

The Global Employer

Focus on Spain



This introductory summary of employment law in Spain focuses primarily on employment and labor law, but also addresses basic aspects of social security law and immigration law, all of which are closely related. This summary is not intended to include all of the many rules and regulations applicable to employment relationships in Spain, but it is intended to provide a general overview of the basic obligations employers have towards their employees and the fundamental legal issues that can arise in employment relationships in Spain.

The Law as stated is at 31 January 2015.

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Sources of Spanish Labor Law

Labor law in Spain can be considered a group of rules intended to protect an employee in his or her employment relationship and determine the conditions applicable to life in the workplace. In the employment relationship, the employee is considered to have a subordinated, and thus unequal, position with respect to the employer. To remedy some of the consequences of this unequal situation, according to the Spanish Constitutional Court, labor law establishes corrective measures that favor employees.

The basic sources of Spanish labor law include the following:

- **Spanish Constitution:** The Constitution of 1978, which recognizes the main labor, social and union rights as they are understood throughout Western European countries.
- **Treaties:** Certain treaties and conventions, including the many EU regulations. Spain is a signatory country to ILO Agreements No. 87 (Agreement on Trade Union Freedom and Protection of the Right to Form Trade Unions of 1948) and No. 98 (Agreement on the Right to Form Trade Unions and Right to Collective Bargaining of 1949).
- **Laws and government regulations that implement them:** The 1995 Labor Act, is the main piece of labor legislation applicable nationwide, the 1994 General Law on Social Security is the main social security legislation, and the 2003 Law on Foreigners is the main piece of immigration legislation.
- **Collective bargaining agreements:** Collective bargaining agreements or “CBAs” are detailed, binding agreements negotiated between unions (and/ or other employee representatives) and employers associations (and/or employers). Many collective bargaining agreements have been negotiated for a specific industry and apply throughout the entire country, such that all companies in Spain that belong to that specific industry will automatically be bound by the rules established in the nationwide collective bargaining agreement. Other agreements apply only to a specific province or limited geographical area, or, if the agreement is negotiated at a company level, to a specific company or part thereof, as may be agreed by the negotiating parties. Almost all companies in Spain are subject to a collective bargaining agreement, and they should be aware of and comply with the applicable agreement’s rules. Please note that legal amendments that became effective as of February 12, 2012, aim to curtail the restrictive nature of industry level collective bargaining agreements in three basic ways (local company level collective bargaining agreements will prevail over industry level agreements in a long list of matters, including salary and benefits, overtime, work hours, annual vacation planning, job categories, etc.; possibility to opt out of and substitute key aspects of the industry level collective bargaining agreements for economic, productive, organizational or technical reasons; reduced expiration dates for collective bargaining agreements that are being renegotiated).
- **Employment contracts:** Individual employment agreements (whether oral or written) between employers and their employees. The law regulates whether contracts can be entered into for a definite period of time or whether they must be indefinite in term, as is the general rule. In addition, the law regulates a number of special types of employment relationships (e.g., top executives, commercial agents, performance artists, household workers, and others), which are not subject to certain rules established under the Labor Act for so-called “ordinary” employment relationships. In practice, employment agreements in Spain tend to be relatively simple by common law countries’ standards, although companies are increasingly including more complex clauses.

- **Case law:** Technically, case law in Spain is only created when two Supreme Court cases decide the same issue in the same way. Single Supreme Court cases and appellate level court decisions are extremely persuasive to lower courts, but they are not in principle binding and, decisions therefore tend to be more inconsistent than may be expected in common law countries.

The Employment Relationship

Under the Labor Act, an employment relationship is defined as the willing rendering of services by an individual (the employee) for consideration and for the benefit, within the organization, and under the direction of another entity or individual (the employer). Case law has clarified that significant factors in determining the existence of an employment relationship are the dependence of an individual on another in carrying out the contracted services and the individual's insertion in the company's organization. Consequently, providing the individual with the necessary work tools, specific instructions (e.g., work schedules, policies, work standards), position within a reporting line, workplace, etc. are basic characteristics of the employment relationship, regardless of whether the employer is located in Spain or abroad.

Employment Relationships vs. Commercial or Independent Contractor Relationships

Significant case law exists on how employment relationships are distinguished from commercial or independent contractor relationships. Although the distinction is not always clear, the nature of the relationship will determine whether the protective labor law or the more flexible commercial law applies, whether the labor or civil courts have jurisdiction, which social security regime applies and what the company's social security obligations are, amongst other things.

Special care should be taken in determining the nature of the relationship in cases where a general manager or other top level employee simultaneously sits on the Board, since significant case-law exists on whether managers with such dual roles should be considered employees or independent contractors. In particular, the nature of the relationship should be re-evaluated when an employee is promoted to serve on the Board of Directors, since the promotion can inadvertently convert the employment relationship into a commercial relationship.

Ordinary Employment Relationships vs. Special Employment Relationships

At the same time, ordinary employment relationships, which are subject to the general rules under the Labor Act, need to be distinguished from special types of labor relationships, which are governed by special laws enacted to address the specific issues that arise in such cases. For example, special legislation applies to top executives, due to the significant degree of trust between the company and the top executive, and the increased negotiating power of the executive vis a vis an ordinary employee. It is normally only general or country managers who are considered to be top executives for these purposes. The types of special employment relationships that may exist are discussed further in section IX below.

"Economically Dependant" Independent Contractors

Spain's 2007 Independent Contractors' Law (hereinafter referred to as the "ICL") aims to regulate the contractual, social security, and health and safety issues that directly affect independent contractors. In doing so, it also indirectly affects companies who deal with independent contractors.

The ICL introduces the concept of "economically dependant independent contractors" ("EDIC"s). EDICs are defined as independent contractors who, despite their functional autonomy, render their services with a strong, and almost exclusive, financial dependence on a single client. Financial dependence in this respect is defined as receiving from a single client at least 75% of the independent contractor's income.

There are certain other criteria that must also be assessed in order to determine whether an independent contractor qualifies as an EDIC. For example, a contractor will not be considered an EDIC if he employs people, or contracts or subcontracts part or all of his work to third parties.

The ICS establishes a number of new rules that affect companies that have contracted EDICs, such as the need to formalize a contract in writing, specific rules on termination (including compensation for damages) and the requirement to provide a minimum of 18 working days holiday per year.

Companies dealing with independent contractors should review the status of their contractors to determine whether any of them qualify as EDICs. If they do, the company should consider whether it should enter into contracts with the EDICs. The contracts should set out the duration of the relationship between the parties and the consequences of prior termination, and should be registered with the labour authorities.

Companies should also:

- Ensure that the EDICs do not fulfill any of the principle criteria for being considered employees; and
- Consider the possible consequences that recent health and safety and social security regulations could have on their dealings with IC's.

Basic Hiring Considerations

The general right and freedom to work in Spain mean that employees are entitled to work wherever they choose. In hiring employees, it is advisable for companies to bear in mind the following rules:

Minimum Age Requirements

Full capacity to enter into a binding employment relationship is reached at the age of 18. Individuals between the ages of 16 and 18 are entitled to work but require a parent's or guardian's consent in order to have complete contractual capacity. Individuals under the age of 16 cannot, as a general rule, enter into employment relationships, although the labor authorities may exceptionally authorize such minors to work as performance artists. In addition, individuals under the age of 18 are not allowed to work overtime or night shifts.

New Indefinite Term "Entrepreneur" Support Contract: One Year Trial Period

By virtue of Labor Law amendments passed in February 2012, a new indefinite term employment support contract exists to encourage companies with less than fifty employees to hire employees on an indefinite term and full or part-time basis. Given that (i) the contract allows in some cases to benefit from social security discounts and tax deductions and (ii) the employee is subject to a one year trial period, companies employing less than fifty employees currently considering hiring employees will most likely take advantage of this contract. Please see section VIII.5 below.

Available Incentives

The Spanish government, on an annual basis, establishes discounts on Social Security contributions for companies that hire certain types of individuals, such as, for example, long term unemployed individuals, employees who have recently been on maternity leave, disabled individuals (see Section XIII below relating to Social Security). Employee candidates can be sought from the National Institute of Employment, which maintains a database of unemployed individuals.

Temporary Employment Agencies

Duly authorized temporary employment agencies may offer employees to companies who do not wish to assume the costs of selecting and training individuals.

The law provides that employees lent by temp agencies should have the same essential fixed and variable salary conditions and other work and employment conditions as if they had been directly contracted by the company The Global Employer – Spain | 9 for which they work, as well as the same conditions in terms of protection for pregnancy, nursing, equality and discrimination. The law also clarifies that temp agency employees are entitled to use transportation, nursery and other services of the company where they work, and more notably, the law establishes the employee's right to be informed of job vacancies at the company where he or she is working.

Nonetheless, employees may only be hired through such temporary employment agencies on a temporary basis and only for the following reasons:

- To perform a job or service that by its nature is limited in time;
- For circumstantial needs of production, excess orders or accumulation of work, even if it is the ordinary work of the company;
- To substitute employees on leave who have the right to have their job position reserved; and

- To temporarily cover a job position during an employee selection process or promotion process.
- To render services under training contracts (on the job training agreements and work-study agreements).

Temporary employees cannot be hired to substitute employees on strike, to perform certain dangerous activities, or to fill job positions that are vacant due to the fact that the employer dismissed another employee unfairly (or through a constructive dismissal) in the previous twelve months. Neither can they be hired to work for another temporary employment agency.

Employees from temporary agencies enjoy special protection in terms of health and safety in the workplace. Temporary employees are also entitled to be represented by the employee representatives at the company where the work is performed.

The company at which the temporary employee's services are provided is jointly liable for the employee's salary and Social Security obligations (including the payment of severance compensations in the event of termination of employment), such that if the temporary agency does not pay, the company hiring the temporary agency will be liable. If, however, the employment contract does not comply with the specified legal requirements, the company receiving the services will be jointly and severally liable for any salary and Social Security obligations (including the payment of severance compensations in the event of termination of employment).

Should a temp employee continue working after the agreed term of his or her contract with the third party company has expired, the employee will be considered to be an employee of the third party company for an indefinite term.

Only duly authorized temp agencies should be used to hire employees; hiring employees through unauthorized agencies amounts to an illegal transfer of employees, which can result in the employee's right to continue employed at the company where the employee works, fines, and in extreme cases, even in criminal liability.

Lastly, by legal amendments passed in February 2012, temporary employment agencies, which to date could exclusively perform temp agency services, are now authorized to serve as placement agencies.

Foreign Employees

EU nationals do not require a work permit to work in Spain. The current immigration scenario in Spain is perhaps confusing, as ordinary general immigration legislation coexists with the Law for Entrepreneurs that has introduced various new immigration options beneficial to intercompany transfers and highly skilled professionals. Under ordinary general immigration legislation, work permits are, as a general rule, subject to the national employment situation in Spain although rules are generally applied flexibly in the case of highly skilled professionals or management employees or companies with specific characteristics. This general rule does not apply to work authorizations introduced by the Law for Entrepreneurs that has established very beneficial treatment for the non-EU personnel of multinational companies and highly skilled professionals.

Social Security Registration Requirements and Other Formalities

Companies must register their employees with the Social Security System before they commence work. Failure to do so will result in liability. Social Security requirements are discussed in further detail in Section XIII below.

In addition, companies must inform the National Institute of Labor every time they enter into a new employment contract, and certain types of employment contracts must be registered. As a general rule, these and other hiring formalities in Spain are handled either by internal HR departments in large companies or by external payroll companies.

Companies starting up in Spain should also consider their tax liabilities and corporate and data protection obligations.

Trial Period

Subject to the provisions of the applicable collective bargaining agreement, employers and employees may agree to a trial period. During the trial period both the employer and the employee are bound by the terms of the employment contract, but may terminate such contract, without having to provide notice of termination, cause for the termination, or any type of severance compensation.

To be valid, the trial period clause must meet the following requirements:

- It must be agreed in writing.
- It must not exceed certain time limits. Unless otherwise specified in the applicable collective bargaining agreement the maximum trial period permitted in ordinary indefinite term employment agreements is as follows:
 - two months for unqualified employees, unless the company has less than 25 employees, in which case the maximum is three months;
 - six months for highly qualified employees.

Definite term contracts may have shorter trial periods which should be confirmed depending on the circumstances. However, the trial period of fixed term contracts lasting less than 6 months may not exceed one month, unless otherwise established in the applicable collective bargaining agreement. If the time limits are surpassed, the clause as a whole may be deemed null and void, and offer no protection at all, even if the employee is dismissed within a period of time that would otherwise have been lawful.

- It must serve as a real “trial” between parties who do not know if the employment relationship will be satisfactory; thus, if the employee has already carried out the same job with the company in the past, independent of the type of employment contract under which similar services were provided, the clause may be deemed null and void.
- Further to legal amendments passed in December 2013, the regime governing the interruption of trial periods (which effectively stops the clock on the trial period in prescribed circumstances) has been updated and extended to other absences related to maternity, breastfeeding and paternity (risk during pregnancy, risk during breastfeeding and paternity in addition to those that already existed such as temporary sick leave or maternity leave). For example, where a pregnant employee is unable to continue working due to a health risk to her baby, the trial period will be suspended, and will only be restarted when she is fit to return to work.
- It cannot in principle be used to disguise discrimination prohibited by the Constitution and Labor Act. Any termination within the trial period that is in fact based on discrimination or any other limitation of the employee’s fundamental rights or public freedoms may be deemed null and void.

Form of Employment Contract

As a general rule, Spanish employment contracts may be either written or oral. However, employees are entitled to have their employment conditions established in a written contract if they so request, even if their employment has commenced.

Notwithstanding the foregoing, companies hiring employees under certain types of employment relationships must enter into a written contract with the employee. The government has established model form contracts that should be used, although additional clauses may, of course, be added. The types of contracts that must be made in writing include the following:

- Contracts subscribed as indefinite term contracts to foment employment.
- Definite-term employment contracts, including training contracts (on the job training agreements and work-study agreements); contracts for the performance of a specific, limited job or service; substitute contracts; or contracts due to the unusual, increased circumstances of production with a duration that exceeds four weeks or entered into on a part-time basis.
- Contracts with temporary employment agencies.
- Contracts that are governed by the special legislation applicable to commercial agents.
- Subsidized contracts/contracts that entitle employers to pay reduced social security contributions.
- Contracts for part-time employment, including partial retirement contracts.
- Permanent seasonal work contracts (also called, "fixed intermittent contracts").
- Contracts for employees who work from home.
- Indefinite Term "Entrepreneur" Support Contract

Failing to establish the contract in writing does not invalidate the contract, but it does create a presumption that the contract has been entered into for an indefinite term and on a full time basis.

A number of contract clauses must also be in writing to be effective, such as non-competition clauses and trial period clauses.

The employer should inform the employment authorities and the employee representatives of the basic terms of the contract.

Written Information Requirements

Regardless if the employment agreement is made orally or in writing, if the duration of the employment relationship exceeds four weeks, companies must inform the employee of certain employment conditions in writing. The information required include the following: identity of the parties; company domicile, work place location; date of commencement of employment (and, in the case of a temporary contract, its estimated duration); job category or summary of job position; amount of salary, components of salary, number of salary payments; work hours and schedule; vacation; prior notice applicable upon termination; and applicable collective bargaining agreement. If the employee is hired to work abroad, additional information must be provided. The company must also inform the employee in writing if any of the above conditions are modified.

Duration of Employment

The employment contract is presumed to be entered into for an indefinite period of time, and all contracts should be for an indefinite term unless sufficient cause exists for the contract to be entered into on a temporary basis. The causes that justify a definite term contract are specified by law and must be real, otherwise an allegedly definite term contract will be considered fraudulent. If the contract is fraudulent, the company may be subject to fines, and the employee will be entitled to continue working indefinitely.

Examples of the types of contract that may be entered into for a definite term are set out below:

- When an employee is hired to carry out a specific job or service which by its nature is limited in time.
- When the circumstances of the market, accumulation of work or excess orders so require, even if the work constitutes the normal activity of the company.
- When an employee temporarily substitutes an absent employee who is entitled to have his or her job reserved during his or her period of absence. In these cases the employment contract must specify the name of the substituted person and the reason for the substitution (e.g., leave for military service).
- Employment agreements for training or work-study employment.
- Contracts concluded through temporary employment agencies.

The maximum duration of definite term contracts is limited by law and may, depending on the type of contract, be further limited by the applicable collective bargaining agreement. Thus, the collective bargaining agreement applicable to the company should always be checked before entering into definite term contracts. Definite term contracts are discussed in further detail in section VIII (“Special Types of Employment Agreements”).

Company Policies and Employee Benefits

Given the variety of company policies and employee benefits, especially in multinationals, we do not provide an in depth analysis of the related issues. However, it is advisable to bear in mind the following:

- Many multinationals are currently implementing policies and benefits in Spain. However, such policies and benefits have not traditionally been used in Spain, and consequently, in many cases, no legislation exists to respond to issues that may arise. Instead, matters are governed by case law, which is developing substantially in these areas. Before implementing benefits and policies, companies should carefully consider the potential consequences.
- Policies that expressly provide for dismissals or other disciplinary measures in the event of their breach will be subject to the requirements of Spanish law, and, consequently, may not always be enforceable. Before taking disciplinary or other action based on a company policy, the legal requirements should be taken into account.
- Even though benefits are often granted unilaterally and sometimes independently by the parent company, they may come to be considered acquired rights. As such, their modification or termination can require specific procedures and justifications, and, in some cases, can even lead to an increased severance entitlement. Moreover, the Spanish courts have considered certain provisions of benefits plans to be null and void, with the consequences that employees may end up with rights the company never intended to grant. For example, courts have held that income from stock options and share grants computes for severance purposes and that, in certain circumstances, employees are entitled to exercise stock options years after termination despite plan provisions to the contrary.

Minimum Employment Conditions

The Labor Act establishes basic minimum rights and conditions, which in some cases may be modified by collective bargaining agreements, and which may always be improved in favor of the employee by collective bargaining agreements and/or individual employment contracts. Some of the minimum conditions are discussed in this section. Please note that these conditions are subject to a number of legal exceptions, as well as the provisions of the applicable collective bargaining agreement.

Salary

The parties to an employment contract are free to agree to the salary they wish, within the limits prescribed by law and the applicable collective bargaining agreement as discussed below. Please note that, typically, salary is paid on a monthly basis, with two additional salary payments being made in December and July of every year (extraordinary payments), unless otherwise provided by the applicable collective bargaining agreement (e.g., it may require payments in more installments, permit the employer to prorate the extraordinary payments, etc.).

The general restrictions regarding salary are the following:

- **Minimum Wage under Law:** The minimum salary for 2015 is 648.60 Euros per month, which on an annual basis, including the two extraordinary salary payments, equals a minimum annual amount of 9,080.40 Euros. This minimum wage must be paid in currency and cannot be substituted in part with salary in kind.
- **IPREM (Multi-purpose Public Indicator of Income).** The IPREM serves to set social security benefits and pension entitlements. It is usually adjusted once a year, in January, in the State General Budget Act. The IPREM for 2015 is EUR 17.75 (per day); EUR 532.51 (per month) and EUR 7,455.14 (per year, including the two extraordinary salary payments).
- **Minimum Wage under Collective Bargaining Agreement (“CBA”):** The CBA set out the job categories and the corresponding minimum salary for each category, as well as any annual minimum salary increases.

With respect to discrimination, the Labor Act reinforces the principle of equal pay by declaring void all clauses in collective agreements or employment contracts that contravene the requirement of equal pay on grounds of sex or marital status. In addition, it requires employers to provide “equal pay for equal work” with no possible grounds for sex discrimination. Pay is widely defined as including not only base salary, but also all bonuses, commissions, and other salarial components. Please note that discrimination based on other unauthorized grounds can also be contested as illegitimate (see Section VI).

Working Time Rules

- **Maximum annual working hours:** As a general rule, employees may work up to 40 hours per week, on average over a reference period of a year. According to caselaw, the annual maximum based on the 40 hours per week is 1,826 hours and 27 minutes. Most collective bargaining agreements have decreased the maximum number of hours permitted, and often set the maximum at 1780 hours. Any time worked in excess of the ordinary work hours is considered overtime (and will therefore be subject to the rules set out in paragraph 5 below).

- **Work time distribution:** By virtue of collective bargaining agreement, or in lack thereof, through agreement between a company and its employee representatives, an irregular distribution of employee work hours throughout the year can be established. However, in the absence of any agreement with employee representatives, employers can unilaterally distribute up to 10% of employees' work time irregularly throughout the year. The employee is entitled to five days' notice of the date and time he or she will be required to work. Pursuant to Royal Decree-Act 16/2013, the regime governing compensation for the difference in hours between the hours worked and the hours agreed will be determined by collective bargaining agreements or, in the absence thereof, by an agreement between the company and the worker representatives, stating that in the absence of an agreement, the difference shall be compensated within a period of 12 months as of when it takes place.
- **Maximum daily working hours:** As a general rule, employees may not work more than nine hours per day, unless otherwise provided by the CBA. Any time worked in excess of nine hours will be considered overtime (and will be subject to the rules in paragraph 5 below). Minors (under the age of 18) cannot work more than eight hours per day. These limits are subject to any higher or lower limits set out in the applicable collective bargaining agreement. They are also subject to certain legislative exceptions increasing or decreasing maximum hours for specific types of work (including work involving environmental risks, work with refrigeration, underground construction work, and work carried out in isolated locations).
- **Breaks during work shifts:** If an employee's shift lasts more than six hours, he or she is entitled to a minimum fifteen minute break. Minors are entitled to a 30 minute break if their shift lasts more than four and a half hours. The break time may be considered actual work time and payable depending on the applicable collective bargaining agreement.
- **Minimum rest periods between work shifts:** The Law, as a general rule, requires that employees enjoy a minimum of 12 hours rest between work shifts, with at least one rest period per week of 1.5 days. However, these rules can differ in relation to certain types of employees (e.g., employees who work in isolated locations, employees who work at their own home, or at the home of a third party, employees on call, etc.)
- **Overtime:** As a general rule, overtime is limited to 80 hours per year, although overtime spent to prevent or repair damages caused by natural disasters or other extraordinary events will not be taken into consideration when calculating the maximum overtime permitted. Overtime must be compensated by pay (at no less than the ordinary hourly rate) or by time off (the amount of which cannot be less than the time worked as overtime). Collective bargaining agreements can and often do establish additional rules on overtime and provide how it should be compensated. Contracts between the parties also establish additional rules, although they are always subject to the law and the applicable collective bargaining agreement. Unless otherwise agreed by contract or CBA additional, any overtime will be understood to require compensation with time off to be enjoyed in the subsequent four months.

Holidays

- **Vacation:** Vacation must be no less than 30 calendar days per year, which is often considered the equivalent of 22 workdays. Collective bargaining agreements tend to establish rules on when vacation should be enjoyed. In line with previously existing court cases, legal amendments passed in February 2012 now entitle employees who cannot take all or part of their vacation entitlement during the relevant calendar year due to certain cases of sick leave are expressly entitled to do so after their sick leave ends and within a maximum term of 18 months as from the end of the year when the vacation accrued.

- **Public/bank holidays:** Public holidays in Spain are generally limited to a maximum of fourteen per year: Christmas (December 25), New Year's (January 1), Labor Day (May 1), and National Day (October 12) are standard holidays, All Saint's Day (November 1), Constitution Day (December 6), Immaculate Conception (December 8), and Good Friday are typically national holidays as well, although they may vary from year to year. The remaining holidays tend to be established annually by the local authorities (autonomous communities or municipalities). Holidays that fall on a Sunday will be moved to a Monday, and holidays that fall in between the week can be moved by the government to a Monday, although it is somewhat uncommon to do so. In fact, at companies with relatively flexible work time, holidays that fall on a Tuesday through Thursday often lead employees to take a day of vacation and enjoy what is known as a "bridge" or "puente", whereby the holiday is joined with the weekend to form a four-day or five-day weekend.

Leaves of Absence

Leaves of absence under Spanish law include short term paid leaves of absence, which an employee is entitled to above and beyond their vacation and public holidays. By law they are the following, but note that such paid leaves are commonly regulated by collective bargaining agreements and sometimes extended:

- **Marriage:** If an employee gets married, he or she is entitled to a minimum of 15 days of paid leave. Couples (whether heterosexual or homosexual) who are not married but who are registered with a local government registry as "de facto couples" may be entitled to the same right, although the issue is still pending further clarification by the courts.
- **Paternity:** In the event of paternity, the employee is entitled to two days of paid leave, or four days if he needs to travel. Fathers are also entitled to a period of unpaid paternity leave, as discussed in letter (d) of the following subsection, and to enjoy part of the mother's maternity leave if she agrees, as discussed below in Section VI.
- **Serious Illness, Hospitalization, or Death of Relative:** Employees are entitled to two days of paid leave in the event of the serious illness, hospitalization, or death of a close relative. This is increased to four days if visiting the ill relative or the funeral requires travel.
- **Change of Residence:** If an employee moves, he or she is entitled to one day off.
- **Public Duties:** Employees are entitled to paid leave to appear in court, serve as a jury member or a witness, vote, etc. for as long as is necessary to fulfill such obligations.
- **Time off to carry out trade union or employee representation activities** as established by Law or in the applicable Collective Bargaining Agreement.
- **Time off to attend prenatal testing and childbirth preparation courses that must be carried out during working hours**
- **Time off to take training courses:** Employees with one year of service are entitled to 20 hours of paid time off per year to take training courses related to the company's activity and within the company training plan. The 20 hours can be accumulated up to 5 years. When the training will be taken has to be agreed by the company and employee unless collective bargaining agreement specifies otherwise. The employee does not have to pay for the training.

In addition, by law, employees are entitled to enjoy certain longer term leaves of absence which are not paid, but which may nonetheless require the employer to reserve the employee's job position until he or she returns. The company may hire someone to temporarily replace the employee, but in such cases of "enforced leave", when the employee on leave returns, the employee is entitled to return to his or her previous job position. Unpaid leaves of absences are also regulated by collective agreements and include the following under the Labor Act:

- **Voluntary Leave of Absence without Cause:** Employees with over one year of seniority at a company are entitled to take a voluntary unpaid leave of absence. The leave must last a minimum of four months and may not exceed five years. At the end of the leave, the employee is not entitled to return to the same job position, but is entitled to take up any equivalent or similar job that may become available at the end of the leave. The company's failure to comply with the legal requirement to rehire the employee at the end of the leave when an equivalent job position becomes vacant can entitle the employee to claim for dismissal and damages.
- **Voluntary Leave to Care for Disabled Family Member:** Employees are entitled to take up to two years unpaid leave of absence to care for a close relative who cannot take care of himself/herself due to age, accident, illness or disability, and who is not employed. The employee is entitled to reinstatement during the first year of the leave and thereafter has the right to return to a position within the same job group or category, if such a position is available. The time spent on this leave counts for seniority purposes.
- **Enforced leave:** Election to either public office or public service occupying more than 20 percent of the employee's working time in a three-month period. Employees in such cases are entitled to leave as required for the purposes of carrying out the public office or service.
- **Maternity, Paternity, Adoption or Foster Care:** The mother is entitled to sixteen weeks of leave of absence and the father is entitled to thirteen days (or twenty days if there are already two or more children in the family). In the case of multiple births, adoptions or foster placings, the mother has two more weeks leave and the father two more days leave for each additional child. Legislation has been passed to increase paternity leave to four weeks effective January 1, 2011, but the legislation has been suspended due to financial constraints. Other maternity and paternity related rights are discussed below in Section VI.
- **Victims of Domestic Violence:** Victims of domestic violence are entitled to take an unpaid leave of absence for an initial period of six months, which can be extended by additional three month periods, up to a maximum of 18 months, if there is a court order reflecting a need for further protection of the victim. Other rights established specifically for victims of domestic violence are discussed below in Section VI.

Discrimination, Maternity, Paternity and Special Provisions for Victims of Domestic Violence

Equal Treatment and Non Discrimination

General principle

Article 17 of the Labor Act provides that any statutory orders, clauses in collective bargaining agreements, individual agreements and unilateral decisions taken by an employer that are discriminatory on the grounds of age or disability shall be null and void. Likewise, any action that constitutes favorable or unfavorable discrimination in employment with respect to pay, hours and other work conditions, on account of sex, origin, including racial or ethnic origin, marital status, social status, religion or convictions, political beliefs, sexual direction, trade union membership and support (or lack thereof), family relations with other employees within the company or language within Spain shall also be considered null and void.

In addition, if an employer treats an employee unfavorably due to the fact that the employee has sought to uphold the principle of equal treatment and nondiscrimination, any unfavourable decision or action of the employer shall be null and void.

Where the equal treatment principle is infringed, the affected employee can file a claim with the labor courts claiming compensation for damages. There is no statutory maximum on the amount of damages that may be awarded, but damages are relatively minor by U.S. standards.

With regard to dismissals, any dismissal of an employee in retaliation of the legitimate exercise of his/her rights under the equal treatment legislation is deemed null and void. In such cases, the employer will be compelled to reinstate the employee immediately with back pay. The employer does not have the option, as in ordinary unjustified dismissals, to request the Labor Court to declare the employment relationship terminated and simply pay the employee a severance compensation.

Equality principle between men and women

The Law of Effective Equality between Women and Men (Ley de Igualdad Efectiva de Mujeres y Hombres) came into force on 23 March 2007. The law defines and prohibits direct and indirect sexual discrimination and sexual harassment in employment, provides remedies and sanctions for noncompliance and protects victims from reprisals if they complain that the equality principle has been contravened.

In addition, Employers with more than 250 employees must prepare and implement, in consultation with the Works Council, equal treatment plans covering recruitment, promotion and training. The plans must contain specific measures which aim to achieve equal treatment and equal opportunities between men and women within the Company, and avoid sex discrimination. The plans must set goals to be achieved, ways of achieving them and methods of monitoring progress. The Works Council is entitled to receive an annual report on the application of the plan.

Equal treatment plans may also need to be produced by companies with less than 250 employees, if specified in the applicable collective bargaining agreement.

Maternity & Paternity Related Rights

Maternity Leave

Employees are entitled to sixteen weeks maternity leave (plus two additional weeks for each additional child in the case of multiple births). The period of maternity leave should be enjoyed consecutively and is independent of any leave to attend medical examinations or leave due to a health risk during pregnancy. The mother may choose to begin enjoying maternity leave before the child is born, although at least six of the weeks must be enjoyed immediately after the birth. If both the mother and father work, the mother may grant part of her maternity leave to the father, provided that she enjoys the minimum six weeks post partum and that her returning to work does not constitute a risk to her health.

Employees on maternity leave are not entitled to receive their salary, unless otherwise agreed with their employers or required by the CBA. Normally, employees qualify to receive a maternity allowance from the public social security system.

The level of maternity social security allowance is equivalent to 100% of the regulatory base rate applicable to the employee. Any employee who wishes to receive a maternity allowance must apply to the relevant authorities.

The employer is required to reserve the mother's job position during the period of maternity leave, such that when the leave ends, she is entitled to return to work under her previous employment conditions.

Paternity Leave

The father is entitled to 13 continuous calendar days of paternity leave. This is increased to 20 days if the mother and father already have two or more children, or if a family member is disabled. The above time periods are further increased in the case of multiple births, by two extra days per additional child. The paternity leave can be enjoyed on a part-time basis if the employer and employee so agree.

In addition to the period of unpaid paternity leave described above, fathers are also entitled to two to four days of paid paternity leave to attend the birth. They may also be entitled to take a portion of the mother's maternity leave, if she so agrees.

As is the case in relation to maternity leave, fathers are entitled to claim a social security allowance during the period of unpaid paternity leave (for further details please see paragraph 2.1 above).

Leave Due to Adoption or Foster Care

Employees are entitled to sixteen weeks unpaid maternity leave if they adopt or foster:

- Child under six years of age; or
- Child over six years of age who is disabled, or who finds it difficult to adapt socially and with the family due to either his or her personal circumstances or the fact that he or she comes from a foreign country.

This leave is extended in the case of multiple adoptions or foster care (by two additional weeks per child). It is also extended by two further weeks if the child is disabled.

If both the adoptive mother and father or guardians work, they may distribute the maternity leave between themselves.

Parents who adopt or foster children are also entitled to enjoy paternity leave. As a general rule, paternity leave may only be taken by the parent who did not take the maternity leave (unless the parents shared the period of maternity leave, in which case either may enjoy the period of paternity leave). For further details regarding paternity leave please see paragraph 2.2 above.

Limited Reduction in Works Hours for Nursing

After the mother returns to work, she is entitled to be absent from work for one hour each day for the purposes of nursing until the child is nine months old. This one hour may be divided into two shorter periods or, at the mother's request, her working hours can instead be reduced by half an hour per day. Alternatively, the mother may accumulate the nursing leave in complete working days pursuant to the terms set forth in the applicable CBA or agreement between the employer and employee. By virtue of amendments passed in February 2012, the law extends the right to cases of adoption and guardianship and to both parents (to be enjoyed indistinctly by either one of them). In addition, the new law states that the employee must give a 15 day notice, unless otherwise established in the collective bargaining agreement, as to beginning and end of reduced working hours.

Unpaid Substantial Reduction of Work Hours

Parents or guardians of children under twelve may request the company to reduce their working hours by a minimum of one eighth to a maximum of one half of their previous working hours for childcare reasons, accompanied with a pro-rated reduction in salary. The reduction can only apply until the child turns twelve, unless otherwise specified by the applicable collective bargaining agreement. Employees who take care of a child or adult with a physical or mental disability may also enjoy this reduction in work hours, so long as the person cared for does not work. In these cases, the reduction is not limited to twelve years and can be enjoyed indefinitely. By virtue of amendments passed in February 2012, the law limits employees' rights to take a reduction in work hours for family care. Under the revised text, employees can take a reduction of one eighth to one half of their daily work hours in order to care for a child under twelve years of age. As such, reduction now must be reduction to daily work schedule (i.e., no reduction in number of days, weeks or months). In addition, the new law states that the employee must give a 15 day notice, unless otherwise established in the collective bargaining agreement, as to beginning and end of leave. The currently existing reductions will be subject to previous rules.

Post Maternity Unpaid Leave of Absence

Employees are entitled to take up to three years' unpaid leave of absence to care for a son or daughter, including adopted or children or children under guardianship, as from the date of birth or court resolution. The employee is entitled to reinstatement during the first year of the leave and thereafter has the right to return to a position within the same job category if such a position is available. The time spent on leave counts for purposes of seniority, and the employee is entitled to be notified of and attend company training courses during the period of leave.

General Protection Against Sex Discrimination

Both the Spanish Constitution and the Labor Act prohibit discrimination based on an individual's sex, which includes discrimination based on an employee's maternity. Consequently, any act by the employer that is based on sex discrimination (change of employment terms, dismissal, etc.) is considered null and void and will be ineffective. In this respect, an employee who considers that the employer has taken a decision against him or her based on discrimination can contest the measure and request the court to declare that it is null and void and therefore ineffective. In such a case, the employee would need to present some evidence of discrimination, and then the burden of proof would shift to the employer to demonstrate that the measure was based on legitimate rather than discriminatory reasons.

If the court finds that the dismissal was based on discrimination, or that the Company has not adequately proven that it was unrelated to discriminatory motives, it will find that the dismissal is null and void, and will order that the employee be immediately reinstated with back pay; in certain cases the court can also award damages. If the court finds that the dismissal was not based on discriminatory motives, it may consider the dismissal fair or unfair, in which case the employment contract can be terminated, with the corresponding severance compensation as the case may be.

Specific Additional Protection Against Dismissal

In addition to the generic prohibition against discrimination, the Labor Act provides additional protection for individuals who have requested or are enjoying certain maternity or paternity related rights. Whereas ordinarily dismissals can be considered unfair and an employee can be dismissed without good cause by paying severance compensation, the Labor Act specifically provides that the dismissal of employees who enjoy special protection against dismissal can only be considered either fair or null and void. That is, if the dismissal is not proven fair, it will automatically be considered null and void and the employee will have to be reinstated with back pay.

The situations in which this special protection will apply are as follows:

- Employees who are currently enjoying maternity or paternity leave, are due to enjoy maternity or paternity leave before the end of the notice period or who have enjoyed such leave within the past 9 months.
- Pregnant employees.
- Employees who are required to take leave due to health risks arising during pregnancy or during nursing, or due to pregnancy, childbirth or nursing related illnesses.
- Employees who have requested or are enjoying a reduction in working hours for nursing, a paid leave of absence or reduction in working hours due to premature birth or hospitalization of the child, a substantial reduction in working hours as a parent of a child under eight years old or an unpaid leave of absence of up to three years to care for a child.

Special Rules for Victims of Domestic Violence

In an effort to assist women who are victims of domestic violence, the government in late 2004 passed the Gender-Based Violence Act, which includes a number of special labor law rules that aim to assist women who are victims of domestic violence:

- **Working Time Privileges:** Victims are entitled to reduce their working hours with a proportional salary reduction and are entitled to change their work schedules.
- **Work Location Privileges:** Victims of domestic violence are entitled to be transferred to another job opening within the same professional category or group that the company may have in another work center. The employer is not obligated to create a new job position for the employee, but it is mandatory to inform the employee of any job openings available. The initial duration of the transfer by law is six months, at the end of which, the employee has a right to return to her prior job position or to continue in the new one. A law passed in 2008 has confirmed that if a victim of domestic violence wishes to change work locations, she may be entitled to receive subsidies to assist with the cost of relocation.
- **Unpaid Leave of Absence:** Victims of domestic violence are entitled to take an unpaid leave of absence for an initial period of six months, which can be extended by additional three month periods, up to a maximum of eighteen months, if there is a court orders reflecting a need for further protection of the victim. At the end of the suspension, the employee is entitled to return to her prior job position under the same previously existing conditions.
- **Privilege Regarding Lack of Punctuality or Absenteeism.** If the pertinent social or health services establish that the lack of punctuality or absenteeism is due to the psychological or physical state of the victim as a result of the domestic violence, the lack of punctuality or absenteeism will be considered justified and will not be considered a cause for a fair objective dismissal.

- **Reinforced Protection Against Retaliatory Dismissals:** Employers are, as a general rule, prohibited from retaliating against employees for the legitimate exercise of their rights, such that any retaliatory dismissal would be null and void. The Gender Based Violence Act specifically provides that this applies in the case of victims of domestic violence who may not be dismissed as a result of exercising any of their rights under the Act.
- **Special Access to Unemployment Benefits.** Whereas employees who voluntarily suspend their employment or who resign from their jobs are not entitled to social security unemployment benefits, an employee who is a victim of domestic violence has the right to receive unemployment benefits if the termination or suspension is due to the domestic violence and so long as she would otherwise qualify for such benefits.
- **Social Security Discounts for Employers:** In addition, note that the Law provides employers with discounts on the social security contributions that will need to be paid for an employee if the employee is a victim of domestic violence or if the employee has been hired to substitute a victim of domestic violence who is on leave or who has been temporarily transferred to another work center. For further information, see section XIII below on Social Security.

Please note that by legal amendments passed in February 2012, many of the aforementioned rights have been extended to victims of terrorism.

Employee Duties of Loyalty

Confidentiality

The only specific provision in Spanish labor legislation concerning an employee's obligation of confidentiality is found in the 1944 Employment Act. Article 72 states "employees are required to keep confidential all secrets relating to the business of their employer acquired during the term of employment and thereafter." Although the 1944 Employment Act has been mostly repealed by the subsequent 1980 Labor Act, it is probable (but not settled by the courts) that the specific provision on confidentiality of the 1944 Act is still effective and enforceable.

Independent of the specific provision in the 1944 Employment Act, employees are subject to a basic duty to act in good faith towards their employer, such that a breach of confidentiality could be considered a breach of the employment contract and justify disciplinary measures.

In any case, regardless of the restrictions, note that once the employment is terminated, the employee is entitled to use any information he or she has learned in the course of the employment for his or her own benefit, to the extent that the information is reasonably required for the exercise of his or her occupation or profession.

Given the difficulties in determining what is confidential and what is information that can legitimately be used within the scope of the employee's profession or occupation, we normally consider it advisable to establish clear and complete confidentiality agreements in employment contracts.

With regard to the information provided by the employer to employee representatives, Article 67.2 of the Labor Act expressly requires that the employee representatives keep confidential all information relating to third parties which they receive from the employer.

Non-Competition

The duty not to compete with one's employer during employment is considered a basic employment obligation under Spanish law. After termination, however, employees are in principle free to compete or to work for a competing company, unless the individual is bound by a valid post contractual non-compete agreement. In order to be valid, a post contractual non-compete agreement must comply with the following requirements:

- It must be agreed between the parties and must be formalized in writing.
- The duration of the duty is limited to a maximum of two years for highly qualified employees and six months for other employees.
- The employer must have a genuine proprietary industrial or commercial interest which requires protection.
- The employer must pay the employee appropriate compensation. In practice, for an obligation not to compete, appropriate compensation may vary from 40% to 100% of the employee's previous salary.

If the employee breaches the non-competition obligation, the employer is entitled to claim damages before the Labor Court.

A common problem faced by companies in deciding whether to agree to a non-compete clause, is that at the beginning of an employment relationship, employers do not always know whether it will be in the company's interest to bear the cost of the non-compete once the employment ends. To avoid committing to the payment of the compensation, employers have in the past drafted post contractual non-compete clauses to include a provision that allows the company the option of releasing the employee from his or her non-compete obligations and releasing the company from having to pay the agreed compensation. Thereby, the company tries to ensure that, if

at termination the company has no interest in enforcing the non-compete clause, no compensation would need to be paid. Note, however, that the Supreme Court –has held that companies cannot unilaterally decide whether or not the non-compete clause is required. Consequently, opt out provisions that allow the company to unilaterally release the employee from his or her restrictions and allow the company to not pay the employee the agreed compensation are considered null and void. As a result, the company may be required to pay the compensation established for the non-compete, regardless of whether it has released the employee from his or her restrictions and regardless of whether a reasonable notice period has been provided to the employee.

If an employer is not certain whether or not it will want to assume the obligation of paying the compensation for the non-compete at termination, a number of alternatives may be considered (e.g., providing specific compensation for the option, designating a third party to decide whether the non-compete will be required, defining specific terms and conditions for the non-compete to be required). Although there is no case law on the enforceability of such provisions, they may provide a viable alternative for companies who do not want to commit to payment for a non-compete clause they may later find they do not need.

Non-Solicitation of Employees, Suppliers or Customers

The obligation not to solicit employees, suppliers or customers of one's former employer is not specifically regulated under Spanish law, but can be agreed between the parties and is enforceable in theory. In most cases the restriction on solicitation after termination of employment will be considered a form of non-compete clause, such that it should comply with the requirements for post contractual non-compete clauses mentioned above, including compensation. Some authors, however, consider that non solicitation of employees (as opposed to non solicitation of suppliers or customers) is not a no compete restriction, such that restrictions against soliciting employees arguable need not comply with the requirements of post contractual non compete clauses.

Special Types of Employment Agreements

Aside from the ordinary employment contract that has an indefinite duration, Spanish law regulates a number of specific types of employment contracts individually, establishing specific requirements for each type. These special types of contracts can be grouped into special employment agreements to foment indefinite term contracts, standard definite term contracts, training contracts, and part-time contracts. Each is discussed below separately.

New Indefinite Term “Entrepreneur” Support Contract: One Year Trial Period

Further to the 2012 labor reform, a new indefinite term contract exists in order to encourage companies with less than 50 employees to hire employees on an indefinite term and full or part-time basis. This contract is similar to the ordinary indefinite term contract and subject to the same general rules, with the main exception of the duration of the trial period (equal to one year for this kind of employment contract).

The main features / requirements of this new indefinite contract are the following:

- 1) The company must have less than 50 employees;
- 2) The contract must be indefinite term and full time basis. Further to legal amendments passed in December 2013, entrepreneur support contracts may now also be entered into on a part-time basis. All applicable tax benefits and reductions in the social security contribution rates under such contracts will be applied on a pro-rata basis accordingly.
- 3) The employees hired under this contract will be subject to a one year trial period. As such, during the first year of employment, the company can unilaterally terminate the employment relationship without having to provide notice, cause for the termination, or any type of severance compensation;
- 4) The company can benefit from social security discounts and tax deductions when using this type of contract for certain employees that meet the requirements. Such employees should be employed by the company for at least 3 years. If he/she is dismissed by the company within these 3 years, the company will have to reimburse the social security and tax credits received. The company is also required to maintain the same number of employees for one year as of the date of the contract, except in certain cases which are not included (fair dismissal, resignation, death, retirement, or disability);
- 5) In principle, these contracts can only be used if, in the previous 6 months, the company has not made job position of the same professional group and at the same work center redundant through an unfair dismissal;
- 6) The contract must be in writing and using the official form contract;
- 7) These contracts can only be used while Spain’s unemployment rate is equal to or exceeds 15%.

Standard Definite or Fixed-Term Contracts

There are three categories of standard definite term employment agreements, as discussed below.

- **Agreements for a specific, limited service or job.** The purpose of this type of agreement is to hire employees to perform a specific service or task. The duration is limited by nature, even if the specific duration cannot be determined in advance. Collective bargaining agreements can define what kinds of jobs or tasks can be covered using these types of agreements. The agreement terminates when the service or task is completed.

Note that the 2010 labor reform has set a maximum length for this type of contract of three years, or of up to four years, if the industry collective bargaining agreement permits a maximum four year term.

- **Agreements for extraordinary production requirements.** These contracts are entered into in situations where market circumstances, workload or an accumulation of orders in the ordinary course of business of a company requires a temporary increase in the workforce. The maximum duration of these agreements is six months within any twelve-month period, unless otherwise established in the collective bargaining agreement.
- **Interim agreements.** These agreements can be used either (i) to temporarily replace employees who have the right to have their job reserved while they are on leave, or (ii) to temporarily fill an open job position while the recruitment process is being carried out, for up to a maximum of 3 months in this latter case. The contract ends when the employee on leave is reinstated or when the vacancy is filled.
- **Limits on Repeated Use of Fixed Term Contracts:** Note that most permitted types of definite term contracts are subject to a general time limit, such that if an employee has worked in the same or different job position at the same company (or group company) for over 24 months in any 30 month period under two or more definite term contracts, then the employee will automatically be considered to be an indefinite term employee, subject to all provisions regarding termination indemnities, including possible severance compensation for unfair dismissals. Such provision is not applicable for interim agreements, training contracts or substitute contracts. Please note that this limit in the repeated use of fixed term contracts has been suspended since August 31, 2011. However, by legal amendments passed in February 2012, the rule will be resumed and effective again as of January 1, 2013. However, the period comprehended between August 31, 2011 through December 31, 2012 will not subsequently compute when rule resumes.

Training Contracts

Spanish law regulates two types of training contracts, both of which have a definite or fixed duration:

- **On-the-job Training Employment Agreement:** The purpose of this type of training contract is to allow employees with a degree (university or medium to high level training or any equivalent recognized degree, qualifying under government regulations) who have a so-called "certificate of professionalism" or "certificado de profesionalidad"¹, to develop their theoretical skills and acquire certain practical experience in their field within the five years following the completion of their studies, or six years in the case of disabled employees.

The employee should provide the employer with a photocopy of the degree held, and the contract should be made in writing, specifying the degree that the employee has, the duration of the contract, and the job or jobs that the employee will be carrying out in training. The contract may include a trial period of up to one month for employees with a medium level degree and two months for those with a higher level degree, unless otherwise established by the applicable collective bargaining agreement.

The permitted duration ranges from six months to two years, although it can be longer for different job positions if the degree or certificate of professionalism differ. Salary will be determined according to the collective agreement, but may not in any case be (i) less than 60% (during the first year) or 75% (during the second year) of the salary established in a collective agreement for a permanent employee who carries out the same or similar job, or (ii) less than the general legal minimum wage.

¹ The Certificate of Professionality is a certificate that can be obtained without any academic degree, but as a result of prior work experience under a work study contract or "contrato para la formación." This on the job training contract, however, cannot be used for employees who received their certificate of professionalism as a result of a work study contract at the same company.

If the contract lasts longer than one year, the employer must notify the employee fifteen days prior to the contract's termination; if notice is not provided (or if notice is provided but is insufficient in length), the employee will be entitled to continue to receive his or her salary for period during which he or she should have, but did not in fact, receive notice. Upon termination, the employer should provide the employee with a record of the tasks carried out, positions held, and duration of the contract.

Companies that hire persons under 30 years under an on-the-job-training agreement will benefit from a reduction in the employer's social security contribution rates related to common contingencies as follows: (i) 50% during the entire term of the contract and (ii) 75% if the employee is carrying out an internship at the time he/she is hired. For the companies to be entitled to such reductions, employees are required to have completed their studies (there is no time limitation as to when they completed such studies, as opposed to the general rule that this type of contract must be entered into within 5 years of completion of studies).

- **Work-study agreements:** The purpose of this type of contract is for employees to acquire the theoretical and practical training necessary to carry out a career or job position that requires a certain level of qualification. The employee must lack the required degree or certificate of professionalism for an "on-the-job" training contract and as a general rule must be between the ages of 16 and 25. However, until December 31, 2013, or until Spain's unemployment rate is under 15%, this contract can also be used for individuals under 30 years of age. No age limits apply to disabled employees.

Employment time is divided into theory based training and working hours. Working hours cannot exceed 75%, during the first year, nor 85% during the second and third years of the term of the contract, of the maximum permitted employee working hours established in the applicable collective bargaining agreement or, in lack thereof, of the legal maximum working hours. Training may take place at a specialized training center or at the company.

The contract duration may range from a minimum of one year to a maximum of three years. However, the applicable collective bargaining agreement can establish a different duration, although the minimum period for the contract cannot be inferior to six months nor exceed three years. The contract can be extended twice for a minimum of six months per extension and capped at three years. Repeated use of the contract with the same employee is permitted at the same company for different professions.

- **New Temporary agreements:** Pursuant to Act 11/2013, dated 26 July, by means of a so-called "first job contract" (primer empleo joven), companies and independent contractors may employ unemployed persons under 30 years without any work experience or with work experience not exceeding 3 months. The duration of the contract ranges from 3 to 6 months, extendable to 12 months if established under a sector level collective bargaining agreement. Working hours may be part-time, provided they exceed 75% of those of a full-time worker. The conversion of such contract into an indefinite term agreement after the third month will result in reduction of employer's social security contribution payments.

Part-time Employment Agreements

- Standard Part Time Employment Agreement: Part-time employment contracts are defined as contracts with an employee who works less hours (a day, week, month, or year) than a full-time employee who works in the same company and work site, with the same contract and similar job position. Part-time contracts can be either for an indefinite term or for a fixed term, (provided that the type of contract may be entered into for a fixed term). Work-study contracts may not be entered into on a part-time basis.
- Traditionally, under part-time contracts, workers could perform overtime and the so called supplementary hours, i.e., hours worked on top of normal part-time hours that technically do not qualify as overtime. However, further to legislative amendments passed in December 2013, the possibility of part-timers working overtime is no longer allowed, unless to prevent or repair damages and other extraordinary and urgent work. Nonetheless, the supplementary hours regime was amended in order to make it more flexible. In this regard, two types of supplementary hours were introduced: (i) contracted supplementary hours (they need to be formally contracted): they are permitted both for permanent and fixed-term part-time employees; and (ii) voluntary supplementary hours (they do not need to be formally contracted but can be requested by the employer in case of need): they are permitted for permanent part-timers only; in addition, prior notice to request contracted supplementary hours was reduced from 7 to 3 days; basically, the changes introduced in December 2013 extend the possibility to agree supplementary hours with fixed-term part-time employees and increases the maximum number of supplementary hours that can be performed under part-time contracts; finally, the obligation to record supplementary hours is now more strict and requires more formalities than before.
- By virtue of Act 11/2013, the employer's social security contribution rates will be reduced during 12 months, extendable to an additional 12-month period as follows: (i) 75% reduction for companies employing more than 250 workers and (ii) 100% for all other companies that hire under a part-time agreement for training purposes unemployed persons under 30 without any work experience or with work experience not exceeding 3 months, or who meet other conditions set forth in the Act.
- Special "Relief" Part-time Employment Agreement: A "relief" employment agreement is a part-time agreement entered into with an unemployed individual or an employee with a fixed term contract, for the purpose of substituting part of another employee's work hours; this other employee enters what is known as "partial retirement" and receives a proportional part of his retirement pension. That is, an employee working full time can reduce his work hours by 25% to 75% and partially retire if he or she qualifies to do so; simultaneously, the Company can hire another employee on a part-time or full-time basis to work during the hours the original employee no longer works. This "relief" agreement can have an indefinite duration or can be entered into for the time remaining until the partially retired employee reaches official retirement age.

Special Employment Relationships

The Labor Act establishes a number of special employment relationships that are partially excluded from the general rules of the ordinary employment relationship and which are subject to specific regulations aimed at responding to the special nature of the services provided. For example:

- Given that top executives have a greater negotiating power than ordinary employees, the level of statutory severance compensation to which they are entitled is, in some cases, lower.
- Given the extraordinary trust that must exist in an employment relationship whereby the employee works at the employer's home, for example, in the case of housekeepers, no cause is required for termination, without prejudice to any severance compensation that may be due.

Special labor relationships include employment relationships with the following types of employees:

- Executive staff ("top executives") in limited cases;
- Family domestic service;
- Prisoners in penal institutions;
- Professional athletes;
- Performance artists;
- Commercial agents, in certain cases; and
- Lawyers that render services for individual or collective law firms.

Due to the significant features of the rules that apply to the employment relationship of executive staff, commercial agents, and performance artists, they are examined below more closely.

Executive Staff

The special employment relationship of top executives is regulated in Royal Decree 1382 of August 1, 1985 on Top Executives.

Scope of Applicability

Royal Decree 1382/1985 on Top Executives applies to all personnel who exercise the employer's authority with full autonomy and responsibility and whose authority is limited only by the direct instructions of the Board of Directors. Employees who do exercise such authority, and who are therefore deemed to be top executives, will be subject to the provisions of the Royal Decree as opposed to the Labor Act. Who qualifies as a top executive and falls under the Decree on Top Executive has been interpreted by Spanish labor courts very restrictively, such that normally only the country manager or general manager will be considered to qualify as a "top manager" or "top executive"

Governing Rules

The predominant characteristic of a top executive employment relationship is the parties' trust. The applicable sources of law for a top executive employment relationship are the terms agreed between the parties, the Decree, which provides the minimum mandatory employment conditions, and the principles of civil and business law.

Trial Period

The parties may establish a trial period of up to nine months if the contract has an indefinite duration. During the trial period either party may terminate the labor relationship without giving rise to any severance compensation.

Duration of the Agreement

The duration of the employment agreement is not subject to a maximum or minimum period, and the agreement may therefore be established for a limited period of time. However, in the absence of a written term, the agreement is deemed to be for an indefinite period of time.

Termination

The top executive may terminate the agreement so long as he gives a minimum of three months' notice, although the required notice may be extended to six months if this is set out in writing in an indefinite employment contract or in a contract with a term that exceeds five years. In cases of resignation without cause, the top manager is not entitled to any severance compensation.

The top manager may also terminate his or her agreement in the following cases:

- Where the employer unilaterally introduces unreasonable changes in the job position.
- Where the employer fails to pay salary or repeatedly delays payment.
- Substantial breach of contract terms by the employer.
- Change in the ownership of the employing company, generally when there is a change in the management bodies or company management policy, provided that the top executive terminates the contract within three months of the transfer of title.

In the above cases, the executive will be entitled to the agreed severance compensation, and in its absence, to a severance compensation of seven days of his cash salary per each year of service up to a maximum of six months' salary.

The employer may terminate the employment relationship in the following cases:

- **Without cause**, providing a minimum of three months notice, and, in addition, paying the severance compensation contractually agreed, or, in the lack thereof, a severance compensation of seven days of cash salary per year of service up to a maximum of six months' salary. If agreed, the length of notice may be extended up to six months in indefinite term contracts or long term definite contracts that exceed five years in duration.
- **With cause**: The employer may also terminate the employment agreement through a dismissal (disciplinary or redundancy), as set forth in the general Labor Act regulation for contract termination (see Section X below on "Contract Termination"). In this case, the employee may contest the termination following the same procedure as for ordinary employment contracts (that is, mandatory conciliation, court proceeding, etc.). The main difference from the General Labor Law system lies in the amount of the compensation to be paid if the dismissal is declared unjustified. The severance compensation will be computed on the basis of twenty days of salary for each year of employment up to a maximum of twelve months, unless otherwise agreed contractually. In addition, unlike ordinary employees, top executives are not entitled to interim salary.

Commercial Agents

The special employment relationship of commercial agents is regulated in Royal Decree 1438/1985 of August 1.

Scope Of Applicability

The Royal Decree applies to employees who partake in business transactions on behalf of one or more principals without assuming the risk or benefit of the operations.

Form and Duration of the Agreement

The contract must be in writing and must specify the following information:

- Type of business transactions which the agent is to promote and services/products to which the transactions may relate;
- The limits of the agent's autonomy;
- Geographic area within which the agent may operate and type of clients to be served;
- Remuneration and duration of the agreement.

The agreement may be limited in duration to a period not exceeding three years. If the agreement does not contain an express provision limiting its duration, it will be deemed to be made for an indefinite period. A trial period may be established in accordance with the Labor Act's general provisions.

Remuneration

Remuneration may consist of a fixed salary or of a fixed salary plus sales commissions. Commissions are accrued upon acceptance of the order by the employer, even if thereafter the sale is not made.

Termination

The Labor Act's general provisions on termination, procedure and severance compensation are applicable. However, in the case of unjustified terminations, the severance compensation will be established taking into consideration not only the length of employment but also the increase in the number of clientele attributable to the employee's efforts.

Although this special type of relationship has the advantage for the employer that it can be entered into for a definite term, please note that it often raises serious issues regarding how the agent should be distinguished from (i) ordinary employees who act as commercial agents under the Labor Act, and (ii) commercial agents who are contracted under the commercial law on Agency Contracts and who are not considered employees.

Performance Artists

Scope of Applicability

The Royal Decree on Performance Artists applies to individual performance artists who voluntarily engage in a public performance for a third party under the organization and direction of an organizer or manager of public performances, and who receives a certain compensation for his/her services.

Technical and auxiliary staff who are engaged in the public performance are expressly excluded and instead regulated exclusively by the general rules for employees under the Labor Act.

Governing Rules

The applicable sources of law for this type of special employment relationship are (i) the Royal Decree which provides the special regulations for this special labor relationship, (ii) the basic labor regulations such as the Labor Act to the extent that its rules are compatible with the Decree, (iii) the applicable Collective Bargaining Agreement and (iv) the terms and conditions agreed between the parties in the employment contract.

Trial Period

The parties may establish a trial period, the maximum duration of which depends on the length of the services to be performed by the Artist, as follows:

Duration of services to be rendered Maximum duration of the trial period

Up to two months Five days.

Up to six months Ten days.

Six months or over Fifteen days.

Duration of the Agreement

The employment contract should be entered into in writing. Its duration is not subject to a maximum or minimum period, such that, contrary to the general rule for employees under the Labor Act, the agreement may be established either for a limited period of time (e.g., a season, as long as the performance lasts or for a certain period of time) or for an indefinite period.

Termination

Generally, the Labor Act's provisions on termination, procedure and severance compensation will apply. However, in cases of definite term contracts that have lasted over one year, unless otherwise provided by the applicable The Global Employer – Spain | 31 collective bargaining agreement, the performance artist is entitled to the following upon termination of the contract:

- Severance compensation of seven days of salary per year of service, (any period under a year of service to be prorated by months) unless otherwise agreed between the parties, and
- Prior notice ranging from ten days to one month, depending on the length of the contract. Notice can be substituted in whole or in part by payment in lieu of notice.

Significance of Collective Bargaining Agreements for Performance Artists.

Please note that performance artists tend to be subject to detailed and precise collective bargaining agreements, the provisions of which should always be checked and complied with. For example, the National Collective Bargaining Agreement for Audiovisual Works and Actors who Perform in Such Works, which applies broadly in Spain to the movie and television industry, sets out significant rules regarding termination. It provides that unless otherwise agreed in more favorable terms for the artist, in the event of termination of the employment contract for any reason not attributable to the artist, the artist will be entitled to the following:

- If the filming has not yet begun, 75% of the total salary agreed.
- If services have begun, 100% of the total salary agreed. Other significant collective bargaining agreements that apply to performance artists and may include significant rules include the following;
- The Catalanian CBA for Actors and Actresses;
- The Cinematographic Actors and Producers CBA of Catalonia; and
- The Theatre Performers CBA for Madrid.

Contract Termination

The Labor Act lists the various reasons for which an employment relationship can be terminated. Such reasons include, but are not limited to, mutual agreement of the parties; reasons validly established in the contract, to the extent permitted by the law; resignation, retirement, death or disability of the employee or employer, force majeure, dismissal and constructive dismissal. The various types of terminations have different applicable rules and consequences that exceed the scope of this summary, and below we limit our discussion to (i) a brief reference to the termination of definite term contracts due to the expiration of their term, and (ii) a more thorough introduction to the rules on dismissals of employees under ordinary, indefinite term contracts.

Termination of Contracts for a Definite or Fixed Period

Unless otherwise terminated earlier, definite or fixed term employment contracts automatically come to an end at the expiration of their fixed term. If the employment relationship continues de facto for any reason at the expiration of such term, the agreement may be deemed to have been tacitly extended for an indefinite period of time.

When the duration of a fixed term contract exceeds one year, the party who wishes to terminate the contract must give a minimum 15 day's notice.

In some cases, depending on the type of fixed-term contract, an employee may be entitled to a severance compensation (9 days of salary per year of service for certain fixed term contracts (e.g., fixed-term contracts for a specific, limited service or job or for extraordinary production requirements) entered into as of January 1st, 2012, to be progressively increased up to 12 days for contracts entered as of January 1st, 2015).

Termination of Ordinary, Indefinite Term Contracts

Once any trial period has expired, ordinary employees may only be dismissed with cause (during the trial period, the contract may generally be terminated by either party freely). The basic causes for termination can be grouped into disciplinary causes and what are known as "objective" causes, which most commonly are economic, technical, productive or organizational causes. Each of the two types of dismissals has its own required procedure, which we discuss briefly below.

Disciplinary Dismissals

Disciplinary dismissals may be based on the following grounds:

- Repeated and unjustified lack of punctuality or attendance at work;
- Lack of discipline or disobedience at work;
- Verbal or physical aggression towards the employer, other staff or their families;
- Breach of good faith and abuse of confidence in performing the job;
- Intentional and continuous reduction of regular or agreed work performance;
- Drunkenness or drug addiction, if it adversely affects the employee's work; and
- Harassment of the employer or of any person who works at the company by reason of racial or ethnic origin, religion or convictions, disability, age, or sexual orientation and sexual harassment or harassment by reason of sex of the employer or people who work in the company.

These grounds are often regulated in further detail by the applicable collective bargaining agreement which can specify the particular conduct that can be sanctioned and the degree of the applicable sanction.

Disciplinary dismissals must be notified to the employee in writing stating

the facts giving rise to the dismissal and specifying the effective date of termination. The employee then has 20 days from the effective date of termination to contest the dismissal. Before the employee can file a complaint with the Labor Courts, however, the parties are required to attempt to settle the matter at the Mediation, Arbitration and Conciliation Office, an Agency of the Labor Department. If no settlement is reached, the employee may then file a court claim. After trial, the Labor Court may declare the dismissal justified, unjustified, or null and void.

If the Labor Court finds those legal causes for the dismissal exist and the correct procedure has been followed, the dismissal is declared justified and no severance compensation needs to be paid to the employee.

If the alleged cause for dismissal is not satisfactorily proven or, if it is proven, but is insufficient to justify a dismissal, the dismissal may be declared unjustified. In this event, the employer has five days as of the Court decision notification date to choose between reinstating the employee with back pay or paying severance compensation. If the dismissed employee is an employee representative, however, the employee representative chooses, not the employer.

The severance compensation for unfair dismissals was reduced by legal amendments that became effective as of February 12, 2012. Under the new rules, for employees hired on or after February 12, 2012, severance compensation for unjustified dismissals is computed on the basis of 33 days' gross salary per year of employment with a maximum of 24 months of salary. For employees hired prior to February 12, 2012, severance compensation is computed as the sum of (i) 45 days' gross salary per year of employment through February 11, 2012, plus (ii) 33 days' gross salary per year worked as from February 12, 2012. In these cases where employees were hired before the amendments, the total severance compensation is subject to a maximum of the greater of the following caps:

- 720 days of total salary, or
- The amount of 45 days' gross salary per year of employment through February 11, 2012, capped at 42 months of salary.

The employee's salary for these purposes includes fixed and variable salary, as well as benefits in kind and equity benefits, but it does not include certain benefits that are considered "social" in nature such as complementary health care schemes, pension schemes and life insurance coverage.

Please note that severance compensations for unfair dismissal, whether disciplinary or objective, have traditionally been tax exempt. However, due to a major tax legislative reform passed in 2014, severance compensations paid as of 1 August 2014 shall continue to be exempt provided that they do not exceed the amount of 180,000 Euros. Also, by virtue of such tax reform, the tax reduction that could be applied to any severance compensation excess paid on top of the statutory amounts for employees with a seniority greater than two years has been reduced from 40% to 30% but such reduction is still limited to a maximum base of 300,000 €.

Note that if the employee is an employee representative and the dismissal is considered unjustified, the employee representative has the right to decide whether he or she is reinstated with back pay, or whether he or she terminates employment. If the employee representative opts to terminate employment, then aside from the standard severance compensation, the employee representative will be entitled to the so-called interim salary, which is the employee's salary from the date of termination through the date on which the court's judgment is notified. This interim salary depends on how long the court takes to hear the case and reach a decision, but it can amount to 3 to 6 months of salary.

Apart from a possible finding of justified or unjustified dismissal, the labor court can alternatively find that the dismissal is null and void. The labor court will declare the dismissal null and void in a number of specific cases, which primarily include the following:

- The dismissal is based on discrimination prohibited by the Constitution or by Law, or the dismissal violates the employee's fundamental rights or public freedoms. These cases can include cases of retaliation against the employee for legitimately exercising his or her rights.
- Automatically in cases where the employee is pregnant, has requested, is enjoying or has recently enjoyed certain maternity or paternity related rights, unless the court finds that the dismissal was justified and was not related to the enjoyment of such rights. In particular, dismissals of employees returning to work after maternity or paternity related leaves of absence will be null and void provided that it occurs within the nine months subsequent to the date of birth, adoption or guardianship. For further details regarding the maternity and paternity rights to which this rule applies please see section VI above.
- When the collective dismissal procedure should have been, but was not, used.
- Where the dismissal is in retaliation for having exercised rights that exist to protect employees who are victims of gender related violence.

Should the Labor Court declare the dismissal null and void, the company is required to immediately reinstate the employee with backpay. Given the costs of having to reinstate and the increased difficulties of dismissing the employee afterwards, prior to any dismissal, the company should carefully consider surrounding circumstances to ensure that no causes for a finding of a null and void dismissal exist.

Objective Dismissals

"Objective" dismissals are dismissals that do not have to do with the employee's ("subjective") misconduct and that are instead based on one or more of the following objective reasons:

- Employee's incompetence that has come to light or arisen after the trial period has elapsed;
- Employee's failure to adapt to reasonable technological developments affecting his or her position, so long as the company has provided adequate training for the employee to adapt to those developments and provided two months have passed from the date the new conditions were implemented or the training to adapt to those technical changes has concluded;
- An employee's absence from work, even if fully justified, which exceeds 20 percent of the work days in two consecutive months if total absences in the last 12 months are 5% of the work days, or which exceeds 25% of the work days in any four months in a twelve-month period (absences due to strikes, maternity, paternity, vacation, sick leave due to work related accident, medical treatment for cancer or serious illness, and any other sick leave unrelated to work related accidents that lasts over 20 days, do not compute for purposes of the 20% or 25%, but absences due to short term sick leaves that last 20 days or less, even if they are fully justified, do compute);
- Company needs to phase out job positions based on organizational, productive, economic or technical grounds. Under amendments passed in February 2012, economic causes will exist when the company has a negative economic situation, in cases such as current or foreseen losses or the persistent decrease in ordinary income or sales. The new law specifies that, in any case, there will be a persistent decrease when ordinary income or sales in three consecutive quarters is less than the ordinary income or sales in the same period of the previous year. Organization causes will exist, among other cases, where there are changes to the system and methods of employees' work or in the way production is organized; technical changes exist where, among other cases, there are changes in the means or instruments of production; and productive reasons exist when, among other cases, there are changes in the demands of the products or services that the company has in the market.

This last type of objective dismissal may only be used when the number of employees to be dismissed does not exceed a particular number established by the Labor Act; if the employees to be dismissed for these reasons exceed the maximum number, the procedure for collective dismissals will need to be followed (see the section below on collective dismissals).

With regard to the individual objective dismissal procedure, the employee must be given a letter of dismissal and provided with fifteen (15) days prior notice or salary in lieu thereof. At the time the letter is provided, the company must simultaneously pay the employee severance compensation of twenty days salary per year of service, any period of less than one year of service being prorated by months, up to a maximum of twelve months salary.

If the procedural requirements for objective dismissals are not strictly followed, the dismissal will be considered unjustified by a court. In such event, as in disciplinary dismissals, the employer is given the option to either reinstate the employee with back pay or to terminate the employment relationship, paying a severance compensation. In this second case, the employee will be entitled to the same severance compensation established for unfair disciplinary dismissals as explained above (specifically, the 45 days' salary per year worked through February 11, 2012, plus 33 days' salary per year worked after that date, subject to a cap of the greater of 720 days of salary or the amount of severance compensation computed through February 11, 2012). Note, however, that the 20 days' salary per year worked paid in these objective dismissals at the time of termination will be deducted from the severance due if the dismissal is considered unjustified. Also note that if the employment contract at issue was a special indefinite term contract pursuant to Royal Decree 8/1997, Additional Disposition One, the amount of indemnity for an unjustified objective dismissal will exclusively be calculated as 33 days of salary per year of employment, up to a maximum of 24 months of salary, such that under these special types of contracts, no part of the severance will need to be based on the 45 days' salary per year of service formula, regardless of when the employee was originally hired. Finally, as in disciplinary dismissals, if the person dismissed is an employee representative and the dismissal is considered unjustified, the employee exercises the option instead of the employer. The employee representative has the right to decide whether he or she is reinstated with back pay, or whether he or she terminates employment. If the employee representative opts to terminate employment, he or she will be entitled not only to the severance compensation, but also to the interim salary, which is the salary from the date of termination through the date on which the court's judgment is notified.

If the court finds the dismissal to have been justified, the contract will be declared to have terminated, and no compensation will need to be paid other than the 20 days' salary per year of service (up to 12 months' salary) that was originally provided to the employee along with the letter of dismissal.

In addition, if the dismissal is based on discrimination, if it interferes with maternity- or paternity-related rights or family care rights, or if it infringes the rules on collective dismissals, it will also be null and void and the company will be required to reinstate the employee with back pay.

Collective Dismissals

The collective dismissal procedure must be used when in any ninety-day period the number of employees to be dismissed for economic, technical, productive or organization reasons equals or exceeds the following:

- Ten employees in companies with less than one hundred employees;
- Ten percent of the workforce in companies with one hundred to three hundred employees;
- Thirty employees in companies with three hundred employees or more; or

- All employees in companies with over five employees.

If the number of dismissals does not meet these thresholds, the dismissals are subject to the objective (individual) dismissal procedure described above.

Please note that spreading out the dismissals over consecutive ninety-day periods to avoid the collective procedure and instead qualify for the more simple objective procedure could lead a court to declare the dismissals fraudulent and consequently null and void. Also, note that significant case law exists on (i) which types of dismissals compute for purposes of the threshold and (ii) how the 90-day periods and/or consecutive 90-day periods should be counted. These rules are extremely important and should be considered carefully prior to any dismissal to avoid the dismissal(s) being declared null and void and having to reinstate the employee(s) with back pay. Finally, please note as well that special rules can apply on which employees the company must dismiss first and which have “last to go” rights (e.g., employee representatives have “last to go” rights).

The collective dismissal procedure can be divided into the following stages:

(i) Constitution of a worker negotiating committee

The employer shall inform the employees of its intention to initiate a collective dismissal procedure prior to start the consultation period in order that the employee can set up one negotiating committee, which will be comprised by the employees representatives of all the work centres affected by the collective dismissal. In the case of one work centre affected by the collective dismissal, the negotiating committee will have a maximum of 3 members per party. In case of several work centres affected, the maximum members are 13 representatives per party.

The law grants 7 days for the committee to be set up, unless there are work centres affected that do not have worker representatives, in which case the period will be 15 days. If the company has no employee representatives (i.e. Works Council or employees delegates) in one or all of the work centres affected by the collective dismissal, a worker representative committee must be set up prior to the commencement of the consultation period.

(ii) Notice of the commencement of the procedure

The collective dismissal procedure requires that the employer to notify the employee representatives of the company (or, as the case may be, the employees) of the commencement of a consultation period and then file a copy of that notice with the labour authorities.

The notice must be accompanied by a number of supporting documents explaining the grounds for the dismissals. The documents should include economic and legal documentation setting out the reason(s) for the dismissals, information on the company’s employees and the employees affected, the timing of the intended redundancies, and the criteria applied to designate the affected employees. The documents should also include the minutes of the constitution of the negotiating committee or, as the case may be, the failure to constitute such a committee within the legally established period of time.

If the termination affects more than 50 percent of the workforce, the employer must also notify the employees and Labour Authorities of any sale of company.

(iii) Consultation Period

Under the Labor Act the consultation period can last up to a maximum of fifteen days in companies with fewer than fifty employees and up to a maximum of thirty days in companies with fifty employees or more.

During the consultation period, the company and employees discuss the reasons for the dismissals and the possibility of avoiding or reducing their negative effects on the employees through measures such as relocation or training to attempt to increase employees’ employability.

The Labour Authority is entitled to provide suggestions and issue warnings during the consultation period that would not entail a suspension of such period but may play a crucial role if the procedure is finally challenged before a labour court.

Note that the law offers the possibility to replace the consultation period with alternative dispute resolution procedures, such as mediation or arbitration, if the parties so agree.

(iv) Notice to the Labour Authority of the outcome of the consultation period

The consultation period may conclude with or without an agreement with the employee representatives. The company must in any case formally inform the Labour Authority of the final outcome. If an agreement has indeed been reached, the company should provide the authorities with a copy of such agreement. If no agreement has been reached, the company must notify the labour authorities and the employee representatives of its decision regarding the collective dismissals and the conditions that will apply to the dismissals.

(v) Individual Dismissal Notification

Dismissals can not take place until 30 days have elapsed since the company notified the Labour Authority of the commencement of the consultation procedure.

The company can proceed with the individual dismissals by providing the employees with a minimum of 15 days of notice plus the statutory severance compensation of 20 days of salary per year worked, capped at 12 months of salary (or whatever amount may have been agreed with the employee representatives).

The failure to reach an agreement with the works council no longer impedes the company from proceeding at the reduced severance compensation rate as used to be the case prior to the February 2012 amendments.

The mandatory costs deriving from the collective dismissal are the following.

- **Severance compensation:** The Labour Act provides for collective dismissals a mandatory minimum severance compensation of 20 days salary per year of service, any period of less than one year of service being prorated by months, up to a maximum of 12 months salary. However, the parties may agree on a higher severance compensation.
- **Outplacement:** If the company dismisses more than 50 employees, the company must offer the affected employees an external job placement plan of no less than six months through authorized placement agencies, which must include training actions, support in searching for a new employment position, etc.
- **Special Covenant with Social Security:** Companies carrying out a collective dismissal that affects employees over the age of 55 are obliged to bear the cost of the "Special Covenant with the Social Security" (Convenio Especial con la Seguridad Social), which approximately equals the cost of the social security contributions for those employees until they reach the age of 61, i.e., approximately EUR11,400 per year maximum. As of 1 January 2013 this obligation will be extended until the employees reach the age of 63 unless the cause alleged for the economic redundancy was economic.
- **Financial Contribution to the Spanish Treasury:** Companies carrying out a collective dismissal affecting employees over the age of 50 will also have to make a financial contribution to the Spanish Treasury provided the following conditions are met:
 - The percentage of workers aged 50 or over, with regard to the total number of workers affected, must be greater than the percentage of workers aged 50 with respect to the total number of company employees. When determining the percentage, in addition to workers aged 50, the calculation will also include contracts that have been

terminated by the company during a three year period before, up to the limit of 27th April 2011, and a one year period after the process. Also, in order to calculate this percentage, with respect to the total number of company employees, it should be taken into the total number of company employees existing when commencing the collective dismissal process.

- The company (or group of companies) has more than 100 employees.
- The company (or group of companies) has either (i) make profit a profit in the two years preceding a collective or company (or its group of companies) or (ii) earns a profit in at least two consecutive financial years out of the one financial year prior to the commencement of the collective dismissal process and the four financials year after the commencement of the collective dismissal process.
- The affected employees over the age of 50 have not been employed within the six months following the date of termination of their employment.

The contribution is roughly calculated according to the amount of the public unemployment benefits and subsidies to be paid to affected employees over the age of 50, including Social Security Contributions made by the Unemployment Office. Pursuant to current legislation, in a worst case scenario (employee with a high salary, children, etc.), the contributions should amount to no more than EUR108,000 per employee over 50 years of age.

After the dismissals are implemented, both the employees and the employee representatives are entitled to contest: the causes for the dismissal, lack of compliance with the collective redundancy procedure, or the validity of any agreement that may have been reached. If the court finds that insufficient causes for the redundancies exist, in most cases, the employees will be entitled only to the statutory severance for unfair dismissal. However, if the redundancy procedure was not used when it should have been, if the company did not comply with the formalities of the collective redundancy procedure, if the company fails to provide for the required consultation period, does not provide the worker representatives with the legally required documentation, if the agreement with the employee representatives during consultation was reached by means of fraud, or when the decision to terminate the contracts breaches fundamental rights and public freedoms the dismissals will be considered null and void.

Business Transfers

Article 44 of the Labor Act, which regulates the transfer of undertakings, provides that the change in ownership of a company, work center or independent unit of production within a work center does not terminate the labor relationship. Instead, the new owner acquires the employment rights and obligations of the previous owner/employer, and the new owner thus becomes the new employer. After the transfer, the prior employer ceases to have an employment relationship with the employees transferred, although the prior employer can be jointly or jointly and severally liable with respect to certain employment and Social Security obligations that may exist in respect of the transferred employees.

Whether a transfer of undertakings occurs and the employees transfer will generally depend on whether the following conditions are satisfied:

- A group of production or property elements should be transferred. The transfer must involve a minimum amount of property or “patrimonial” support, such that the transfer of the mere activity and/or related service contracts in Spain is normally insufficient to trigger the rules on transfer of undertakings². Note also that the property need not be transferred pursuant to a sale and purchase agreement; the transfer may occur pursuant to another form of commercial transaction, such as a lease agreement.
- The property elements transferred need to have “sufficient functional autonomy”, such that what is transferred is sufficient to carry out an essential or subsidiary economic activity.
- The transfer should involve continuity both in the business’s activity and in the rendering of services.

As the new employer, the transferee, as a general rule, assumes all of the obligations of the previous employer with respect to the employees, regardless of the source of those obligations, that is, regardless of whether the previous employer assumed them voluntarily or involuntarily, by collective bargaining agreement, by contract, or by his previous actions, express or implied. However, case law has established some exceptions, which should be considered in light of the specific circumstances of each case.

Effect on Employment Relationships

In the event of a transfer of employment, the labor relationship is not terminated; rather, the employment contracts remain in force with the new employer. The employee receives a new employer automatically, whether or not he or she approves of such new employer; the employee cannot oppose his or her transfer simply because he or she does not want an employment relationship with the new employer. This is so even if the transfer weakens the economic position of the company and thus could potentially harm the employee’s position.

Nevertheless, the employee(s) may attempt to contest the transaction or the application of Article 44 on other grounds. Employees could claim, for example, that the transaction involves fraud, or that the requirements of Article 44 have not been met and, that the transaction does not therefore result in their automatic transfer to the new owner but, rather, in an illegal transfer of employees. Such employee allegations would need to be proven in court to prevent the transferee from becoming their new employer.

² The Spanish Supreme Court has, however, acknowledged the case law of the European Court of Justice, which has held that in cases of labor intensive service contracts when a significant number and quality of employees are hired by the successor contractor, property need not be transferred for a business transfer to take place. The Spanish Supreme Court has been openly critical of the ECJ’s application of the transfer of undertakings rules in these cases and is expected to apply this exception very restrictively.

With respect to certain general managers and top level executives who are subject to the special labor legislation for top executives, please note that they transfer as other ordinary employees would. Such top executives are, however, entitled to terminate their employment relationship if the transfer of undertakings results (i) in a new Board of Directors or other governing body, or (ii) in a change in the principal activity or in the approach the company has to that activity. The termination can be requested within three months of the relevant change, and entitles the top executive to a severance compensation of seven days of his cash salary for every year of employment, up to a maximum of six months salary, unless a greater compensation has been agreed by the parties.

Information Requirements

Companies are obligated to inform the employees or their representatives about the transfer and, depending on the circumstances, may need to consult with the employee representatives. The Labor Act establishes that the transferor and transferee should provide the following information to the employee representatives (i.e., employee delegates or works council) of the employees that are affected by the change of ownership:

- Scheduled date of the transfer;
- Reasons for the transfer;
- Legal, economic and social implications of the transfer for the employees, and
- Measures planned with respect to the employees.

If no employee representatives exist in the Company or work center, then the information should be provided to the employees directly.

With regards to timing, the Labor Act states that the information should be provided “sufficiently in advance” of the transfer. What is sufficient may depend on the particular circumstances, but in practice it is generally considered that the information should be provided no less than 15 days in advance of the transfer.

Where there is a merger or company spin-off, the relevant information should be provided when the shareholders’ meeting is called to pass the relevant resolutions.

Consultation Requirements

The Labor Act provides that if the transferor or transferee intends to implement “labor measures” by reason of the transfer, the employee representatives should be consulted regarding the nature of the intended measures and their consequences for the employees. What is considered a “labor measure” is not clear from the Labor Act, but we consider that dismissals, relocations, and other relatively significant changes in employment conditions would constitute labor measures and, as such, would require a consultation period.

Again, no specific length of consultation period is established, such that it will depend on the circumstances. It is often considered that the consultation period should commence no less than fifteen days before the implementation of the labor measure. If, however, the specific measure requires a longer consultation period under the regulations applicable to that measure (as could be the case, for example, in a collective dismissal procedure), the applicable longer period should be complied with.

Labor Relations

Trade Unions and Employer Organizations

Spanish trade union regulations are comparable to those of other Western democracies. The Spanish Constitution recognizes various trade union rights, including the right to organization, formation, membership and action, as well as the right to join national or international union organizations. These general rights apply to both trade unions and employers' associations. Members of the armed forces, magistrates and public prosecutors are, however, excluded from the right to form or join trade unions.

Trade union and employers' association must abide by the Principle of Democratic Rules of Government in terms of their structure and operation.

The most important employers' organization is the Spanish Confederation of Employers' Organizations ("Confederación Española de Organizaciones Empresariales", or "CEOE"), which was founded in 1977. The two most relevant trade union organizations are "Comisiones Obreras" ("CCOO"), which is communist organized, and the "Unión General de Trabajadores" ("UGT"), which is socialist in nature and presently the predominant of the two.

Employee Representatives and Works Councils

Employees at companies or work centers with a minimum of six employees can hold elections to elect employee representatives, who represent the employees before the company's management. Employee representatives are normally, but not always, union members. The number of representatives depends upon the number of employees at the work center or company as follows:

No. of Employees	No. of Representatives
6 to 30	1
31 to 49	3
50 to 100	5
101 to 250	9
251 to 500	13
501 to 750	17
751 to 1,000	21
over 1,000	an additional 2 per 1,000 employees (subject to a maximum of 75)

In companies or work centers with a minimum of 50 employees, given the greater number of employee representatives that can be elected, the representatives form what is called a "Works Councils" or "Comité de Empresa". As a general rule, Works Councils have the same rights and duties as individual employee representatives or "Delegados de Personal."

Employee representatives enjoy certain special rights with regard to sanctions and dismissals; rights that aim to impede interference with their representative role and retaliation. In addition, representatives are each entitled to be relieved of their employment obligations for a certain number of paid work hours per month in order for them to perform their duties as employee representatives.

The number of allowed hours ranges from:

- 15 hours per month in companies with up to and including 100 employees;
- 20 hours per month in companies with 101 to 250 employees;
- 30 hours per month in companies with 251 to 500 employees;
- 35 hours per month in companies with 501 to 750 employees; and
- 40 hours per month in companies with more than 750 employees.

Employee representatives have full authority to represent employees in collective bargaining and individual matters regarding labor relationships. They may also intervene in problems arising as a result of working conditions and may raise health and safety, social security, or any other work-related issues before the company and the labor and social security authorities.

Employers are required to disclose certain information to employee representatives, including information on sales, production and employment status, and financial statements. With regard to employee representatives' rights to information, the Law states that labor representatives are entitled to be informed of all employment contracts that must be executed in writing by the employer. The documents must include all pertinent information regarding the agreement, with the exception of the employee's personal details that may affect the employee's privacy. Top executive agreements are, however, expressly excluded from this obligation of disclosure.

Finally, employee representatives are entitled to issue reports and sometimes to be consulted in relation to certain matters, such as matters affecting employment, collective reorganizations, on-the-job training, relocation, and corporate reorganization.

Labor Disputes

Individual Disputes

An individual dispute is a disagreement that arises between an employee and an employer over the individual's subjective rights. Even if the disagreement affects the rights of several employees, the dispute continues to be an individual dispute so long as the basis of the disagreement lies in individual interests.

Collective Disputes

Collective disputes arise only when collective interests are involved, i.e. where a dispute is attributed to a group or to the entire work force specifically because of its collective nature. The special nature of the collective dispute is based on the fact that the party with the collective interest is the trade union organization, or any group or association of employees. It is therefore the trade union or employee representatives who have the right to initiate proceedings

Mediation, Arbitration And Conciliation

Conciliation, mediation and arbitration are specific means for the resolution of labor disputes. In 1979, the Ministry of Labor created the Mediation, Arbitration and Conciliation Institute (SMAC), which operates under the authority of the Ministry of Labor and has the following functions:

- Establish Labor Arbitration Courts;
- Provide conciliation and mediation (as the mandatory pre-trial step to filing claims in Labor Courts);
- Serve as a central source of reference concerning statutes of labor organizations and collective agreements.

Conciliation is a process whereby a third person is appointed to assist the parties in reaching an agreement, with the ultimate goal of avoiding judicial proceedings. Agreements reached through labor related conciliations cannot affect irrevocable rights. In both individual and collective disputes, Spanish law imposes the obligation to attempt conciliation before filing any claim in Labor Courts.

Mediation proceedings may be initiated at the request of the parties involved in the dispute. In certain cases, the Ministry of Labor and Social Security may also request that a mediator be appointed. The mediator must, in as little time as possible, submit a settlement proposal to the parties in dispute.

If the proposed settlement is accepted, it has the same binding effect as a collective agreement.

Arbitration is a procedure for settlement of labor disputes characterized by the intervention of a third party, the arbitrator. The arbitrator's duty is not to bring the parties together so as to secure their agreement (as a conciliator should do) nor to propose a solution (as in the case of the mediator). Rather, the arbitrator himself must settle the dispute with a ruling or judgment. The arbitration provided for under Spanish law is private and voluntary.

The Collective Dispute Procedure

Spanish labor legislation establishes the so-called collective dispute procedure, which aims to settle collective disputes. This administrative procedure may be initiated either by the employee representatives involved in the dispute or by the employers or their representatives. When a petition is filed, the Labor Ministry will summon the parties and attempt to get them to resolve the dispute either by mutual accord or by arbitration. If the dispute is not resolved, it may or may not continue to the labor court depending on the nature of the dispute. If the dispute concerns the proper interpretation of a rule of any sort, the Ministry will forward the proceedings to the Labor Court so that the collective conflict proceedings provided for under labor proceeding legislation may be initiated. If the dispute does not relate to the interpretation of a rule, the parties must resort to other means for resolution.

Strike And Lock-Out

The Spanish Constitution recognizes the right to strike, incorporating this right among those that are granted maximum or privileged Constitutional protection. The right to strike, however, is exclusively a labor right that must involve labor objectives. Thus, political strikes and non-labor related strikes are generally unlawful. Employees have the right to strike whether or not they belong to a trade union. The exercise of the right is subject to a fixed procedure set out in the law, which requires a formal declaration of the state of strike, notification thereof, and the establishment of a strike committee.

Lock-out is a means by which the employer can impose labor pressure on the employees by terminating their activity and closing the establishments, consequently interrupting the payment of salaries. The lock-out is designed to impose certain labor conditions on employees or to respond to a strike or some other employee act of pressure. Lock-outs are generally only allowed when they are defensive and in response to strikes or anomalous collective actions in the workplace which imply either:

- Danger of violence to people or serious damage to property;
- Illegal occupation of the work site or its premises, or a certain risk that this will occur; or
- A degree of absenteeism or irregularity in the workforce, which seriously disturbs normal processes of production.

The lock-out must be limited to the time necessary for the termination of the disturbance that provoked it. If the Government requires the employer to reopen the work site, the employer must comply. Failure to do so will make the employer liable as if the lock-out had initially taken place illegally.

Social Security

Royal Decree 1/1994 of June 20 approved the Amended Text of the General Law on Social Security, which is the fundamental law in this area. The General Social Security scheme covers:

- Spanish employees who usually perform their activity in national territory.
- Non-resident Spanish employees in certain cases (e.g. civil servants, employees of international entities and employees employed by the Spanish administration abroad but who are not civil servants).
- Foreign employees in Spain with residence and work permits.

Notwithstanding the foregoing, the General Social Security Scheme is subject to a number of exceptions, pursuant to which certain types of employees may be excluded:

- In the case of employees transferred to Spain from abroad an exemption may exist under certain treaties, such that transferring employees may continue to be registered with the social security system of their country of origin. Such exemptions, when applicable, are subject to reporting requirements, time limits, and any other requirements that may exist under the applicable treaty.
- Employees who perform an occupational activity covered by one of the Special Social Security Schemes subject to special rules (performance artists, household employees, agricultural employees, seamen, selfemployed people, coal miners, etc.).
- Except in special cases, the spouse, descendants, ascendants, and other blood relations or kin (and, where applicable, adopted children) of the employer up to the second generation inclusive, provided that they are employed in the employer's offices or plant and that they live in the employer's home under his or her charge.
- Persons who occasionally perform activities for friendship or charity.
- Persons whose work can be considered marginal and which does not constitute their livelihood, in view of their working time or earnings (provided that the Government has determined, at the request of the interested parties, that these criteria are fulfilled).

Structure and Administration of the System

The Social Security System is based on a number of regimes, each of which is governed by its own rules. Levels of contributions and benefits vary according to the tariffs subscribed to by the beneficiary (as in the case of self-employed workers) or by fixed quantities based on salary levels.

Affiliation to the system is mandatory for both parties to a labor relationship and for self-employed persons.

Registration of the Employer and Employee under the Social Security Scheme

Any employer with the intention of starting a business or company and hiring employees must be registered with Social Security and must register its employees with the General Social Security Treasury in the province in which the company's registered offices are located.

The employer's registration with the Social Security system is valid throughout Spanish territory and for the duration of its existence. For identification purposes, a registration number is issued and an identification number is assigned to the work centers existing in each province.

Registrations, withdrawals and changes in the employees' status should be notified to the Treasury by the employer or, failing this, by the employee himself. New employees' registrations must be notified before the employee begins work and all withdrawals or changes in the status of an employee must be notified within six days from the last day of work or the date the change took place.

Social Security Contributions

Employers are obligated to pay a certain level of social security contributions or taxes for each employee on a monthly basis. In addition, employers should withhold from the employee's salary an additional amount that the employee is required to pay to Social Security. Thus, on a monthly basis the employer is responsible for withholding the amounts to be contributed by each employee from their payroll, for filing the necessary documentation, and for depositing both the employer's portion and the employee's portion of the Social Security contributions. Should the employer fail to withhold the employee's portion of the required Social Security contributions, or withhold the incorrect amount, the employer will be liable for the employee's contribution, or the excess, as the case may be, and subject to possible surcharges and fines.

The obligation to contribute arises as of the date work starts, continues even in situations of temporary incapacity during trial periods, and is only terminated when the employee ceases to render services and the Provincial Office of the General Social Security Treasury is notified of that fact within the statutory time limit.

The monthly contributions to be paid to the Social Security are determined by applying the "rate" or percentage established every year for each contingency covered (general contingencies, industrial accidents and occupational disease, unemployment, Wage Guarantee Fund and vocational training) to the "basis of contribution" for each employee. The basis of contribution is generally the employee's salary, within the maximum and minimum bases of contribution established on an annual basis. Salary not paid on a monthly basis should be prorated and included in the monthly calculation of the basis of contribution to ensure that the correct level of contributions is paid.

Please note that further to legal amendments passed in December 2013, the list of remuneration in kind items that are subject to social security contributions has been extended that could imply an increase in Social Security costs for companies. The list now includes the following items, which were previously fully or partially exempt:

- transport and long distance allowances;
- granting of company shares or quotas;
- lunch vouchers;
- infant education vouchers;
- pension plans; and
- medical insurance.

The maximum amount or basis of contribution for the year 2015 is 3,606.00 Euros per month. The minimum monthly basis of contribution varies from 1.056,90 Euros to 756,90 Euros depending on the contribution group the employee holds.

The rates of contribution that need to be applied to the monthly basis of contributions under the general Social Security scheme for 2015 are as follows:

- 28.3 percent for common contingencies, of which 23.6 percent is charged to the employer and 4.7 percent to the employee.
- The premium tariff passed by Royal Decree 2930/79 for Work-Related Accidents and Occupational Diseases, which varies substantially depending on the company's activity (or the nature of the employee's job position) and associated risks.
- 7.05 percent for unemployment, of which 5.50 percent is charged to the employer and 1.55 percent to the employee.
- Wage Guarantee Fund: 0.2 per cent charged exclusively to the employer.
- 0.7 percent for vocational training, of which 0.6 percent must be paid by the employer and 0.1 percent by the employee.

Thus, the general percentage of the basis of contribution that the employer must pay and must withhold from the employee's salary is as follows:

Contingency	% Company	% Employee	% Total
Common Risks	23.6	4.7	28.3
Unemployment	5.50	1.55	7.05
Wage Guarantee Fund	0.2	-	0.2
Vocational Training	0.6	0.1	0.7
Total	29.90³	6.35	36.25 (not including % for industrial/ work accidents)

³ In addition, the company will need to pay the applicable percentage for industrial accidents.

For example, if an ordinary indefinite employee earns 4,000 Euros per month, his or her basis of contribution will be 3,606.00 Euros per month, which is the maximum basis of contribution. The employer would then have to pay 29.9% of this 3,606.00 Euros (or 1,078.19 Euros) to social security every month. The employer would also be required to withhold from the employee's wages 6.35% of the 3,606.00 Euros (228,98 Euros). In addition, the employer would have to pay a certain percentage of the basis of contribution to cover work-related accidents and occupational diseases; this percentage varies significantly depending on the activity the company performs (or the specific job the employee performs).

Sick Pay

In cases of sick leave due to illnesses unrelated to the job, the Spanish social security system does not provide any coverage for the first three days of illness. The employer during those first three days will typically bear the cost of the employee's full salary. As from the fourth day of sick leave, however, the employee is only entitled to receive a temporary disability pension, unless the employer and employee have contractually agreed that the employer will complement the employee's temporary disability pension, or unless specifically required under the applicable collective bargaining agreement.

The amount of the Social Security temporary disability pension for employees is 60% of the employee's social security basis of contribution from the fourth to the twentieth day of sick leave, and 75% of the employee's basis of contribution from the twenty-first day to the date of recovery or through the date the temporary disability becomes a permanent disability.

From the fourth to the fifteenth day of illness, despite the fact that the 60% payment is considered a social security benefit, the employer is required to bear the costs of the 60% temporary disability pension. Subsequently, that is, from the sixteenth day of illness onwards, social security bears the cost of the respective 60% and 75% temporary disability payments (i.e., 60% from the sixteenth day through the twentieth day and 75% from the twenty-first day onwards). Payments continue throughout the period of temporary disability or sick leave, which under social security rules can last up to twelve months, and which exceptionally may be extended under certain circumstances to eighteen months.

Payment of the difference between the social security sick pay and an employee's normal remuneration is at the employer's discretion unless required by the collective bargaining agreement or otherwise agreed. Please note that many collective bargaining agreements do require such a payment.

Incentives to Employing Certain Types of Individuals: Social Security Discounts and Subsidies

Spanish law provides a number of inducements to encourage employers to enter into contracts of an indefinite duration, particularly with certain types of individuals, such as individuals who are unemployed and those who are disabled, or particular types of contracts, such as the indefinite-term employment contract to support entrepreneurship.

To qualify for the reductions, an employer must be up to date with all tax and social security payments, must not have been precluded from receiving such benefits as a result of a sanction, and must not have unfairly dismissed employees who qualified for similar social security discounts in the previous 12 months, or used a collective dismissal procedure in relation to such employees.

In addition, there are certain specific requirements provided for each reduction that the employer needs also to comply with. Furthermore, an employer is not entitled to benefit from social security discounts in relation to any of the following individuals, even if such persons fulfill the rest of criteria:

- Individuals who occupy management positions within the company or are members of the board of directors or other governing body of the company,
- Family members to the second degree of the employer or of any person falling into the category above,
- Employees hired under a special type of employment relationship,

Various types of discounts are available and are modified periodically, such that before hiring individuals, it is advisable to check for available discounts, as savings can be substantial.

In this regard, please note that the government has introduced an initiative to promote the use of indefinite term contracts. For all indefinite terms contracts entered into from 1 March 2015 the employer will be exempt from paying certain percentage of the social security contributions on the first EUR 500 of each employee's salary, provided certain conditions are met. The EUR 500 exemption will be adjusted proportionately for part-time employees. The measure will be applicable for a period of 24 months starting from the date the employment contract is signed, with 31 August 2016 set as the final limitation date.

Finally, please note that individual reductions may not be accumulated. In the event that an employee qualifies for more than one reduction, the employer should choose which reduction it would like to apply.

Immigration

Citizens of all EU Member States, citizens of the European Economic Area, and Swiss citizens (jointly referred to as “EU Citizens”) are entitled to work and reside in Spain. EU citizens may enter Spain by presenting their identity card or passport. They are free to establish their residence in Spain and employers may hire them as if they were Spanish.

Non-EU citizens that intend to enter Spain must identify themselves by means of a suitable identification document, normally a valid passport. A visa, to be obtained prior to entry, may also be required in some cases. Prior to entry into Spain, the authorities may require non-EU citizens to provide proof of sufficient economic resources for the duration of their stay. In addition, they must obtain a residence permit if they wish: (i) to stay in Spain for more than three months within a six-month period; or (ii) to transfer their residence to Spain.

Under general ordinary immigration regulations there are three kinds of residence permits for non-workers: (i) an initial permit, up to one year’s duration; (ii) a renewed residence permit, of two years’ duration; and (iii) a permanent residence permit, which is available after five years of legal residence and valid for five-year periods, thus requiring renewal every five years. The Law for Entrepreneurs has introduced the Spanish investor visa program by which individuals who have invested a specific amount either in real estate or other financial products may obtain an investor visa that is valid for one year that allows the holder to work or not in Spain. This investor visa may be converted into an investor residence permit that is valid for two years and may be renewed for equal time periods as long as the investment in Spain is maintained or increased. The investor visa or investor residence permit do not oblige the holder to remain in Spain for a given time period so the individual does not have to effectively live in Spain to obtain this type of visa or permit.

Work and Residence Permits for EU and Related Nationals

Absence of Requirement of Work and Residence Permit for Citizens of Certain EU and Other Countries

4 Royal Decree 240/2007, February 16th, 2007 regarding nationals of EU Member States.

In general, EU citizens do not require a work permit to work in Spain,. Nonetheless, EU citizens must observe certain formalities depending on the duration of their residence and on the nature of their employment activity in Spain. The spouse of an EU citizen, his or her children under the age of 21 years old and all relatives in the ascending line may also be hired to work in Spain even if they do not qualify as EU citizens, that is, even if they are non EU nationals. Other family members who do not qualify as EU citizens may be entitled to reside and work in Spain only in certain cases.

Independent of the right to work and reside in Spain, EU citizens, their spouses, children under the age of 21 years old and relatives in the ascending line who intend to reside in Spain for over three months are required to comply with certain registration formalities at police headquarters for identification purposes:

- EU citizens should apply for registration on the Central Register of Foreigners within three months of the date they entered in Spain.
- Spouses, children under the age of 21 years old and relatives in the ascending line should apply for a five year duration residence card as a family member of an EU citizen.

Pursuant to Law 45/1999, regarding the displacement of workers within the framework of a transnational provision of services within the EU territory, entities that temporarily transfer their employees to Spain because of a transnational supply of services (either by entities established in an EU member state or in a state that is a signatory to the agreement on the European Economic Area [EEA]) must guarantee to those employees that, notwithstanding the legislation applicable to their employment contract, they will also be protected by the Spanish legislation -- including any applicable collective bargaining agreement -- regarding minimum salary, working time, equal treatment and nondiscrimination, work health and safety, and freedom to participate in unionized strikes and meetings. The employers in such cases are also required to disclose certain information to the Labour Authorities for monitoring and coordination purposes. Specifically, the foreign sending company should report the existence of the secondment to the Spanish Labour Authorities before the employee starts to work, irrespective of its anticipated length.

Work and Residence Permits for Other Foreigners

As mentioned, the Spanish immigration scenario is such that two different immigration legislations coexist in parallel. We will, in relation to work permit options, only refer to the options offered by the Law for Entrepreneurs that provides more benefits or flexibility than the general ordinary immigration law to companies.

1. Entrepreneurs Visa.

The law establishes the possibility of obtaining a special entrepreneur visa to set up business in Spain. The special visa gives access to obtaining a resident permit in Spain when the business activity has effectively begun.

To obtain the special visa, Spanish authorities must have issued a report in favour of the activity based on its economic interest for Spain. For the report, authorities will take into account the foreigner's professional profile; the business plan and added value for Spanish economy, innovation or investment opportunities of the project.

2. Intra-company Transfers

The law introduces a new residence permit based on intra-company transfers. The foreign employee transferred to Spain must hold a university level degree or three years professional experience and three months of previous and continuous length of services with the current employer or any other company belonging to the multinational group. As commented, transfers must take place within the same group of companies but this is yet to be defined. The Law, depending on the circumstances allows processing of the permit while the employee is in Spain.

3. Highly Skilled Professionals

The law establishes even more beneficial treatment to obtain work permits to companies that qualify for their highly skilled or management foreign personnel. Current immigration regulations have already implemented a fast track procedure for the commented personnel of companies that meet specific criteria in terms of amount of personnel in Spain, investment in the country, net turnover, etc. The law smoothens the requirements and, for example, establishes fast track work permit processing to companies or groups of companies with at least 250 employees (current regulations establish that the amount of personnel must be 500 employees).

The processing of a work/residence permit for a highly skilled professional holding a University level degree or who has studied in a Spanish business school of prestige also follows fast track processing and is highly facilitated under the new Law for Entrepreneurs as all work/residence permit applications may be filed with a more flexible and agile procedure.

4. Family Members

In all cases, the foreign national's family members (spouse and children under 18 years old or over such age where, for health reasons, they are financially dependent) may process simultaneously or successively a visa or residence permit.

Note that the following benefits are common to all the new permits established by the Law for Entrepreneurs:

- Fast track processing at the Large Companies' Unit (LCU). The applications must be necessarily processed in 20 days from the date of the application.
- Approval of the permit without having to pass a labour market test
- Depending on circumstance, the application may be filed while the employee is in country in a legal capacity as a tourist or business visitor.

In sum, with this law, the Government has made a great advance in its strategy to stimulate foreign investment and attract foreign entrepreneurs and highly skilled personnel to Spain. We will be following developments closely, as further instructions will certainly define more precisely the practicalities of the law.

Your key contacts:

Baker & McKenzie – Madrid

David Díaz
+34 91 391 59 59
david.diaz@bakermckenzie.com

Fermín Guardiola
+34 91 391 59 60
fermin.guardiola
@bakermckenzie.com

Concepción Martín
+34 91 230 45 80
concha.martin
@bakermckenzie.com

Teresa Candel
+34 91 391 59 80
maria.teresa.candel
@bakermckenzie.com

Ester Maza
+34 91 391 5189
ester.maza@bakermckenzie.com

Jose Prieto
+34 91 391 59 50
jose.prieto@bakermckenzie.com

Baker & McKenzie – Barcelona

Alejandro Valls
+34 93 206 08 20
alex.valls@bakermckenzie.com

Mireia Sabaté
+34 93 206 08 20
mireia.sabate@bakermckenzie.com

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