

# Spanish employment contracts

The Spanish labour system is known as rigid and Scandinavian companies operating in Spain often find it difficult to understand that the employer does not have a notice period for the termination of an employment contract.

## General basic conditions

In Spain, there are two different types of employment contracts.

- The general employment contract.
- The executive employment contract.

The following points are of particular relevance for each one of them:

**Language:** Any Spanish employment contract has to be written in Spanish. It is possible to draft in two languages, however the Spanish language shall prevail.

**Law and Jurisdiction:** The employee will be working in Spain so the contract must be in accordance with Spanish Legislation. Any dispute would be submitted to Spanish Labour Court.

**Vacations / Holidays:** Generally, vacations are 30 days or 23 working days per year. Salary must be paid during vacations and the employee will have his vacation during the working year (including first working year).

Renunciation of vacations is not permitted by the Spanish Law.

There are national and local bank holidays (14 days). Some bank holidays can be transferred to Monday or Friday by the authorities.

**Expenses for the company:** The company shall pay social security for the employees (approx. 32,30% of the gross salary). It is important to take this into account when negotiating the gross salary with the employee.

**Salary:** The payment of salary must be done timely. Normally salaries are paid the last day of the month or the first day of the following month.

The company must withhold the employee's part of social security (approx. 6,4%) and personal taxes of the employee.

**Social security coverage:** The payment by the employer and employee to the Spanish Social Security covers:

- *Maternity/Paternity leave:* The Spanish Administration is paying during this period, but the employer must still pay the social security contributions.

- *Illness/Incapacity:* The employer pays the salary but has a compensation in the social security contribution depending on the duration of the illness (60% or 75%)

- *Unemployment:* If the employee has been working during 6 years the right of unemployment payment by the administration is 2 years. For 3 years of working the right of unemployment payment is 1 year.

- *Retirement pension:* The administration pays pension based on years worked and contributions paid to the

social security. For the year 2021 and after 37 years 3 months work, the employee can obtain 100% of the gross salary with a maximum amount of 37,904 euro.

## General employment contract

Regulated by the Spanish Labour Act (*Estatuto de Trabajadores*) and the collective agreements.

**Form:** A standard form is used. It is possible to enclose annexes with special clauses (confidentiality, non-competition...). The contract has to be registered within the Labour authorities.

**Working hours (full-time):** Working hours are determined by the collective agreements. Usually: 40 hours / week excl. lunch.

**Evaluation period:** Depends on the employee's position and the collective bargaining. General rules are max. 6 months for qualified technical and max. 2 months for the rest of employees.

During the probationary period both parties can terminate the labor relationship without notice.

**Termination:** The employee must give a notice period for the termination of the agreement according to the collective agreement. Normally 1 month for managers/directors and 15 days for technical employees.

The employer never gives a notice period and can terminate the agreement at any time, but it is compulsory to give compensation to the employee.

If there is not a demonstrable cause, the compensation is 33 days of salary per worked year (before the 12.02.2012 the compensation is 45 days of salary per worked year).

If the reasons of the termination are based on demonstrable causes (economic or organizational) the compensation shall be reduced to 20 days of salary per worked year.

To change the position, duties, working place, etc. of an employee, it has to be done in writing and with

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valid arguments.

The employee can choose between accepting the new modifications or terminate the agreement with compensation from the employer. The court will decide if the compensation shall be 20 or 33 days of salary per worked year.

## Executive employment contract

Regulated by the special labour legislation for directors, Royal Decree 1382/1985, and applies only if the executive takes decisions and works independently.

The agreement between the employer and the director (executive) is based on mutual trust and the parties agree on the content. There are some differences regarding general agreements such as:

**Working hours:** Extraordinary hours are included into the salary.

**Notice period:** The parties can agree on notice period in case of termination.

**Compensation from the employer upon termination:** The parties can agree on the compensation but it cannot be less than 7 days of salary per worked year.

**Vacation:** The parties can stipulate additional vacation than the compulsory 30 days per year.

**Penalties:** It is possible to agree on a penalty if the employee breaches the non-competition clause, secrecy, etc...