of measures that should be adopted. The evaluation should serve to identify dangerous elements, the employees who could be exposed to such elements, and the magnitude of the risks. When the result of such an assessment reveals situations of risk, the employer will then plan the appropriate preventive activity in order to eliminate, control and/or reduce those risks.

A company's Health and Safety Committee is an internal body tasked with consulting on a regular basis the company's actions in the field of risk prevention. It will be constituted in all companies or work centres that have 50 or more employees. The Committee will participate in the preparation, implementation and evaluation of risk prevention plans and programs in the company, as well as promote initiatives on preventive methods and procedures. In any case, employers must meet the minimum request established by law regarding their constructive conditions, order, cleanliness and maintenance, signposting, service installations or protection, environmental conditions, lighting, sanitary and local respite services, equipment and first aid accommodations.

B. COMPLAINT PROCEDURES

In addition to whistleblower regulations, employees can file complaints, either during or after employment. Some companies offer internal codes of conduct with procedures in this regard.

Statutory law does not enforce a specific procedure to be followed, however. Besides internal complaints before the company, employees are entitled to report any violation of the law before the Labour Inspectorate, which is an administrative body meant to guarantee employment rights. All actions and claims carried out by employees in defence of their rights are protected from any form of retaliation. Therefore, any claim registered internally, or externally before third parties, will effectively serve to protect employees from retaliation.

C. PROTECTION FROM RETALIATION

The protection from retaliation is the right of every employee to not be punished for raising complaints of discrimination or harassment, for participating in legal proceedings or internal investigations, or for having exercised any type of labour rights that affect them personally or affect a third-party. Retaliation can include any negative job action, such as demotion, discipline, dismissal or salary reduction. The consequence of any action taken by the company with the intention of a reprisal will make it null and void.

The protection from retaliation is framed in Article 4. 2 g) of the Workers' Statute, which declares that workers have the right to exercise any actions deriving from their work contract, as similarly defined in Article 24.1 of the Spanish Constitution, which establishes that "every person has the right to obtain the effective protection of the judges and the courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended". Case law has been modelling and constituting the case-by-case assumptions in which a worker is protected. However, not every claim will grant the employee a valid protection. Reckless or baseless claims with the sole purpose of searching for a specific type of protection will not be effective. There is a proper legal procedure to claim a violation of retaliation in protection of fundamental rights and public liberties.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

Employees are entitled not to be discriminated directly or indirectly during their employment for reasons of sex, marital status, age within the limits establish by the law, racial or ethnic origin, social status, religion or belief, political ideas, sexual orientation, affiliation with a union (or not), or for reason of language, inside the Spanish State. Employees may not be discriminated against for reason of disability, provided that, they are fit to perform the job in question.

2. EXTENT OF PROTECTION

Any direct or indirect discrimination included in regulatory provisions, clauses in collective agreements, individual agreements, and unilateral decisions by employers shall be deemed null and void and could be subject to a complementary claim for damages. Among other causes of discrimination, are those for reason of age or disability handicap and in regarding remuneration, working hours and other working conditions for reasons of sex, origin, including racial or ethnic origin, marital status, social status, religion or beliefs, political ideas, sexual orientation, membership (or not) of unions and their agreements, kinship links with other workers in the company and language in Spain. The decisions of the employer that involve unfavourable treatment of employees as a reaction to a complaint or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment and non-discrimination, would also be null and void.

3. PROTECTIONS AGAINST HARASSMENT

Employees are entitled to protection and respect of their privacy and due consideration for their dignity, including protection against harassment on the reason of racial or ethnic origin, religion or belief, disability, age or sexual orientation and against sexual harassment and gender based harassment. Harassment for reasons of racial or ethnic origin, religion or belief, disability, age or sexual orientation employer or people working in the company is considered a breach of contract. The employer could face a constructive claim for dismissal via article 50, which basically would entitle the employee to the same amount as an unfair dismissal, if the employee brings to court serious evidence of the harassment activities by the employer. This claim can be complemented with an action for moral damages against the company.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

Spanish Labour Legislation requires the adoption of internal rules in companies or centres that promote and stimulate the elimination of disadvantages or general situations of discrimination against persons with disabilities, including reasonable adjustments.

Employers are required to take appropriate measures for adapting the workplace and accessibility of the company, depending on the needs of each specific situation, in order to enable people with disabilities access to employment,

job progress and access to training, unless such measures would impose a disproportionate burden on the employer. To determine whether a charge is excessive, the court will consider whether, if taken, it is sufficiently remedied by measures, public grants or subsidies for people with disabilities.

Spanish regulations oblige companies with more than 50 employees to reserve a quota of 2% of their staff for disabled people.

5. REMEDIES

If an employee considers that the employment relationship has been extinguished by any discriminatory reason, he/she is entitled to judicially demand the protection of his or her labour rights.

When the employer's decision to terminate a contract includes some of the causes of discrimination prohibited by the Constitution or the law, or has occurred in violation of fundamental rights and public freedoms of workers, the termination decision will be deemed null and void, and the employee will be entitled to reinstatement and – whenever proven – to moral damages as well.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

Three key measures offer protection:

- Organic Act 3/2007 of 22 March, for the effective equality between women and men;
- Royal Decree-Law 6/2019 of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation; and
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, on the application of the principle of equal opportunities and equal treatment for men and women in matters of employment and occupation.

The Organic Act 3/2007 establishes the principle of equal treatment and opportunities for men and women. The central, regional and local governments will actively mainstream this principle in the adoption and implementation of their legislative provisions. Moreover, from time to time, the State Government will approve a Strategic Plan for Equal Opportunities covering all areas of its competence, which will include measures to attain the objective of equality between women and men and eliminate discrimination on the grounds of gender. Additionally, article 11 of the Organic Act regulates affirmative actions, stating that in order to ensure the effectiveness of the constitutional right to equality, public authorities will adopt specific measures favouring women to correct situations of obvious inequality with respect to men. Such measures, which will be applicable while the situation exists, must be reasonable and proportional to the objective pursued in each case. Furthermore, equality plans are regulated under Chapter III of the Organic Act. These regulations establish that corporate equality plans comprise a set of measures adopted after a diagnosis of the situation and shall be designed to attain equal treatment and opportunities for women and men within said company. Equality plans will stipulate

the specific equality objectives to be reached, the strategies and practices to be adopted to attain them, and the establishment of effective monitoring and assessment systems.

2. REMEDIES

Employees can change equal pay practices through their participation in the application and elaboration of equality plans. The application and elaboration of equality plans is compulsory for companies with over 250 employees, when mandated in the collective bargaining agreement and when the labour authorities agree to substitute the formulation and implementation of such a plan for accessory penalties, resulting from penalty proceedings. Royal Decree-Law 6/2019 modifies the Organic Act and requires companies with 50 or more workers to draft equality plans and mandates that such plans shall be registered accordingly. Application of this obligation shall be gradual and systematic. Enterprises must have an equality plan in place as of:

- 7 March 2020 for companies with more than 150 to 250 workers;
- 7 March 2021 for companies with more than 100 to 150 workers; and
- 7 March 2022 for companies with 50 to 100 workers.

If an employee believes that the company did not adhere to an equal pay practice, he is entitled to initiate an internal demand (within the company) for the protection of his labour rights. However, if the company does not have an internal procedure for this type of claim, a demand can be filed with the courts or the relevant labour inspection authority in order to guarantee the equal pay provisions.

3. ENFORCEMENT/ LITIGATION

Examples of remuneration discrimination can be found in case law related to the existence of a double salary scale. Specifically, the Supreme Court's ruling of 5 March 2019, held that the company's salary structure comprised an unlawful double pay scale based on a personal complement of seniority, which led to a policy to establish wage differences between workers as a result of their entry date into the company, exclusively. Likewise, the discrimination in remuneration is also manifested in the classification and professional promotion of employees. For example, there was a case involving temporary female workers who were assigned a lower professional category upon agreement of a fixed-term contract, than the professional category that was assigned to temporary male workers. However, the leading case law relating to discrimination is the judgment rendered on 1 July 1991, involving discrimination in remuneration established in the CBA between the professional category of labourer (mostly men) and the professional category of cleaners (mostly women), when both professional categories carried out manual work of equal value at the Gregorio Marañón Hospital.

4. OTHER REQUIREMENTS

International law, European Union law and Spanish national law, have recognised and protected the right of women and men to receive equal pay for work of equal value. At the national level, the Royal Decree-Law 6/2019 of 1 March, introduced several modifications in the Workers' Statute, specifically in relation to the term 'work of equal value' mentioned in article 28 of said law. Prior to its modification, it only established that the employer was obliged to pay the same remuneration for the provision of work of equal value. After the modification made by the Royal Decree-Law 6/2019, a second paragraph was introduced specifying what is understood as 'work of equal value' –

“A work will have the same value as another when the nature of the functions or tasks actually entrusted, the educational, professional or training conditions required for their exercise, the factors

strictly related to their performance and the working conditions in which those activities are carried out are in fact equivalent.”

Royal Decree-Law 6/2019 adds a second and a third paragraph to article 28. The second paragraph establishes the obligation of the employer to maintain a Salary Record. This record must be carried out regardless of the number of workers and it must include the average values of salaries, salary supplements and extra-salary perceptions, such values being separate by gender and distributed by professional groups, professional categories and equal job posts or job posts of equal value. The purpose of this record is to obtain a global vision of the remuneration received by workers, according to their gender and for performing work of “equal value”. Such records will be available to employees who have the right of access through their legal representatives.

Furthermore, the new third paragraph of article 28 provides that, in companies with at least 50 workers, when the average of the remuneration of one gender is higher than the other by 25% or more considering the total payroll or the average of the paid perceptions, the employer has the obligation to include in the aforementioned salary record, a justification to prove that the difference does not correspond to reasons related to the gender of the workers. In this sense, Royal Decree-Law 6/2019 further added a new section 3 to article 9, which provides that, in the event of invalidity due to wage discrimination on grounds of gender, the worker will have the right to the remuneration corresponding to equal work or work of equal value.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

In Spain, the new culture resulting from the development, implementation and use of new possibilities such as social media and other technologies enabling mass dissemination of information, is changing the way people relate to each other in all fields. The working environment is no exception. Massive amounts of personal information are available to anyone wishing to use it, and companies are obviously not indifferent to this valuable source of content, nor can they escape from this fast and ever-changing technological innovation that allows people to communicate and share extremely detailed data at a much faster rate. The vast majority of regulations applicable to the multimedia content in Spain are driven by the European Union Council and European Parliament. This European legislation is complimented by the Courts of Social Justice Case law. These elements have provided a set of principles and guidelines making analogies between on-line and off-line worlds. Still, the widespread use of social media and the speed at which it evolves, has clearly overtaken any attempt to keep pace using the legal resources currently available to private users and companies in most countries, and this is particularly true in Spain.

In spite of the need, Spain still lacks specific regulation on the subject of using social media in the employment context. Due to lack of well-defined regulatory legislation, it has been up to the courts to solve conflicts between employer and employees regarding their rights and duties for use of social media in connection with employment.

There is no express legal prohibition for employee not to use social media at the workplace. Such a

prohibition can be regulated by the employer by written form, with a detailed policy on surveillance and control of the company's property and the use of social media tools during working hours. Although there is no need to seek approval with the employees' representatives to implement or negotiate such policies, some companies choose to negotiate directly with these representative bodies, before communicating such policies to the individual employees.

Therefore, if the employer considers the particular use of multimedia contents by its employees detrimental to the company's activities, the employer may within its responsibilities, issue the appropriate guidelines and instructions to regulate the use of these tools and seek greater productive capacity from the employees, and even prohibit the use of social media at the workplace.

Thus, the measures used by the employer will be assessed according to the principle of proportionality meaning the measures to control the employee at the workplace have to be justified, appropriate, necessary and balanced. According to a general formulation, the principle of proportionality may be applied to conflicts between fundamental rights. This is based on three types of test: first, if the application of the measure is able to achieve the objective (judgment of suitability); second, if it is necessary and there is no other measure which is less aggressive (judgment of strict necessity); third, if it is balanced and obtains more advantages than disadvantages for the general interest (judgment of strict proportionality).

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

Article 20.3 of the Workers' Statute recognises the employer's right to take the most appropriate measures to control the work of their employees, so as long as they do not violate their fundamental rights.

Case law of the European Court of Human Rights and Spanish Courts have established that when the electronic communication systems used by employees are owned by the company, and therefore susceptible to being considered as work instruments and tools, they may be subject to the employer's control. However, for the monitoring of the electronic communications to be valid, the employer must comply with the following:

- establish guidelines on the use of these media, and inform the employees that the use of such devices is limited to professional tasks; and
- warn or notify employees, in advance, of the possibility to control and monitor their electronic devices and the possibility to penalise them for improper use.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

Without clear policies, it can be difficult to lawfully sanction employees for misuse of social media. The High Court of Justice of Madrid accepted offensive statements posted on Facebook by an employee as evidence towards the appropriateness of the employer's disciplinary action. The High Court found the dismissal of the employee to be fair, because of the company's code of conduct, which explicitly permitted disciplinary measures for offensive or defamatory remarks made by employees against the company.

It is important to have a social media policy implemented by the employer and communicated to the employees, in order to control the use of company resources and tools. Also, some courts in first instance consider it necessary to include in

such a policy, that it may be used for disciplinary reasons against the employee. The company will be entitled to enforce the policy and sanction the employee whenever breached.

It is advisable to provide such a policy to the employees at the beginning of their employment relationship; firstly, by defining how social media may or may not be used for private use during working hours; secondly, identifying what non-confidential company information can or cannot be posted by employees on social media sites, if any. This can be included in the employee's work contract.

VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

In Spain, the following are grounds for termination:

- mutual consent of the parties;
- grounds established in the contract;
- expiration of the contract term or end of the specific job;
- employee's resignation;
- employee's death or permanent illness;
- retirement of the employee;
- employer's death, retirement or permanent illness;
- force majeure that makes it impossible to continue rendering services;
- collective dismissal based on objective grounds;
- employee's voluntary departure based on breach of contract by employer;
- disciplinary dismissal of the employee.

2. COLLECTIVE DISMISSALS

Terminations based on economic, technical, organisational or productivity grounds are deemed collective when: ten (10) workers are affected in companies with less than one hundred (100) workers; at least 10% of the employees are affected within a period of ninety (90) days in companies that have between one hundred (100) and three hundred (300) workers; thirty (30) workers in companies with three hundred (300) or more workers.

3. INDIVIDUAL DISMISSALS

Termination can be based on objective grounds or disciplinary grounds.

A. REASONS FOR OBJECTIVE DISMISSAL

- worker's incompetence;
- worker's inability to adapt to technical change;
- layoffs based on economic, technical, organisational and or productivity grounds.

Given that labour courts are so restrictive in accepting dismissals based on business grounds, this procedure is seldom used, unless the grounds are absolutely clear (e.g., bankruptcy).

B. REASONS FOR DISCIPLINARY DISMISSAL

- repeated and unjustified tardiness or lack of attendance at work;
- lack of discipline or insubordination;
- verbal or physical offence towards the employer, other people working in the company or residing family;
- contravention of contractual good faith and misuse of trust;
- continuous and voluntary decrease of the worker's normal or agreed performance;
- intoxication due to alcohol or drugs, when causing a negative effect in work;
- harassment based on: race, religion, birth, gender, age, disability, opinion, social condition and sexual orientation.

C. IS SEVERANCE PAY REQUIRED?

A disciplinary dismissal is one wherein the cause is based on the employee's behaviour, which constitutes a punishable offense. Disciplinary dismissals must be communicated by a written letter to the worker, stating clearly and sufficiently

the facts that motivate it and the date on which the dismissal will take effect. A disciplinary dismissal does not entitle an employee to receive any compensation from the company. A severance payment will only be required in cases that involve a court ruling declaring the dismissal unfair.

D. SEVERANCE PAY RESULTING FROM OBJECTIVE DISMISSAL

The severance pay resulting from an objective dismissal is a tax-free payment in the amount of twenty (20) days' salary per year of service, up to twelve (12) months' salary. If the dismissal is not correctly proven in court, the employee will be entitled to the severance explained below for unfair dismissals.

E. SEVERANCE PAY RESULTING FROM DISCIPLINARY DISMISSAL

If the dismissal is proven in court the employee is entitled to no severance. However, if the dismissal is deemed unfair by the judge or acknowledged as unfair by the company before the Conciliation Chamber or the Court, the relevant tax-free severance is thirty-three (33) days' salary per year of service, up to twenty-four (24) months' pay. However, this calculation must respect the following:

- for the period of seniority rendered before 12 February 2012 (the day the labour reform was approved) the employee is entitled to the indemnity arising from a calculation based on 45 days per year of work, with a cap of 42 months.
- for the period of seniority as from 13 February 2012 until termination date, the employee will be entitled to compensation based on 33 days per year of work, with a cap of 24 months. The sum of both amounts will be the legally established compensation for the employee.

The maximum cap is now 720 days. However, when the calculation to determine the severance for dismissal before 12 February 2012 results in a number of days greater than 720, the cap will then be 42 months.

The parties may agree to a lower or higher compensation. Higher compensations that exceed

the ones described above will be subject to tax and social security contributions (in case of mutually agreed terminations), in the amounts described below.

F. CALCULATION FORMULA AND BASIS FOR CALCULATION

Severance compensation is calculated under two criteria: seniority and daily salary. In case of objective or unfair disciplinary dismissal the severance will be calculated by multiplying the seniority by the daily salary and the days (20 in case of objective dismissal/ 33 in case of unfair dismissal). The daily salary is calculated taking into consideration the twelve (12) last payments, and the company shall include all salary concepts. This also includes salary in kind and extra-hours. Only extra-salary concepts should be excluded. Therefore, bonus, incentives and irregular payments are included.

Stock Options will be calculated for the severance under certain circumstances: in case of voluntary leave or disciplinary dismissal declared fair, the employee will lose the right to include the stock options in the severance for dismissal. The Supreme Court has said that in the event the dismissal was declared unfair and was carried out a few months before options could be exercised, they will be included in the severance for dismissal. The same will occur in the event of death, disability and retirement, in which the employee or his/her heirs will be able to claim these. In case of unfair dismissal, the employee will be entitled to exercise the right to stock options after the contract is terminated even if a "permanence clause" has been signed.

4. SEPARATION AGREEMENTS

Termination of contracts based on mutual consent does not entitle the employee to severance payments (unless specifically agreed) or unemployment benefits.

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

Should a severance be agreed, it would be subject to taxes and social security contributions. To avoid the aforementioned, the general practice for companies is to dismiss the employee so that he/she is entitled to the legal severance and also to unemployment benefits. Although this system is used in a clear majority of cases by employers, a termination agreed by mutual consent that has the appearance of a dismissal (by giving a dismissal letter to the employee in order to receive the severance free of taxes as well as unemployment benefits), is unlawful and considered fraudulent.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

A mutually-agreed termination will only require a simple agreement by both parties that puts an end to the employment relationship. In said agreement, we recommend the parties include certain background information that briefly explains the grounds for termination, the agreed compensation and the means and timing of payment, a specific mention to gross and net amounts, and several other clauses such as confidentiality, non-disparagement, waiver against future actions and possibly a non-compete, whenever appropriate.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

A mutual agreement may be reached between parties independent of the employee's age. That said, we need to be careful of those separation agreements with employees near retirement age, that are dressed as "dismissal letters", as they could be subject to inspection by the state who will be in charge of paying said employees their unemployment benefits and subsequent retirement pension.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

In principle, the employee that signs a separation agreement is not entitled to additional benefits beyond agreed severance payment, the final payments, and any other amounts, agreed upon. If no dismissal letter is given and both parties

agree to mutually terminate the contract, income tax payments and social contributions will be due by the employee in the event that the contract is terminated by mutual consent not only for the amount that exceeds that of an unfair dismissal, but for the whole severance paid.

The company will have to take the whole severance compensation and apply to it the employee's existing tax % in his ordinary payroll. Likewise, it will also contribute to the social security as explained above.

If a mutually agreed termination (with no severance payment) is not correctly addressed, for example by not having a detailed termination agreement, with inclusion of a waiver clause, the employee may challenge the termination by filing a dismissal claim against the employer. In this case, if the employee proves that the termination was really a dismissal and not a mutually agreed termination, the employer may be liable to pay the maximum severance explained for unfair dismissals. These amounts would then be free of taxes and the employee would be entitled to unemployment benefits.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

An employee is entitled to appeal against any such dismissal. However, prior to filing a claim with the courts, the parties are required to try to reach an agreement before the Mediation, Arbitration and Conciliation Service. When the employee files a claim before the court, the court will render one of the following judgments:

Fair Dismissal – in which case, the employer will not be subject to any penalties or further obligations towards the employee.

Unfair Dismissal – if the employee is successful in his claim, the principal remedies available are:

- reinstatement, with financial award to cover lost remuneration; or

- an award of 33 days salary per year of service, subject to a maximum of 24 months' salary.

The choice of remedy, whether to make severance payments or to reinstate, is the decision of the employer. However, in cases involving the termination of an employees' representative, the representative is the one who will enjoy the choice of remedy.

Null and Void Dismissal – a court will declare the dismissal null and void (and will award reinstatement, with financial award to cover lost remuneration) where a fundamental right of the employee has been breached during the course of the dismissal procedure, for example:

- where the dismissal involves an element of discrimination prohibited by the Spanish Constitution or statute, or which otherwise violates the employee's fundamental rights;
- where the employer should have used the collective procedure;
- where the employer has dismissed any of the protected categories of employees and has not justified the dismissal correctly.

If the worker is an employees' legal representative or a trade union representative, there will be formal adversarial procedures, during which the worker and other members of the union to which he or she belongs, may be heard. If the worker is a member of a trade union and the employer is aware of this fact, representatives of the corresponding trade union must be heard in advance. Lastly, in the event of collective dismissal, the workers' representatives have priority for remaining in the enterprise.

There is no absolute protection against dismissal in cases of pregnancy, suspension of the contract due to maternity leave, risk during pregnancy or breastfeeding leave; adoption or fostering; family leave to care for children or handicapped persons; and certain circumstances where female workers have been victims of gender violence.

Dismissal in such cases will be allowed if not motivated by reason of pregnancy or the exercise of the right to the abovementioned leaves (dismissal for an objective cause and disciplinary dismissal).

6. WHISTLEBLOWER LAWS

There is no specific employment legislation in place that provides legal protection for whistleblowers. However, internal company policies usually provide for protection as well regulate specific procedures to report illegal practices. Internal policies must be implemented in accordance with what is established within the law and regulations. The most recent reform of the Criminal Code, which came into force on 1 July 2015, introduced the need to have internal prevention mechanisms and channels in order to reduce or avoid any potential criminal liability for companies or their representatives. Whistleblower programs have also been regulated by the Data Protection Authority's ('DPA') guidelines, in particular by the "Guide for Data Protection in Labour Relationships". Usually, protection in an internal policy will be limited to the company's employees, which have a direct hierarchical relation with the company.

Outsourcing services, agency workers or independent contractors do not fall under the organisational scope of the employer, but this does not mean that they cannot be protected in case any breach needs to be violated. The reporting system must rely on wrongdoings, which could affect the contractual relationship between the companies and the incriminated employee. There are some companies that have created "ethical mailboxes" where an employee can report alleged breaches of the company's internal code of conduct. The company will need to ensure that its employees are well-informed about this system, how it works and most importantly, how their privacy and confidentiality concerning the information in the complaint will be guaranteed. The reporting system is created to uncover wrongdoings by other employees or company officials, which could be considered a breach of their contractual relationship.

The main principle, however, is that confidential information is only available to those people who are essential to the investigation of the complaint. The whistleblower's identity will only be revealed if he/she acted in bad faith. The accused person will need to be informed of the accusations against him, without further delay, and usually there will be a department responsible for the investigation and

the rights concerning data protection, although this can be delegated to an external advisor, as well. The registered information will be destroyed within a maximum of two months after the end of the investigation if nothing comes out of it. If there is a legal case, the information can be retained as long as needed by the company.

The possibility of filing an anonymous complaint is generally prohibited, because there is a real need to identify the complainant and the accused party. Finally, the body responsible for the investigation will need to inform the accused party regarding the protection and confidentiality of their personal information during all stages of the process, even upon its conclusion.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

Restrictive covenants are bilateral agreements between the employer and the employee, and are used to protect key business information and ensure fair dedication to employees. It represents a limitation of the right to work and the free choice of profession or trade, so that any restriction of this constitutional right must be performed in compliance with all requirements established by labour law. Non-competition rights and obligations are regulated in the Workers' Statute.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

Non-competition agreements are intended to prevent an employee from working in a competing company or sector after termination of employment. A non-compete obligation after termination, may not last longer than two years for technicians and six months for other workers, and will only be valid if the following requirements are met:

- the employer has an effective industrial or commercial interest in such a non-compete obligation; and
- the employee is paid adequate economic compensation.

B. NON-SOLICITATION OF CUSTOMERS

Spanish Labour Legislation does not specifically regulate this type of restriction, but case law has considered this restriction valid within the scope of the non-compete clause.

C. NON-SOLICITATION OF EMPLOYEES

Spanish Labour Legislation does not specifically regulate this type of restriction, but case law has considered this restriction valid within the scope of the non-compete clause.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

If the employee breaches the non-competition agreement, he/she will be obliged to return the amount received for this concept and may be required to pay damages, should the company provide evidence of damage. In case of doubt when determining the amount of compensation to be returned, or refusal from the employee to comply with the agreed payment as compensation, the employer may appeal to a social court or an arbitrator (when specifically agreed) to determine said amounts. Likewise, the employee can make a claim against the employer when the agreed compensation was not paid although the non-compete clause remains in full enforceability. The clause itself could be declared void if the legal requirements explained above (2a) were not met. However, it is also possible to cancel the agreement if both parties agree to it, but it can never be cancelled or waived unilaterally.

4. USE AND LIMITATIONS OF GARDEN LEAVE

The term during which an employee remains on normal salary and is bound by his/her contract of employment, but at the same time requested by the employer not to attend the office or contact clients or customers, is usually used only on disciplinary procedures while the investigation takes place. The employer cannot, unless expressly referred to in the employment agreement, put the employee under garden leave, as they are not provided for statutorily. This is the reason why they may only be mutually agreed to within the scope of the employment contract.

In the event an employer puts an employee on garden leave without having regulated this possibility within the contract, the employer bears the risk of having the employee file a claim for lack of occupation, which ultimately may result in a court claim requesting a constructive dismissal, on the basis of a severe breach of the employer's duties for not procuring sufficient occupation.

Employers often use garden leave during an employee's notice period to prevent the employee from having further access to customers, clients and staff and to prevent the employee from working for a competitor, but this is generally used in Spain only when there is evidence of gross misconduct by the employee.

X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

Employees' rights and obligations are subrogated to the new shareholder and remain intact; this includes special benefits and retirement compensation that employees may be entitled to.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The Workers' Statute requires formal notice to employees in the event of transfer of undertakings, including date or proposed date of the transfer, reasons for the transfer, legal, economic and social implications for the employees, and any measures envisaged in relation to the employees.

Employment contracts are automatically transferred with the business to the new employer. Employees' rights and obligations are also transferred.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

The Spanish Constitution grants unions the authority to promote and defend the workers' economic interests. It also empowers them to represent workers in collective bargaining and to participate in the preliminary mandatory conciliation steps, before disputes can be presented to governmental conciliation agencies.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Freedom of association and representation are fundamental rights in the Spanish Constitution. All employees (except senior executives, i.e., general managers) are represented by the elected representatives. There is no distinction between blue and white-collar representatives. It is the employees' duty to start the process of elections, and thus, the employer has no obligation to promote them. Freedom of association and representation includes the following rights:

- right to associate freely with any of the unions; this is a right, not an obligation;
- right to establish unions without prior authorisation, both nationally and internationally;
- right to choose employee representatives;
- right to participate in union activities;
- right to keep association preferences private and not communicate them to the employer.

3. TYPES OF REPRESENTATION

There are two types of employees' representation: individual delegates and works councils. Individual delegates represent workers in companies or worksites having up to fifty (50) workers. Where the company or the worksite has more than fifty (50) workers, workers will appoint a works council formed by the following number of members:

A. NUMBER OF REPRESENTATIVES

- 50 to 100 workers: 5 members
- 101 to 250 workers: 9 members
- 251 to 500 workers: 13 members
- 501 to 750 workers: 17 members
- 751 to 1000 workers: 21 members
- more than 1000 workers: 2 members for every 1000 workers, up to 75 members.

B. APPOINTMENT OF REPRESENTATIVES

The workers choose representatives when elections are called. The vote is free and secret.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

Works councils and delegates are entitled to preside over and organise assemblies, take legal and administrative action and raise legal disputes. They are also entitled to overview and control the company's fulfilment of its obligations regarding safety, security, and any other regulations in force.

Works councils and delegates are entitled to receive information on the company's performance, the market and particularly on employment. They are entitled to consultation in situations affecting a number of employees exceeding the threshold (around 10% of workforce), namely relocation of a worksite, change of employment terms, collective redundancy or mass layoffs, mergers, etc.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

Due to the principle of mutual trust between the employer and senior executives, the latter cannot be eligible nor participate as electors in the employees' representation for they (senior executives) cannot defend or represent opposite interests to those of the company.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

The most basic form of collective representation in Spanish employment law is known as "Personnel Delegate" or "Staff Representatives". Representation of the workers in a company or work centre with less than fifty and more than ten workers shall be entrusted to the staff representatives. There may also be a staff representative in companies or centres that employ between six and ten workers, if so decided by the majority workers. Through a free, individual, secret and direct suffrage, the workers shall choose their staff representatives as follows: up to thirty workers: one; between thirty-one and forty-nine: three. The staff representatives shall jointly exercise vis-à-vis the employer the representation to which they were elected, and shall hold the same powers established for the works councils.

The employees are entitled to participate in the company on issues related to health and safety in the workplace. Health and Safety representatives are elected by and among staff representatives in the field of the respective bodies of representation, and specialise in health and safety matters at work.

Along with this, the Health and Safety Committee is established as the joint body together with representatives of the employer being involved in the same tasks.

The works council is the representative and collegiate body of all the workers employed by the company or work centre in charge of defending their interests; it shall be established in each work centre with a register of fifty or more workers.

A company that holds two or more work centres in the same province or neighbouring municipalities, which register less than fifty workers but which, overall, total this amount, shall have a joint works council. If certain centres have fifty workers and others in the same province do not, the former shall have their own works councils and another council shall be established with the remainder.

A CBA must establish the incorporation and operation of a Joint Council ("Comité Intercentros") up to a maximum of thirteen members, to be appointed from amongst the members of the various councils. When incorporating a Joint Council, the trade union proportionality according to the election results taken as a whole shall be maintained. Such Joint Councils may not take on other duties than those expressly granted in the CBA whereby their incorporation is agreed.

A. NUMBER OF REPRESENTATIVES

The number of members of the works council shall be determined according to the following scale:

- between 50 and 100 workers: 5 members
- between 101 and 250 workers: 9 members
- between 251 and 500 workers: 13 members
- between 501 and 750 workers: 17 members
- between 751 and 1000 workers: 21 members
- 1000 and above: 2 per every thousand or fraction, up to a maximum of 75 members.

B. APPOINTMENT OF REPRESENTATIVES

The collective representation structures are at the request of employees. There is no obligation to put in place employees' representatives. The election process may be promoted by:

- the most representative unions of the sector;
- trade union organisations with at least a 10% representation in the company;
- employees by majority agreement.

The works councils or work centre shall choose from amongst their members a chairman and secretary of the council, and shall draw up their own procedural regulations, which must comply with the law, a copy of which shall be sent to the labour authority, for its records, and to the company. All councils shall meet every two months or whenever this is requested by a third of its members or a third of the workers represented.

C. TASKS AND OBLIGATIONS OF REPRESENTATIVES

A works council shall have the following powers, although it is understood that also staff representatives will be entitled to the same rights:

- to receive information, provided at least on a quarterly basis, on the general performance of the economic sector to which the company belongs, on the current production and sales situation of the company, on the production and performance forecasts for company employment, including the employer's forecasts on the execution of new contracts, indicating their number and the forms and types of contracts to be used, including part-time contracts, the working of extra hours by part-time workers and sub-contracting.

It shall also be entitled to receive information, at least each year, on the company's application of the right of equal treatment and opportunities between men and women, to include data on the ratio of women and men in the various professional categories and, if applicable, any measures adopted to encourage the equal treatment of men and women in the company and the application of any equal treatment plan.

- to receive information on the balance sheet, profit and loss account, annual report and, if the company is a corporation based on shares or participations, of any other documents provided to the members, in the same conditions applicable thereto.

- to receive information of the employment contracts and the notification of any renewals and contractual repudiations.
- to receive information on the very serious sanctions issued to employees.
- to be informed and consulted about all company decisions that may imply relevant changes in terms of work organisations and contracts, and also concerning staff reduction plans.

The works council is entitled to issue a report before the employer executes any decisions taken on the following matters:

- staff restructuring and total or partial, final or provisional removals of staff;
- a reduction in the working schedule;
- total or partial transfer of employees to other premises;
- merging operations of the company that may imply any change whatsoever of the number of employees;
- plans for professional training provided by the company;
- implementation or review of work arrangement and control systems;
- a study of working hours, a premium or incentives plan and the appraisal of work posts.

To carry out the following tasks:

- to ensure the fulfilment of current labour, social security and employment rules, including any other agreements, conditions and terms currently applied by the company, filing any legal actions that are necessary before the employer and the competent bodies or courts.
- to supervise and control all safety and hygiene conditions in the execution of work at the company.
- to ensure that the principle of equal treatment and opportunities between men and women is upheld and applied.
- to participate, as determined in a CBA, in the management of any social projects established in the company to the benefit of the workers or their relatives.
- to cooperate with the company management to procure the necessary measures to ensure the maintenance and increase in productivity levels, according to what is agreed in the CBAs.

- to inform the represented workers of all the issues and matters described in part 1. of this section, if they directly or indirectly affect employment relations.
- to collaborate with the company's management in establishing and starting up conciliation measures.

Any reports to be issued by the Council beyond the powers recognised above, must be drawn up within a term of fifteen days.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

In Spain, the legal framework for the principal system of social protection is derived primarily from the Social Security Act 1/1994. The social security system of national insurance contributions covers:

- common contingencies, these contributions cover the situations included in the general social security regime;
- professional contingencies cover expenses resulting from labour accidents and occupational diseases;
- overtime; and
- other concepts such as unemployment, training or the Wage Guarantee Fund.

2. HEALTHCARE AND INSURANCES

Social security offers public medical care to all affiliated workers.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Employees are entitled to a minimum of thirty (30) days of paid vacation per year. This can be improved by contract or collective agreement. In addition, there are fourteen (14) public non-working days per year, which may differ slightly by region.

B. MATERNITY AND PARTNER LEAVE

Royal Decree-Law 6/2019 entered into force on 8 March 2019. This regulation aims to achieve real and effective equality between men and women in the promotion of personal and family life. The new Royal Decree introduces a novelty in paid leaves for birth and adoption, which applies to all births that occurred after 1 April 2019. This novelty is the equalisation of the time for both parents to enjoy

the leave for birth and adoption. Therefore, every progenitor will be allowed to take 16 weeks of leave. Until now, article 48 of the Workers' Statute used to provide 5 weeks for paternity leave and 16 weeks for maternity. According to the Regulation, the term "Paternity" has been replaced by "Partner Leave" and refers to the parent other than the biological mother. The Regulation foresees a gradual application of the time allotted for 'partner leave' in the course of the following years:

- from 1 April 2019, partner leave will last 8 weeks
- from 1 January 2020, partner leave will last 12 weeks
- from 1 January 2021, partner leave will last 16 weeks.

In conclusion, for the year 2020 the situation is the following:

- Maternity leave lasts sixteen (16) weeks. The mother must take six (6) of these weeks immediately after the birth. The remaining ten (10) weeks can be organised by the mother under her discretion until the child is twelve months old. However, the biological mother can anticipate the suspension up to four weeks before the expected date of birth.
- For births after 1 January 2020, partner leave will last twelve (12) weeks. The partner must take four (4) of these weeks immediately after the birth. The remaining eight (8) weeks can be organised by the progenitor under his/her discretion until the child is twelve months old. From 1 January 2021, partner leave will last sixteen (16) weeks. This is an individual right of the worker and its exercise cannot be transferred to the other parent.

C. SICKNESS AND DISABILITY LEAVE

Temporary disability benefits are daily subsidies that cover the worker's loss of income due to any sickness such as common diseases or non-work-related injuries, occupational diseases or work-related injuries. The maximum duration of the

benefit is 365 days, but it can be extended for a further 180 days if, during this period, the person is expected to be cured. In case of common diseases, the worker's beneficiaries must have been affiliated in the social security scheme or be able to prove to have covered a 180-day contribution period in the preceding 5 years. In case of injuries, whether work-related or not, and occupational diseases, previous contributions are required. The contents and amounts of these benefits are the following:

- in case of common diseases and non-work-related injuries the amount will be 60% of the base rate from the 4th day of leave until the 20th, inclusive, and 75% from the 21st day onward.
- in case of occupational diseases or work-related injuries the amount will be 75% of the base rate for benefits from the day following the date of leave from work.

In the case of disability of the child or the adopted child or foster care child, the suspension of the contract for maternity leave and partner leave will have an additional duration of two weeks, one for each parent. Whoever, for reasons of legal custody, needs to be in charge of the direct care of a child under twelve years of age, or a person with a physical or sensorial disability who does not perform any paid activity, shall have the right to a reduction of their working day, with the proportional decrease in salary between, at least, an eighth, and at most, half of its duration.

Workers shall also have the right to a leave of not more than two years, unless a greater period is established by collective bargaining, in order to attend to the care of a family member up to the second degree of consanguinity or affinity who, for reasons of age, accident, illness or handicap, cannot fend for him/herself and who does not perform any paid activity.

D. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

Article 37 of the Workers' Statute recognises the following benefits:

- 15 calendar days in case of marriage;
- 2 days for the death, accident or serious illness, hospitalisation or surgical operation without hospitalisation, but requiring home rest, of

relatives up to second degree of consanguinity or affinity. Should the worker need to travel for this purpose, the interval shall be 4 days;

- 1 day for change of domicile;
- for the indispensable time required to comply with an inexcusable duty of public and personal character, including the exercise of active suffrage. Where a specific period is reflected in a legal or conventional norm, such provision shall be respected as regards the duration of the absence and its economic compensation;
- to perform union or personnel representation functions under the terms legally or conventionally established;
- for the indispensable time required to undergo pre-natal check-ups and childbirth preparation techniques that have to occur during the working day.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

Retirement pensions are included in all social security regimes and are for life. The conditions for obtaining a pension include:

- having turned sixty-five (65) years of age (there are exceptions: it could gradually change from 65 to 67 years if it attests 38,5 of contribution); and
- having paid national insurance contributions for a minimum of fifteen (15) years – at least two (2) years of contributions must have taken place within the 15 years prior to retirement.

Iván Suárez
Partner, **Suárez de Vivero**
isuarez@suarezdevivero.com
+34 93 295 600 0



SUÁREZ DE VIVERO

SPAIN

Suárez de Vivero is a leading law firm in Spain specialised in employment law, employee benefits, pensions and social security. Since its origin in 1975, it has focused on offering its clients a wide range of legal services concentrating mainly on negotiations, litigation and company restructuring, and other non-judicial areas closely related to the labour aspects of a company, such as economical and organisational engineering. The firm's partners are recognised for their comprehensive expertise by industry insiders such as Chambers and Partners, The Legal 500 and The International Who's Who of Management Labour & Employment Lawyers, among others.

This memorandum has been provided by:

Suárez de Vivero

Torre Inbisa, Planta 15-D
Plaza Europa 9-11
08037, Hospitalet de Llobregat
Barcelona, Spain
+34 93 295 60 00
www.suarezdevivero.com

CONTACT US

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

L&E Global
Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org





L&E GLOBAL

an alliance of employers' counsel worldwide

This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name in relation to and by some or all of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.