

Spain

Introduction

Under the Spanish legal system, employees are represented before the management of a company by their representatives. Employee representation in Spain is structured in two different ways – union representatives and employee representatives – each of which has similar rights. This is particularly true in companies or work centres employing 250 employees or more.

Applicable Legislation

The Spanish Constitution recognises the freedom to join a union as a fundamental right. This implies the freedom to set up a union, as well as the individual's choice to join such union.

The Union Rights Act contains a detailed regulation on union affiliation, legal capacity of unions, union obligations and liabilities, status of “majority representation,” and remedies for any potential violation of union affiliation rights.

The Workers' Statute regulates labour representation bodies in Spain, including the election, duties, faculties, and rights of employees' representatives.

Trade Unions

Constitution Of A Trade Union

Employees affiliated with a trade union may set up union divisions (*secciones sindicales*) within a company to represent their interests before management. Furthermore, in companies or work centres with 250 employees or more, employees may elect their union representatives (*delegados sindicales*) by and among employees affiliated with a labour union. The number of such union representatives for each union division is related to the number of employees in the company or work centre, as follows:

Number Of Employees In The Company	Number Of Union Delegates For Each Section
Up to 250	1
250 to 750	1
751 to 2,000	2
2001 to 5000	3
More than 5,000	4

The number of union representatives may be increased if the company and employees' representatives or the collective bargaining agreement stipulates it.

The Scope Of Trade Union Rights In Businesses

Union representatives belonging to a trade union with the status of "majority representation" and those having union representatives in the company's representative bodies (Works Council or Employee Delegates, see below), are entitled to the following rights:

1. To be provided by the company with a specific bulletin board on which all union-related information will be posted and made available to all employees;
2. To intervene in collective bargaining;
3. To have an adequate place in the company to perform union activities; and,
4. To be represented in the company by union delegates.

Trade union representatives in the company not belonging to the Works Council are entitled to the following rights:

1. To be provided with the same information and documents as those provided to the Works Council (see below);
2. To take part in the company's collective bargaining negotiation representing their union division;

3. To be heard by the company prior to a collective redundancy affecting employees in general and their affiliated members in particular;
4. To take part in the discussion and consultation in cases of redundancy;
5. To take part in the Works Council's meetings regarding safety and health matters, without voting rights; and,
6. To be provided with the same time off as that provided to Works Council's members (see below) to carry out their representative duties.

The Rights Of Trade Union Delegates

Employers must give trade union delegates any necessary unpaid leave to perform their duties as union delegates and a compulsory leave of absence during the term they are elected as union delegates. When the term expires, the company must reinstate the delegates under the former terms and conditions they held before their leave. Their seniority is not affected nor suspended.

With prior notification to the company, trade union delegates also have the right to go to work centres to perform their union activities.

Works Councils

Constitution Of The Works Council

In companies with 50 employees or more, the company must establish a Works Council (*comité de empresa*) to act on behalf of employees and to negotiate with the company's management. The number of Works Council's members depends upon the number of employees in the company, as follows:

Number Of Employees	Number Of Representatives
50 to 100	5
101 to 250	9
251 to 500	13
501 to 750	17
751 to 1,000	21
More than 1,000	An Additional 2 Per 1,000 (Maximum Of 75)

Companies employing from 11 to 49 employees do not need to establish a Works Council, but may elect Employee Delegates (*delegados de personal*) to represent the employees' interests. In companies employing 11 to 29 employees, one representative is elected. In companies employing 30 to 49 employees, three representatives should be elected. Companies employing from six to 10 employees may also elect Employee Delegates if the employees so decide by majority agreement.

The Scope Of Works Council Rights In Businesses

Work Councils and Employee Delegates have the following rights:

- To receive quarterly information on the evolution of the activity sector, production and sales in the company, production objectives of the company, and forecast of employment in the company;
- To receive a basic copy of all employment contracts in writing, including all pertinent information of the contract, except personal details affecting privacy, as well as extensions and modifications of these contracts, within 10 days after they have been entered into (senior managerial contracts are expressly excluded from this obligation of disclosure);
- To examine the balance sheet, the profit and loss account, the annual report, and in the case of limited liability companies, any other documents to be provided for the information of shareholders or partners, and in the same manner as this information is provided to the latter;
- To issue a report when the company makes decisions in connection with: (i) changes in the structure of the workforce or reductions thereof, whether total or partial, permanent or temporary, (ii) a working schedule reduction, (iii) total or partial transfer of a work-centre location, (iv) training programs in the company, (v) implementation or revision of organisational and control systems, and (vi) productivity matters, the introduction of bonus or incentives schemes, and job assessment procedures;
- To issue a report when a merger, take-over, or any other change in the legal status of the company may affect the volume of employment in the company;
- To be informed on labour contracts used by the company and the documents relating to termination of employment;

- To be informed of all serious sanctions (e.g., disciplinary dismissal) imposed by the company;
- To be informed at least quarterly of the level of absenteeism and its reasons, work accidents and occupational illness and their consequences, periodic or special studies on environmental labour matters, and the procedures for prevention of risks;
- To supervise the fulfilment of labour and social security legislation and any other applicable agreements in the company, and, when necessary, bring the corresponding legal action to the company or to the administrative or judicial authorities;
- To supervise and control the implementation of the health and safety regulations in the company or work-centre;
- To take part, as established in the collective bargaining, in the management of welfare schemes set up within the company for the benefit of the employees and/or their families;
- To cooperate with the company's management in introducing measures to maintain and increase productivity as agreed in the applicable collective agreement; and,
- To inform all employees on all the above referenced matters, insofar as they have or may have direct or indirect effect on labour relations.

Trade Union And Works Council Employee Protection Rights

Employees' representatives in Spain benefit from the following rights and guarantees:

- When there is a serious or very serious sanction against an employee representative (e.g., dismissal), an investigation procedure must be opened, during which the remaining members of the representation body (Works Council or Employee Delegates) and the affected employee are heard;

- Where such a dismissal is declared illegal by a labour court, the employee representative is entitled to choose either to be reinstated in his or her former position or to be dismissed receiving the legal severance compensation (in the event of other employees, the company will choose between both options);
- Where contracts are terminated due to an objective dismissal for economic, technical, organisational, or productive reasons, the employees' representatives are protected and therefore entitled to continue their jobs;
- During the four-year representative term and the year following its expiration, it will be extremely difficult to dismiss or sanction employee representatives as they have special employment protection;
- Employee representatives are free to express their opinion on matters falling within the scope of their duties; and,
- Employee representatives are allowed a number of hours off per month to perform their duties (15 hours per month for companies with up to 100 employees, 20 hours from 101 to 250 employees, 30 hours from 251 to 500 employees, 35 hours from 501 to 750 employees, and 40 hours for more than 750 employees).