Labour Relations Spain

1. INTRODUCTION

Individual labour contracts may not include terms that are less favorable to the worker than the minimum standards set by law or an applicable collective bargaining agreement. Any waiver of Spanish labour law or its effects by an employee is considered null and void. In recent times the Spanish labour law has been amended on a very important way many times. These reforms are the response of the government to the crisis.

2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION

2.1 THE OPEN-ENDED EMPLOYMENT CONTRACT

Duration
This type of contract is not subject to a limited period of time but is indefinite. Contracts may be full or part-time.

Formalization
The contract may be formalized either verbally or in writing. However, the written form will be required if one of the parties demands it. The regulation, grants annual Social Security Benefits for Companies that convert fixed-term employment contracts into open-ended ones. These benefits changes depending on the worker, for example, if the worker is a woman the benefit is higher.

On March 2009 a new type of rewarded contract was created to allow higher allowances for employees with the right to draw unemployment benefits. Later, on February 2012, this kind of contract was amended to allow better benefits.

Since 2012 if the employer changes a training contract or a replacement contract into an open-ended employment contract that will allow a benefit in Social Security of 500€ annually for a period of time of three years. If the worker is a woman the amount increases from 500€ to 700€.

The Workers' Statute allows for the employer and employee to agree in writing to a trial period that cannot exceed 6 months for qualified technicians or 2 months for non-qualified workers unless otherwise established in the applicable collective agreement. This trial period increases to 1 year in entrepreneurs contracts that were created in 2012.

Termination
Justified disciplinary dismissals do not require the employer to pay any severance compensation. However, the employer must compensate an employee who has been objectively dismissed by providing him/ her with the equivalent of 20 days' salary per year of service, taking into account on a pro-rata basis any fractions of a year by months, up to a maximum compensation of 12 months' salary (however, a larger severance payment may be negotiated).

The employer must notify the employee in writing of the circumstances of a disciplinary dismissal, stating the facts giving rise to the dismissal and the effective date of termination. If a Court determines that a dismissal is unfair, the worker is entitled to a severance pay of 33 days' salary per year of service up to a maximum limit of 24 months' salary. In addition, the employee will also be entitled to receive interim salary until the notification of the Court decision.

The minimum legal severance compensation for collective dismissals is 20-day salary per year of employment with a maximum of an annual payment. However, the general practice is that the collective dismissal ends with an agreement between the employer and the employees' representatives.

The advantages of reaching an agreement with employee representatives during the consultation period are no longer as important as before since the labour reform on February 2012. Nowadays it is not required any authorisation from the labour authorities.

Since the labour reform on February 2012, the objective dismissal is allowed because of worker intermittent absences even if they are justified by the employee. The absences must be above 20% of working time during 2 months consecutively or 25% in 4 months discontinuous in a period of 12 months. Before February 2012 the absenteeism rate in the company had importance but now these percentages are always activated, even if the absenteeism in the company is almost nonexistent.

2.1.1 Open-ended employment contract to support the entrepreneurs

The purpose of such a contract is to stimulate the recruitment in companies with less than 50 workers on staff. As we have said above, this type of contract have a trial period of one year. The employer can benefit from a tax deduction of 3.000€ if the employee is under 30. Moreover, if the employee is from 16 to 30 years, the employer has a benefit in the Social Security of 1.000€, 1.100€ and 1.200€ in the first, second and third year respectively. In the event of contracting a long-term unemployed, the employer has a benefit of 1.300€ in each of the three years, and if it were a woman the amount increases to 1.500€. Furthermore, if the worker is receiving certain public benefits when it is contracted, the employer has other tax benefits in form of deductions.

2.2 STRUCTURAL FIXED-TERM EMPLOYMENT CONTRACTS

A worker is hired on a part-time basis only if the hours stipulated daily, weekly, monthly or annually are fewer than the ordinary working hours of a "comparable employee". A comparable employee is considered to be one with a full time working schedule. If the employment relationship continues *de facto* for any reason after the term, the agreement is tacitly extended for an indefinite period.

The modification introduced by the Labour Reform of 1st July 2006 regarding fixed-term employment contracts in general is very important. Employees who in a 30-month period have been employed in the same work place at the same Company for a period of more than 24 months, with or without interruption, will automatically acquire the conditions of an indefinite employment relationship. Now, because of the crisis, this rule is temporarily in suspense according to the Labour Reform of 10th February 2012. The suspension is stipulated until 31st of December 2012.

2.2.1 Contracts for a Specific Limited Service or Job

The purpose of such a contract is to carry out a specific job or provide services which have some independence and substance of their own within the employer's business but are limited in time and are to be carried out or provided for a period of time that cannot be fixed in advance. Contracts may be full or part-time.

Duration
These contracts last for the duration of the work or services in question. The length of such contracts cannot exceed three years, and twelve months extra if the collective agreement allows. If the contract were to fix a duration or term, this may serve as a guideline. If the duration of the work or services is longer than one year, fifteen days' notice of termination must be given. If the employer fails to give such notice he must pay the wages for the relevant period in lieu of notice. If the effective duration of these contracts is less than seven days, the Company's contribution to Social Security covering normal circumstances will increase by thirty-six percent.

Formalization
The contract becomes an indefinite contract, barring proof to the contrary showing that the contract is clearly of a temporary nature, where ***(i)*** it has not been made in writing; ***(ii)*** the employee has not been registered with the Social Security after a period of time equal to or greater than the trial period; ***(iii)*** neither party terminates the contract at the end of the contracted period and the employee remains on the job; ***(iv)*** furthermore, any contracts made fraudulently are presumed to be indefinite contracts.

Termination
At the termination of this contract, unless it is for a temporary replacement, the worker shall be entitled to receive severance compensation from 8 to 12 days' salary per year (with an adjustment for any proportion thereof) worked or that which may arise from the specific regulations applicable, the amount between 8 to 12 days depends on the date of the contract:

- 8 days per year of work in contracts dated until 31st December of 2011;
- 9 days per year of work in contracts dated from 1st January of 2012;
- 10 days per year of work in contracts dated from 1st January of 2013;
- 11 days per year of work in contracts dated from 1st January of 2014;
- 12 days per year of work in contracts dated from 1st January of 2015.

If the contract exceeds a duration of 1 year, 15 days' notice must be given prior to termination.

2.2.2 Contracts for Extraordinary Production Requirements, the Accumulation of Work, or Excess Orders, which are nevertheless within the Company's Normal Activity.

Contracts may be full or part-time.

Duration
At most 6 months out of every 12, starting from when the circumstances or reasons for entering into such a contract arise. Collective wage agreements, either at the level of the industry or in its absence at a lower level may modify the maximum duration of these contracts, as well as the period during which they may be entered into. In any case, the maximum duration of these contracts is 12 months within any 18 month period. In the event of agreeing to a period less than the maximum legal or conventionally established term, this contract may be extended by agreement between the parties one single time, but the total term of the contract may not exceed said maximum term. If the effective duration of these contracts is less than 7 days, the company's Social Security contribution covering ordinary circumstances will increase by 36 percent.

Formalization
The contract must be in written form when duration exceeds a 4-week period or when it is part-time. The employer must indicate the cause or circumstance, which justifies the contract. The contract becomes an indefinite contract barring proof that the work is of a temporary nature where: ***(i)*** It has not been made in writing; ***(ii)*** the employee has not been registered with the Social Security after a term equal to or greater than the trial period; ***(iii)*** at the end of the contractual term the employee remains on the job; ***(iv)*** the contract has been entered into fraudulently.

Termination
At the termination of this contract, unless it is for a temporary replacement, the worker shall be entitled to receive severance compensation from 8 to 12 days' salary per year (with an adjustment for any proportion thereof) worked or that which may be established by specific applicable regulations. Every year the severance compensation will increase according to the following rules:

- 8 days per year of work in contracts dated until 31st December of 2011;
- 9 days per year of work in contracts dated from 1st January of 2012;
- 10 days per year of work in contracts dated from 1st January of 2013;
- 11 days per year of work in contracts dated from 1st January of 2014;
- 12 days per year of work in contracts dated from 1st January of 2015.

2.2.3 Interim Contracts

These are for ***(i)*** replacement of workers with the right to reserve their jobs; ***(ii)*** replacement of workers on maternity leave without pay; ***(iii)*** replacement of workers on official leave to care for family members, the replacement worker having received unemployment benefits or welfare payments for more than 1 year; ***(iv)*** covering of a job temporarily while the selection or promotion process to fill the position definitively is in progress; ***(v)*** replacement of workers in training by workers receiving welfare payments, in which event a certificate issued by the public administration or entity in charge of managing training must be attached; ***(vi)*** replacement of disabled workers whose contract is suspended due to temporary disability, the replacement worker being an unemployed handicapped person contracted while the other's temporary disability persists.

Duration
The contract **is for the length of time that the job is reserved for the replaced employee**, or for the time it takes to complete recruitment or promotion of the employee who is to fill the job permanently. In the latter case, the period may not exceed 3 months. In recruitment processes undertaken by Public Administrations, the duration of the contract shall be that foreseen by the Administration for completing the relevant process.

The contract lapses when the employee who has been replaced returns to work: either at the end of the statutory or agreed term for the employee to return to the job; or on the reasons for reserving the job becoming no longer applicable; after the 3-month term foreseen for recruiting or promoting the employee who is to hold the job permanently, or after the applicable term in the case of such contracts being made by Public Administrations.

Formalization
Interim contracts must be full-time except in the following cases: ***(i)*** where the employee replaced was contracted to work part-time or when it is a case of temporarily covering a post

that is intended to be a part time post ***(ii)*** where the contract is entered into in order to make up the full, working day of a person who is exercising his or her recognised right to time off in order to look after a child under 6 years of age or a physically or mentally disabled person. This also applies if the person is off work to take direct care of a family member, either by birth or marriage, up to twice removed, who for reasons of age, accident or illness cannot look after his or herself. Finally, this applies where the contract is entered into in order to replace a person whose working day has, by agreement, been reduced in accordance with what is legally or conventionally established.

Termination
There is no need to give notice of termination, unless otherwise agreed.

2.3 OCCASIONAL FIXED-TERM EMPLOYMENT CONTRACTS

2.3.1 On the Job Training Contract

Its goal is to facilitate the professional practice following on from the studies the employees have accomplished. After 5 years since the studies were finished this type of contract is not allowed. The worker must have completed one of the following studies: University Degree, Technical Engineer, Technical Architect, University Bachelor, Engineer, Architect and Technician or Highly Qualified Technician for a specific professional training, as well as equivalent officially recognized qualifications to carry out the profession.

Duration
Shall not be less than 6 months and not more than 2 years. If there is to be a period of probation, this shall not exceed 1 month for staff with a middle degree or 2 months for qualified technical staff, except when it is otherwise established in the Collective Agreement.

Formalization
The employee shall provide the employer with a true copy of the degree, certificate of his application or certificate showing that the studies have been completed. The employee is entitled to work in a professional group and category or professional level, which is in accordance with the professional classification system in force in the company.

Remuneration
During the first or second year of the contractual term, the salary must not be less than 60 or 75 per cent respectively of the salary established in the collective agreement for an employee who carries out an equivalent job. It shall, in no case, be less than the minimum inter-professional salary.

2.3.2 Apprenticeship Contract

Apprenticeship contracts allow employees to acquire theoretical and practical training.

Duration
Apprenticeship contracts are valid for 1 year to 3 years (before February 2012 the minimum was 6 months and maximum 2 years). Apprentices can be rehired as an apprentice once this maximum duration has been reached with the only requirement of changing his/her assignment. Upon completion of the apprenticeship, employers must provide apprentices with a certificate stating the training's duration and nature.

Employers must supervise the development of the trainee, either personally or by designating a qualified or professionally experienced tutor. Unless otherwise established in the collective bargaining agreement, one tutor should supervise a maximum of 3 trainees. If employers do not meet the obligations to train the employees, the contract is presumed to be an ordinary contract.

Formalization
Apprenticeships are restricted to those who are between 16 and 25 years old (employees may be older if disabled). The last labour reform established a maximum age limit of 30 years until the unemployment rate fall under 15%.

In addition to the age limits there are some maximum working time. The employee cannot work more than 75% of the workday during the first year and 85% during the second and third years.

Apprenticeship contracts must be in writing and must specify: the occupational level, the distribution of time between theory and practice, and the contract's duration.

Remuneration
Collective bargaining agreements prescribe apprenticeship salaries, which cannot be lower than the minimum salary. Once the employee obtains the professional training degree, salaries increase in proportion to the time dedicated to actual work.

2.4 SPECIAL TOP EXECUTIVE EMPLOYMENT CONTRACT

The special employment relationship of top executives is regulated in Royal Decree 1382 of 1August 1985 on Top Manager Personnel, which applies to all personnel who may exercise the employer's authority with full autonomy and responsibility in order to achieve the employer's general objectives and who are restricted only by the direct instructions of the Director or the Board of Directors. If an employee exercises such authority, he or she will be deemed to have the special labour relationship called top manager relationship, and the employment contract will be subject to the provisions of the Decree on Top Managers. The Spanish labour courts have interpreted very restrictively who qualifies as a top manager and falls under the Decree on Top Managers.

Duration
The duration of the employment agreement is not subject to a maximum or minimum period. In the absence of a written term, the agreement is deemed to be for an indefinite period of time.

Governing Rules
The predominant characteristic of this top manager employment relationship is the parties' trust. The applicable sources of law for this special employment relationship are: the contract agreed between the parties, the Decree, which provides the minimum mandatory employment conditions, and the Principles of civil and business law.

Termination
The top manager may terminate the agreement so long as he gives a minimum of 3 months' notice, although the required notice may be extended to 6 months if provided in writing in an

indefinite employment contract or in a contract, which exceeds 5 years. In such cases of voluntary terminations, the top manager is not entitled to any severance compensation.

The employer may terminate the contract without cause, providing [the same] notice as set out above for the top manager's termination at will, and, in addition, paying the severance compensation provided under the employment contract, or, in the absence of such a provision, a severance compensation equivalent to 7 days' salary in cash per year of service up to a maximum of 6 months' salary.
Whenever there is a cause, the employer may also terminate the employment agreement for the employee's material breach as set forth in the general Employees' Statute regulation for 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 to the general labour law system lies in the amount of the compensation to be paid in case the dismissal is declared unjustified. The severance compensation will be computed on the basis of 20 days' salary for each year of employment up to a maximum of 12 months, unless otherwise agreed in writing in the employment agreement.

3. SOCIAL CONTRIBUTIONS AND DIFFERENT KINDS OF BENEFITS IN SPAIN

3.1 PRESENTATION OF THE SPANISH SOCIAL SECURITY SYSTEM

Our Social Security System has always had a strong professional component providing professional risks coverage in the event of any loss of salary due to temporary or permanent sick leave, retirement, death and unemployment.

However, there are also important manifestations and tendencies towards universality such as the non-contributive benefits (children in charge, disabilities and retirement or old age), which can be sought whenever there is a need to be protected and the person has no income. On the other hand, medical assistance is increasingly being separated from the Social Security system which has focused mainly on benefits of economical character.

The Social Security System is based on a number of special regimes governed by specific norms. 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.

The government prescribes the percentage of social security contributions each year, which is based upon the aggregate of monthly salary plus any amount, not accrued on a monthly basis, divided by 12 with a maximum and a minimum base.

Under Spanish Labour Law, being part of the Social Security system is mandatory for both parties in a labour relationship (employer and employee). Both parties will pay their corresponding Social Security contributions. Employers have the basic responsibility to collect and pay the contributions. The employer must contribute both his/her own contribution as well as the employee's contribution. The Company must apply for registration with the appropriate Social Security System.

Employers are required to contribute to the Social Security, as well as Unemployment, Salary Guarantee, Professional Training and Solidarity Funds. Employers must complete the official contribution forms for this purpose.

Should the Labour Authorities find out that employees are working without being registered, the Company could face a fine ranging from 3.126€ to 10.000€ per unregistered employee.

3.2 THE STATE PENSION SCHEME

The Social Security System contains two basic levels of protection, the contributive and the non-contributive. Both differ fundamentally, according to their area of application, their protective action, management and finance.

The contributive level comprises employed and self-employed workers, as well as those assimilated such as religious people, sportsmen, students, etc.

The non-contributive level of the Social Security system applies to all Spanish Citizens (and EU residents), as well as foreigners that legally reside in Spain. The protective action covers situations such as old age, retirement (from 67 years on), disability, etc. These benefits are financed by taxes.

The employer will be exclusively liable for the employee's contribution under the General Social Security Scheme and will likewise be responsible for withholding the amounts to be contributed by each employee from their payroll, for filing the necessary documentation, and for depositing the amount of the Social Security contributions.

3.3 THE UNEMPLOYMENT BENEFIT SYSTEM

To have access to the unemployment benefit, contributions must have previously been made on behalf of the worker. The National Public Employment Service manages and controls these benefits for unemployed workers, with the exception of the Special Scheme of Social Security for Maritime Workers, the management of which is under the charge of the Maritime Social Institute.

Protected Situations
These are situations where employees are not employed either because they lose their job temporarily or permanently.

The beneficiaries are entitled to receive Unemployment Benefit, always provided they ***(i)*** have made social security contributions over a minimum period of 360 days within the last 6 years before they become unemployed, ***(ii)*** are within the scope of one of the situations of unemployment prescribed by law, ***(iii)*** do not find themselves in one of the situations of incompatibility, which are legally stipulated, ***(iv)*** are registered as unemployed with the Spanish Institute of Employment (INEM) and apply for their unemployment benefit within 15 days of becoming unemployed.

During the first 180 days the amount of unemployment benefits due to dismissal or cancellation of an employment contract, is at 70% of the base amount, which is obtained by dividing 180 by the sum of contributions made in the 6 previous months. After 180 days, the allowance is 50% of the base pay. The calculation of the allowance is based on the past 6 years of employment.

The worker is entitled to this allowance for the first two years of unemployment. The worker may also apply for an extension after this period. If the employment relationship is terminated as a result of the employee's deliberate wrongdoing, the employee may not receive unemployment benefits.

4. FOREIGNERS WORKING IN SPAIN – TRANSFERS OF UNDERTAKINGS

4.1 FOREIGNERS WORKING IN SPAIN

Foreigners over 16 years of age, willing to carry out any gainful activity either as an employee or employer, will be under an obligation to obtain the corresponding official permission to work.

Foreigners are those who lack Spanish nationality. Those who stay in Spanish Territory are obliged to conserve the documentation that proves their nationality and explains the reasons for their stay in Spain.

In order for a foreigner to obtain an initial work permit, Spanish Authorities generally stipulate that the national situation of the employment must be such as to warrant hiring the foreign worker.

Some of the requirements that Spanish Authorities may look for in a foreigner in order for him to be entitled to a work permit are: to be the spouse or daughter or son of a foreigner who resides in Spain with a renewed work permit; to be the holder of a previous authorisation for work, with the intention of renewing it; to be a refugee or stateless person where certain conditions apply; to be in charge and taking care of Spanish ascendants or descendants; to have been born in and being a resident in Spain; to be the daughter or son, grandson or granddaughter of a Spanish citizen by birth, etc.

The legal requirements to employ foreign workers are the obtaining of a residence and a work authorisation. Foreign workers are able to have recourse to the Law when the following requisites are met:

- there are no applications from nationals or legal residents that may occupy the offered job;
- the existence of a work contract signed between employer and employee. The employer has to express his intention of maintaining the employment contract for at least 1 year (with some exceptions);
- the Company has to be subscribed to the Social Security System and has to fulfil its tax duties;
- the possession of a degree or qualification that proved she/he is capable of exercising the profession.

4.2 TRANSFERS OF UNDERTAKINGS

The change of ownership of a company, a work center, or a stand-alone production unit does not in and of itself extinguish the employment relationship. Rather, the new owner replaces the former with respect to employment and Social Security rights and obligations. It is necessary, however, to clarify that the mere transfer of activity does not mean that the requirements of Article 44 of the Spanish Employment Code are met. What is necessary is the transfer to the

new owner of the basic assets, which make up the infrastructure or business organization of the operation.

It is clear, then, that at the time of replacement, the new owner must assume unconditionally and peacefully the former owner's position – although possible justified changes in the future are not ruled out. This prevents the new owner from making any detrimental changes such as, for example, refusing to employ some workers at all or effectively or introducing a probation period. The new owner cannot in any way limit or undermine the workers' enjoyment of their acquired rights. The new owner is bound by all the employment rights and obligations which existed with the former owner, regardless of their origin. This means also ensuring that the new employment relationship resulting from a succession is the same as the old with respect to the worker's status. The worker's status may not be diminished in any way.

Not only is the employment relationship maintained, as we have seen, but the Social Security and supplementary worker benefits must be maintained as well.

During the first three years the new and old owner are both liable for the labour debts and also for the Social Security debts.

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