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COMPLEMENTARY INFORMATION

3. LABOR AND SOCIAL SECURITY REGULATIONS



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3. LABOR AND SOCIAL SECURITY REGULATIONS

3.1 Introduction

It is understood that there exists a labour relationship when the employee, voluntarily, renders its services for a consideration, on behalf and under the management and organization of another person, company or individual, called the employer.

The basic Law that governs these sorts of relationships is the Workers' Statute (contained in Royal Legislative Decree 1/1995). This law regulates the rights and obligations of employee and employer, the general conditions of labour contracts, the employees' representatives, and the collective bargaining.

Nevertheless, the Statute covers also several relationships that, albeit having labour character, have a more specific regulation given their specialty, such as:

- Senior executive officers
- Domestic employees
- Convicts working in jail
- Professional sportsmen
- Artists in public shows
- Sales representatives
- Disabled body workers that render their services in special working centres
- Longshoremen that work for State owned companies or in ports managed by an Autonomous Community
- Other jobs declared as special labour relationships by any Law

The regulation of the Workers' Statute can be improved by a Collective Agreement; it is a written agreement subscribed between the employer or its representative organizations and the workers' representatives that establishes the working conditions and any other issues that could affect the labour relationship and the collective interests of the contracting parties. Those Collective Agreements duly subscribed under the Workers' Statute are a relevant source of Labour Law with the same force as a Law.

Furthermore, the conditions established by the Statute and a Collective Agreement can be improved by an individual covenant included in a work contract.

3.2 General Rules

Labour Law is conceived to develop a protecting function in favour of the weakest part in the labour relationship, that is, the employee, trying this way to correct the initial imbalance between the contracting parties.

3.2.1 Main tenets of the labour legislation

- *Pro operario principle*

This principle implies that, if there is a doubt as to the meaning or scope of a regulation, it must be interpreted in such a way that is more advantageous to the employee.

- *Most favourable regulation principle*

This principle conveys the application of the regulation or the interpretation of the regulations which are more favourable to the employees' interests, regardless of the hierarchical rank of the regulation. In order to choose the most favourable regulation, it must be considered as a whole, it is not possible to pick several dispositions of different regulations.

- *Principle of the most advantageous condition*

This principle conveys that the rights acquired by the employee must be maintained, consolidated by virtue of the work contract, individual agreement, an unilateral declaration of will of the employer, or by usage and custom, even in the case that at a later moment a less favourable regulation is approved.

- *Principle of the inalienability of rights*

As one of the main tenets in Labour Law is that the contracting parties are not equal, the Workers' Statute forbids the disposition of workers' rights that had been approved by regulations of mandatory application and the rights recognized as non-disposable by a Collective Agreement.

- *Principle of employment stability*

This principle conveys the expectative of the employee to maintain its job, provided that the employee respects the conditions established in the contract and the Law. This principle justifies that the general rule in labour law contracts is indefinite contracts, and that temporary contracts are strictly occasional.

3.2.2 Minimum work age

The minimum work age is 16 years. Younger people can participate in public shows with a permit granted by the Labour Authorities.

Workers younger than 18 years cannot develop night-time jobs, or jobs that the Government declares unhealthy, arduous, harmful or dangerous, nor work overtime.

3.2.3 Contract formalities

Although there is a freedom of form in labour contracting, there are certain contracts that must always be celebrated in written, that is: partial-time contracts, service or per opera contracts, training contracts, fixed-discontinuous contracts, substitution contracts, work at home contracts, insertion contracts, contracts in which the employee is going to work for the employee out of Spain, and temporary contracts whose length exceeds four weeks. Failing to observe this formal requirement, the contract will be understood to be of indefinite length and for the full working day, unless there is proof to the contrary.

3.3 Labour Contracts

3.3.1 Types of labour contracts

As a general rule, work contracts are of indefinite length although there are temporary contracts which require for a cause for their validity. Work contracts can be classified in indefinite contracts and temporary contracts. There are three different temporary contracts: per opera or service contracts, temporary contract due to manufacturing circumstances, or interim contracts.

Apart from the indefinite contracts and temporary contracts there are other types of contracts, such as relay contracts, fixed-discontinuous contracts, work at home contracts or partial-time contracts.

- *Indefinite contracts*

These types of contracts imply that the contract is not subject to a definite length in time.

There is another modality of indefinite contract, named contract to promote indefinite contracts of unemployed and temporary employees with difficulties to get a new job. This contract must be made in written and in an official form.

- *Fixed-discontinuous contract*

This contract is made to hire employees that perform certain works that are of a fixed-discontinuous sort, which are not repeated at any given date, within the usual business activity.

Fixed-discontinuous employees will be called in the order and the way that is determined in the Collective Agreements, and if that is not observed, the employee can file a dismissal claim before a Court of Justice, starting from the moment that the worker knows about the lack of notification.

This contract must be made in written and in an official form.

• *Temporary contracts*

Temporary contracts must have a cause, and for that reason it is only possible to hire temporarily in the cases admitted by Law.

	OBJECT	FORMALITY	DURATION
SERVICE OR PER OPERA CONTRACT	Realization of certain works or services, which are autonomous or specific in the activity of the company, and whose period of execution is definite, although unknown	In written, it is necessary to describe the works or services clearly and precisely	The amount of time required for the execution of the work or service. If after the work is finished the employee carries on working in the company, the contract will be understood to be prorogued tacitly for an indefinite term. If duration of the job is established, will be orientative.
EVENTUAL CONTRACT FOR PRODUCTION CIRCUMSTANCES	Attend circumstantial requirements of the market, build-up of work, or an excess of orders, within the usual business activity	In written if the duration is longer than four weeks, or if it is a part-time contract. If it is made in written, the following items must be included: - Specification of the type of contract - Duration - Cause or circumstance that justifies this contract, expressed clearly and precisely	It must be defined at the moment of its signature. Maximum of 6 months in one year period of reference. Collective agreements can modify the length, but with an 18 month limit as period of reference, and duration that does not exceed 3/4 of the period of reference. It is possible one and only one prorogation if the limit established in the law or the Collective Agreement has not been exceeded. The contract will be terminated when its duration expires.
INTERINITY CONTRACT	For the covering of transitory vacant posts in the following cases: - Substitution of workers which have a right to the reservation of their post - Temporary coverage of a vacant job during the time needed to the selection or promotion of an adequate candidate - Substitution of autonomous workers, working partners or a working partner in a cooperative entity	It must be formalized in written, including the following information: - Name of the employee that has been substituted - Cause of the substitution - Description of the post assigned to the employee, if the work is the same of the substituted worker, or if the substitute is another employee of the same company	The contract will have a duration that equals the absence of the employee that has been substituted, or during the time needed for the process of selection or promotion, with a limit of 3 months, and it is not possible to make another substitution contract.

There are certain issues common to temporary contracts:

- If the contract has been signed for a term inferior to the maximum established in the Law or in a Collective Agreement, when it expires without being denounced or expressly extended, it will be considered that it has been prorogued until the limit of the maximum term established in the Law or in a Collective Agreement. Once the maximum term is reached, if the employee continues working, the contract will be considered to be prorogued indefinitely, unless it exists proof to the contrary.
- If the contract has been signed for a term longer than one year, the contracting party that denounces the contract is obliged to notify the termination to the other party with at least 15 days, with the exception of the substitution contract in which the parties agreement will be applied.
- Employees that within a 30 month period had been hired under any of the temporary contracts mentioned for more than 24 months, continuously or discontinuously, in the same company, with two or more

temporary contracts, directly or through a temporary work agency, will acquire the condition of fixed employees.

- The extinction of per opera or service contracts and the eventual contracts for production circumstances will accrue in favour of the employee an indemnity equal to 8 days of salary per working year.

- *Training contracts*

	WORK PLACEMENT CONTRACTS	TRAINING CONTRACTS
QUALIFICATIONS	Required. The work must be suitable to the qualification of the employee The company does not acquire training nor supervisory obligations different to the ones related to a regular work contract	Not required Mixed nature of the contract: - Work for a remuneration - Acquisition of the technical and practical training required for the correct development of a qualified job (Minimum 15% of the work time must be dedicated to training)
FORMALITIES	Written If not written, will be considered an indefinite contract	Written
DURATION	From 6 months to 2 years (unless disposition on the contrary in the Collective Agreement) The contract can be prorogued only twice If the duration is 1 year can be prorogued	From 6 months to 2 years (unless disposition on the contrary in the Collective Agreement) A Collective Agreement can extend its duration to 3 years 4 years for disabled workers
SALARY	Not lower to 60 or 75 % during the first and second years, respectively, of the salary established in a Collective Agreement for an employee that makes similar work	As established in a Collective Agreement, with the limit of the minimum inter-professional salary Usually, it is the same as the placement contract, but reduced in 15% for the training time
OTHER REQUIREMENTS	It can be celebrated only in the 4 years subsequent to the acquisition of the qualification	Workers older than 16 years and younger than 21 years

There are certain issues common to training contracts:

- Both can be subject to probation period, although with different temporary limits.
- Both are computed for seniority purposes.
- If the contract has been signed for a term inferior to the maximum established in the Law or in a Collective Agreement, when it expires without being denounced or expressly extended, it will be considered that it has been prorogued until the limit of the maximum term established in the Law or in a Collective Agreement. Once the maximum term is reached, if the employee continues working, the contract will be considered to be prorogued indefinitely, unless it exists proof to the contrary.
- At the end of the contract the employer must issue a certificate.
- The contract will be converted into a regular contract if the employer breaches totally its obligations in theoretical training.
- It will be presumed that the contracts have been signed for an indefinite period when,
 - Have not been signed in written
 - The workers had not been registered in the Social Security, within a period equal to the maximum probation time
 - Have been signed in fraud of Law

- It is possible to prove that the contract has a temporary nature, unless they have been signed in fraud of Law.

- *Relay contracts*

The contract signed with a person that was previously unemployed or with a temporary duration contract with the same company, in order to substitute partially an employee that has applied for a part-time retirement pension, as the retired employee obtains the pension and at the same time a partial time salary.

The duration of this contract will be indefinite, or at least equal to the time remaining for the substituted worker to reach retirement age. If, at the time of reaching that age, the employee remains in the company, the relay contract celebrated with a specific termination date can be prorogued of mutual agreement year by year, being extinguished in any case at the end of the year in which the relayed worked finally and totally retires.

In case that the partial retirement happens after the worker reaches the legal retirement age, the relay contract signed by the company to substitute the part of the work day left vacant can be indefinite or covering one year. In the last case, the contract will be prorogued automatically each year, and will be extinguished in the way mentioned above.

The job performed by the worker hired under a relay contract can be the same one of the worker substituted, or any other one similar, understood as the development of tasks corresponding to the same professional group or of equivalent category. When, given the specific requirements of the job, it was not possible, there must be at least a correspondence between the contribution bases of both.

The contract must be formalized in written in an official form.

When the contract is terminated, the worker hired under a relay contract will have the right to obtain an indemnity equal to 8 days of salary per year of work.

- *Part time contracts*

It is understood that there is a part time contract when it has been agreed that the rendering of services comprises a number of hours in a day, in a week, or in a month, lower than the work day of a full time worker of the same company and work centre, with the same type of contract, and which performs an identical or similar work. If in the same company there was not any comparable worker at full time, it will be considered the full time work day established in the Collective Agreement of application or otherwise, the maximum work day established by the Law.

The contract must be formalized in written in the official form, in which information must be given about the number of ordinary working hours each day, week, month or year, and its distribution. Failing to observe these requirements, the contract will be considered to have been celebrated as a full time one, unless there is proof on the contrary that credits the partial time character of the services hired.

3.3.2 Probation period

The probation period is the period of time, agreed between the employee and the employer, during which, any of the contracting parties, can unilaterally terminate the labour relationship, without giving neither notice nor indemnity.

The purpose of the probation period is that the employer ascertains if the employee meets the professional characteristic required for the job, and likewise, that the employee decides if it conveys to its interests to maintain the labour relationship just started.

It is required that this clause is included in written in the work contract and that is adjusted to the limits established in a Collective Agreement, or the limits established in article 14 of the Workers Statute, that is:

- 6 months for workers with a university degree
- 2 months for workers without a university degree
- In companies with less than 25 employees, the probation period cannot exceed 3 months for employees without a university degree

In temporary contracts it is also valid to establish a probation period.

On the other hand, it is not possible to agree on a new probation period if the employee has previously worked in the same company, or when hired after a placement contract, or in the case of business succession.

Once the duration period has finished, without desisting any of the contracting parties, the contract will produce its full effects, computing for seniority purposes.

3.3.3 Working day

The working day is the period which, calculated in days, weeks, months or years, is dedicated by the employee to develop the activity for which has been hired.

The maximum length of the ordinary working day is 40 weekly hours as an effective average in an annual basis, being valid the agreement made in a Collective Agreement or, otherwise, in an agreement between the company and the employee's representatives, to distribute irregularly the ordinary working day.

In this sense, agreements made in individual work contracts will be considered.

Overtime hours are the working hours made in excess of the maximum length of the working day. They are voluntary, unless individual or collective agreement.

Overtime is forbidden during night shifts, except in certain special activities duly identified and authorized. Furthermore, it is forbidden that employees under 18 years make overtime hours.

Overtime hours will be compensated with money or with paid free time, as agreed in the individual contract or Collective Agreement. The amount perceived for each overtime hour cannot be less than the value of an ordinary working hour. In absence of an agreement, it will be understood that overtime hours must be compensated with paid free time within the subsequent four months.

The maximum number of overtime for employees with less annual working hours than the regular working hours in the same company will be reduced proportionally.

The legal limit of 80 overtime hours per year will not be applied to the ones made to prevent or repair extraordinary and urgent damages, although they will be paid as overtime hours, being of obligatory realization to the worker. They will not be taken into account for the calculation of the annual limit.

A *minimum weekly rest* is mandatory, which can be accumulated in periods of up to fourteen days, of one day and a half uninterrupted which, as a general rule, will comprise the afternoon of Saturday, or the morning of Monday, and the whole Sunday. In case of employees younger than 18 years, the weekly rest must be two uninterrupted days.

Furthermore, between the end of a working day and the beginning of the following, it will lapse a minimum of twelve hours.

As for the daily rest, when the length of the continuous working day exceeds six hours, it must be established a minimum rest period of at least fifteen minutes. This period will be considered effective working time when it is so established or when established by Collective Agreement or by work contract.

In case of employees younger than 18 years, the daily rest must last at least thirty minutes, and will be established always that a continued working day exceeds four hours and a half.

The Organic Law for the effective equality between women and men introduced the right of employees to reduce their working day for family reasons. Furthermore, the Law of Gender Violence also considers this possibility for employees which are victims of gender violence.

Holidays are also paid working days, non recoverable by the company, and cannot exceed 14 days in one year. They are established each year by the central Government, the authorities of the Autonomous Communities, and the Municipalities. The Government can move to Mondays all the national holidays

which happen during the mid of the week, and in any case the holidays that happen on Saturday will be moved to the next Monday.

On the hand, it is mandatory a *paid holiday* period no shorter than 30 days. Holidays can be agreed in an individual or collective way, following the guidelines established in the Collective Agreements on annual planning of holidays.

The holiday's calendar will be established in each company. In any case, the employee will know his/her holidays period at least two months beforehand their date of beginning.

Exceptionally, and in order to favour the conciliation of work and family life, when the holidays period established in the calendar coincides with the period of contract suspension due to maternity leave, the employee will have the right to enjoy the holidays period at a different time, even though the natural year to which the holidays period refers to have finished.

Holidays cannot be substituted by a monetary compensation, except in the cases of work contract termination that prevent their enjoyment, or in temporary contract when the legal holidays cannot be enjoyed.

Employees will have a right to certain *paid leaves* when, with a previous warning and a later justification, the employee is in any of the following situations:

- Wedding, fifteen days.
- Birth of a child or death, accident or serious illness, hospitalization or surgery without hospitalization that requires rest at home of family members up to the second consanguinity or affinity degree, two days or four days if movement of the ill person is required.
- Moving of home, one day.
- Compliance of an inexcusable duty of personal and public character, such as the exercise of the right to vote, for the minimum time needed. If established in a Law or agreement, duration and compensation regulations will be applied. If the leave implies an absence of more than 20% within a three month period, the company can change the employee to extended absence status.
- The duration and economic compensation can be established in a Law or in an agreement.
- Union representatives participating in committees that are negotiating Collective Agreements, if their company is affected by such negotiation, for the time adequate for this task.
- For the indispensable time needed for the realization of pre-birth checks and birth preparation classes, in case they should be made during the work day.
- Women, during the breastfeeding period of a baby younger than nine months, will have a right to a daily hour of work leave, which can be split in two fractions. This permit will be increased proportionally in case of multiple births. Women will be able to opt for the substitution by a reduction of their work day in half an hour with the same purpose, or accumulate this leave in full day leaves as established in a Collective Agreement. This permit can be enjoyed by either the mother or the father provided that both are employed.
- In case of birth of premature babies, or which, for any other cause, must remain in hospital after being born, the mother or the father will have the right to abandon their post during one hour. Furthermore, they will have the right to reduce their work day a maximum of two hours, with a proportional reduction in the salary.
- Those people which have the legal custody and care of a child younger than 8 years or of a person with a physic, psychic or sensorial disability, which does not develop a paid activity, will have a right to a reduction in the work day, with a proportional reduction of the salary of at least, one eighth to one half of the work day.
- Jury duties will have, for labour regulations purposes, the consideration of inexcusable duties of personal and public character.

- Time used by members of the Personnel Committee and Personnel Delegates, as a credit of monthly hours for the development of its representative functions.

3.3.4 Salaries and wages

It is understood that the salary is the total amount of economic benefits perceived by an employee, without discrimination for gender reason, of money or benefits paid in kind, for the professional rendering of labour services, that are a consideration for effective work, whichever the consideration, monetary or in kind, or the rest periods accountable as work. Salary in kind can never surpass 30% of the total salary received by the employee.

The salary cannot be less than the Inter-professional Minimum Salary as established each year by the Government. This Minimum Salary has been established in 2009, for whatsoever activities in agricultural, industry and services, without distinction by gender or age of the employees, in 20.80€ per day or 624€ per month, in case the salary is fixed in days or months.

It will not be considered as salary the amounts received for the following concepts:

- Indemnities or reimbursable expenses incurred as a consequence of the labour activity
- Indemnities or benefits received from the Social Security
- Transport and distance aids
- Indemnities for home moving
- Indemnities for suspensions or dismissals

Furthermore, the employee has the following rights:

- Perception of the salary at the due date and the place established
- To obtain a receipt for the salary
- That the payment of regular and periodical salaries is not made in terms longer than one month
- Perception of payments in advance
- Perception of a late payment interest of 10% in case of delay in the perception of the salary

The employer can delegate the practice of tax withholdings and Social Security contributions that are legally applicable on the salaries.

Employees have the right to receive each year at least two extraordinary pays, which amount will be established by the Collective Agreement or by an agreement between the employer and the employees' representatives. They will be made effective at Christmas and another one at the month fixed by the Collective Agreement, or by an agreement between the employer and the employees' representatives. If established in a Collective Agreement, it can be prorated monthly.

3.4 Termination of Labour Contracts

Labour relationships between the company and the employee can be terminated by any of the following causes:

- Mutual agreement between the contracting parties
- Valid causes included in the contract
- Expiration of the duration of the contract, or finalization of the work or service established in the contract
- Renounce of the employee

- Death or permanent, total, or absolute disability of the employee
- Retirement of the employee
- Death, retirement, disability, or extinction of the employer corporation
- Force majeure events
- Collective dismissal based on economic, technical, organizational or production causes
- At the employee's will for a justified cause
- Disciplinary dismissal
- Objective causes established by the Law
- Decision of an employee (woman) that is obliged to abandon finally her work as a consequence of her being a victim of gender violence

The employer, at the time of the termination of the contract, or at the time of communicating the employees the denounce of the contract, or the notice prior to the termination, must include a proposal in order to liquidate the amounts owed to the employees. The employee can request that a legal representative of the employees' is present at the time of the signature of the settlement, and the representative presence or its absence will be stated in the document. If the employer prevents the representative presence, the employee will state the fact in the settlement document, for the legal purposes of application.

• **Dismissals**

A dismissal is a unilateral decision of the employer to terminate the labour relationship.

Dismissals can be objective, disciplinary, collective, or for force majeure. Each one of the types of dismissal obeys to a different purpose, and has different procedures.

• **Disciplinary dismissals**

It is the termination of a work contract by the decision of the employer, based in a severe and guilty breach of the employee obligations.

The reasons in which that termination can be founded are the following:

- Unjustified or repeated absence to work or arriving late at work
- Indiscipline or disobedience
- Verbal or physical offences to the employer, other people working in the company, or their family members
- Breach of contractual good will and abuse of confidence in the development of the work
- Continuous and voluntary reduction in the usual or agreed performance at work
- Regular intoxication or drug addiction if it affects adversely labour activity
- Harassment of the employer or the other employees for racial, ethnic, religious, beliefs, disability, age, or sex orientation reasons, sexual harassment or for sex reasons

Collective Agreements usually regulate the disciplinary regime applied to the employees under their scope, in this sense; they usually contemplate the dismissal as the punishment to impose in case of commission of very severe faults.

Procedure:

The decision to terminate the contract must be communicated in written to the employee, stating the facts that motivate the dismissal and the date in which it is effective, within the sixty days following the date in

which it is known the fault of the employee, or otherwise, in the six months following the commission of the breach.

Collective Agreements can establish additional formalities for the dismissal.

If the employee were a legal representative of the workers, or a union delegate, it will be required that a contradictory expedient is opened, in which will be heard, apart from the part concerned, the other representative members, if there were others.

If the employee was affiliated to a union, and it was known by the employee, a previous hearing must be held with the union delegates corresponding to that union.

If the dismissal is executed without observing the above requirements, the employee can execute a new dismissal observing all the requirements, within 20 days. Nevertheless, the employer will have to pay the salaries accrued during that time, and keep the worker in the Social Security for the time being.

• **Objective dismissal**

The labour contract can be terminated by any of the following causes:

- a) Incompetence of the employee. This cause, to be valid, must be known or happening after the employee is hired. If it was known before the end of the probation period, it cannot be alleged as a valid termination cause.
- b) Lack of adaptation of the employee to technical modifications in the job. This motive will be valid only if the modifications are reasonable, considering the employee knowledge and that at least a two month adaptation period is granted.
- c) Elimination of jobs. Termination of labour contracts must be objectively credited in economic, technical, organizational or production causes. The employer will have to prove the economic cause of the termination, with the purpose of overcoming adverse economic situations, or in technical, organizational or production causes, in order to overcome difficulties that hinder the good functioning of the company, be it due to competitive position in the market or due to demand requirements, through a better organization of resources.
- d) Absence to work, justified but sporadic, that surpass the limits established in the Statute of Workers.
- e) Budget shortages for the execution of plans and public programs.

General procedure: The dismissal must be notified in written to the employee, expressing the cause, and giving a notice of at least 30 days. In case of dismissal for elimination of jobs, a copy of the notice will be given to the legal representative of the employee, for its information.

In addition, the employee must be offered an indemnity of 20 salary days per year at the moment of the dismissal notice, with a maximum of 12 months of salary, and given a six hour per week paid leave to look for a new job.

The employer has the option to offer an indemnity instead of the notice period, in the amount of the salary accrued during this period.

In the termination for objective causes, if any of the requirements are not meet, with the exception of the notice period, will cause that the dismissal is null and void.

• **Collective dismissal**

Termination of work contracts must have an economic, technical, organizational or production cause. It is understood that such causes concur when the collective dismissal contributes to ensure the future viability of the company through an adequate organization of resources, or when there is not a future viability of the business.

The dismissals will qualify as collective dismissal when the termination affects, within a 90 day period, at least to:

- 10 employees in companies with less than 100 employees.
- 10% of employees in companies whose workforce is between 100 and 300 employees.
- 30 employees in companies whose workforce exceeds 300 employees. For the calculation of the number of workers affected, it will be also considered any other termination made by the initiative of the employer, but not considering the termination for time expiry, or finalization of work or service contracts, provided that its number is at least of five employees.
- Dismissal of the whole workforce, provided that there are more than five workers, when the collective dismissal happens as a consequence of the total cessation of the business activity, due to any of the causes mentioned before.

On the contrary, the dismissal would be qualified as an objective dismissal for elimination of jobs.

Procedure: These types of dismissals are required to follow an administrative procedure, called labour force adjustment plan. This procedure requires a previous period of negotiation with the employees' representatives or directly with the employees affected. This period has the purpose of procuring an agreement between the employer and the employees, whereas if such an agreement was not reached, the Authorities can approve the collective dismissal.

The indemnity established is 20 salary days per year worked, with a maximum of 12 months, although the amount can be exceeded if an agreement is reached.

• **Dismissal qualification**

The dismissal of an employee can be challenged before a Court of Justice. But there is a specialty in labour court procedures, which is that, prior to going to court, it is required that a settlement between the contracting parties is attempted before an administrative office for mediation and arbitration.

If the dismissal is challenged by the employee, the judge can qualify it as fair, unfair, or null and void.

If the dismissal is qualified as fair, the judge will declare that the dismissal has been done in accordance to the Law. Such qualification, in case of disciplinary dismissal, implies the absence of the right to an indemnity, and in case of objective dismissal, that the indemnity established by the Law will be 20 salary days per working year.

When the dismissal is qualified as unfair, the employer can choose between the reinstatement in the job, or an indemnity of 45 salary days per year with a limit of 42 months of salary. In any case, the employee must receive the salary accrued during the time the process has taken place, that is, the salary accrued since the employee stopped working after the dismissal date, till the modification of the date, or previously, till the consignment of the indemnity and salary accrued until the moment the employer recognizes the unfairness of the dismissal and communicates the employee the consignment of the money, or, otherwise, until the date that the employee begins a new job in another company.

In case of an objective dismissal of workers declared unfair, which had been hired under an indefinite contract for the promotion of employment, the indemnity is 33 salary days per year of work with a maximum of 24 months of salary.

In companies with less than 25 employees, the Salary Guarantee Fund will pay 40% of the indemnity established by Law to employees whose labour relationship had been terminated by a collective dismissal or an objective dismissal for elimination of job position.

If the employee was an employees' representative, will have the right to choose between the indemnity and the reinstatement.

No additional salary will be accrued if within the 48 hours following the dismissal, the company recognizes the unfairness of the dismissal and makes the consignment of the indemnity.

It will be possible to qualify the dismissal as null and void when there is a discriminatory cause and/or a breach of basic rights.

The dismissal will also be null and void in the cases in which in the employee concurs any circumstance related to the labour and family life, such as the dismissal of pregnant employees, of employees during the maternity

or paternity leave, risk during the pregnancy, adoption or foster care, reduction of the work day to attend children or disabled dependents, or reduction due to breastfeeding, or employees victim of gender violence in certain cases. This will apply also in the nine months following the return to work of the employee after a maternity, adoption, foster care or paternity, counting since the date of birth, adoption, or foster care of the sons.

The qualification of a dismissal as null and voids implies the immediate reinstatement of the employee with the payment of the salary accrued during that time.

3.5 Senior Executives

The labour relationship of a senior executive has a special character, being governed basically by Royal Decree 1382/1985, and for issues not contemplated in the Royal Decree or in an agreement, civil and mercantile legislation and its general principles will be applied.

It is understood that a senior executive is an employee that has wide administration and management powers concerning the general objectives of the company, and exercises its faculties autonomously and with full responsibility, answering only before the highest management and administration body of the company.

It will be excluded from this definition the people that only exercise their position as members of the board of directors in the businesses that act through a corporation.

This labour relationship is based in the mutual confidence of the contracting parties, which adjust the exercise of their obligations and rights to the exigencies of good will, so that the parties are free to establish the conditions of the contract.

The contract will be formalized in written, in two copies, and a probation period no longer than nine months can be established if its duration is indefinite.

The contract can be terminated by will of any of the parties, without allegation of cause, but with a notice of three months. If the termination is made by the employer, the employee will have a right to the indemnity established in the contract. In its defect, the indemnity will be seven salary days per working year, with a limit of six months of salary.

If the dismissal is qualified as unfair, the indemnity will be the amount established in the contract, in its defect 20 days of salary per year of work with a limit of twelve months of salary.

On the other hand, the senior executive is also free to desist of the contract, with a required notice of three months, which is increased to six months if established in written in indefinite contracts or those with duration that exceeds five years. This notice period is not needed when there is a severe breach of contract in the part of the employer.

In addition, the Law established certain causes for the termination of the contract, with the indemnities established, and in its defect, the ones established for the termination owing to the will of the employer.

On the other hand, a senior executive can be also dismissed by any of the causes established in the general labour regulations, that is, objective causes or disciplinary measures.

3.6 Temporary Work Agencies

The activity consisting in hiring employees to be submitted temporarily to another company can only be made through the so called Temporary Work Agencies (Empresas de Trabajo Temporal or ETT), which must be duly authorized under the regulations of Law 14/1994.

When there is this cession of workers we found a triple relationship: employee-ETT, ETT-user company, employee-user company.

The relationship between the ETT and the user company is strictly of a mercantile nature, as it is a contract to put at disposal whose object is the cession of the employee to render its services in the user company.

Between the ETT and the worker a labour contract is duly signed, although the employee will render its services to the user company.

The third relationship is the one that bonds the employee with the user company in which the services will be rendered. This does not give place to a different labour contract, whereas what happens is that, albeit the contract is the same, the user company surrogates in the position of the employer with respect to certain rights and obligations concerning the employee.

ETTs are allowed to sign a work contract to cover several different and subsequent contracts with different user companies, provided that the contracts are fully determined before the work contract is signed, and in every case are related to a temporary hiring for production circumstances, making a mention in the labour contract of each put at disposal.

These put at disposal contract cannot be used for the following cases:

- Substitution of employees during a strike.
- For the development of certain activities and jobs that the regulations consider of special danger to security or health.
- When, in the twelve months before the contract, the company has eliminated the positions to be covered through an unfair dismissal or for the causes established for the termination of the contract by initiative of the employee, collective dismissal, or dismissal based on economic reasons.
- Contracts made in order to hand over workers to other ETTs.

Employees who in a 30 month period had been contracted for more than 24 months, continuously or discontinuously, for the same position in the same company, through two or more temporary contracts, directly or through an ETT contract, with the same or different types of definite duration contract, will acquire the condition of fixed employees.

3.7 Representatives of the employees

There are two ways for the representation of the workers of a company, individual representatives (personnel delegates and workers' committee), and union representatives (union sections and union delegates).

Individual representatives are the representation bodies through which the employees exercise their right to participate. Their election is obligatory in work centres of more than 10 employees, and it is optional, by agreement between the work-force, in work centres which count with 6 to 10 employees. They represent all the employees in that work centre.

The number of delegates and the number of members of the Committee depend on the number of employees in the work centre.

Union representatives are bodies of union activity within the company, and represent only the interest of the affiliates to the union. Affiliates to a union have the faculties to create union sections, regardless of the relevance or implantation of their union, and the size of the work centre or the company.

There are other ways of specific representation such as in the prevention of labour risks, prevention delegates, which are picked by and between the unitary representatives of the employees, and which are attributed faculties of information and counselling in the area of prevention of labour risks; and the security and work health committee, which is a joint peer collegiate body whose purpose is to look up regularly and periodically the activity of the company in this area, and which must be created in every company with more than 50 employees.

3.7.1 Functions of the Personnel Committees and the Personnel delegate

The duties attributed to the unitary representation of the employees are the following:

- Information rights : Information about economic issues, employment and production, accounting and company information, or related with labour contracts, or sub-contracting, labour penalties for severe faults, health and prevention of labour risks, working conditions, equality of treatment and opportunities for sex cause, among others.

- Right to be heard, information and consult: information in the processes of professional qualification, right to be heard in disciplinary procedures against the representatives, information prior to the execution of decisions regarding the restructuring of the workforce, work day reduction, or moving of the premises, training plans, implementing or revision of the organizational system or work controls, time analysis, mergers and acquisitions or changes in the legal status of the company that affects the volume of employment, right to be consulted previous to the execution of decisions regarding the moving and substantial modification of working conditions.
- Right to decide jointly with regard to the collective agreements of salary break away, of substantial modification of working conditions as established in a Collective Agreement, collective agreements in a company in absence of a Collective Agreement, and collective agreements for the collective suspension and termination of work contracts.
- Right to negotiate agreements and collective conflicts.
- Vigilance, control and denounce of the observation of labour regulations.
- Faculties regarding security and health.
- Vigilance of the observance and application of the principle of equality in the company, among others.

3.7.2 Collective Agreements

As it has already been explained, a Collective Agreement is a written agreement made between the representatives of the employees and the employers, whose purpose is governing the conditions of the contracting process and working conditions.

Its scope must be analyzed from a functional, personal, time or territory point of view. Thus, there can be Collective Agreements whose scope is general or restricted, usually to a company or sector of activity (province, region, or nationwide), which obliges to establish previously the adequate scope in order to negotiate the agreement.

From a functional point of view, the application of a Collective Agreement depends mainly of the principal activity developed by the company, more than the type of services rendered by the employees at a given time. The personal scope of the Collective Agreement defines the group of people whose labour relationship falls within the regulation established by the Agreement.

The territorial scope defines the geographical space in which the Collective Agreement is going to be applied. In this sense, the Collective Agreement can be national, of an Autonomous Community, of the province, municipality or county.

Collective Agreements must always define their validity in time. This means that the Collective Agreement must establish the date in which they come into force, and the period of time in which they are effective, and the denounce procedure, in particular, the conditions and the formalities, and the previous notice period. It is often agreed that the regulation will have a definite validity (one, two, or three years), which requires a periodical revision for its adjustment (mainly in economic issues) to the changing environment of the production and work reality.

There is not a closed list of issues to be regulated by the Collective Agreement, although there are some aspects of the labour relationships that are typical in the Collective Agreements (salaries, working hours, etc.), in which the Law reduces its scope in favour of the Collective Agreement.

3.8 Labour Implications of the Acquisition of a Business

When there is a change in the ownership of a business, work centre or an autonomous production unit, the new owner must surrogate in the rights and obligations concerning labour and Social Security, of the previous employer.

Furthermore, there exists a joint responsibility between the previous employer and the new one for the obligations or liabilities originated before the transfer of the business, during the three subsequent years, or even of obligations or liabilities born after the transfer, when the acquisition of the business was qualified as a crime.

Both employers must give information to the representatives of the employees affected by the change of ownership about the following:

- Date of the transfer of property
- Reasons for the transfer
- Legal, economic and social consequences for the workers
- Expected measures regarding the employees

If there were not representatives of the workers, such information will be given directly to each one of the employees concerned by the transfer.

In both cases, the information must be given beforehand, to the employees of the acquiring business before the acquisition takes place, and in the case of the acquired business, before the transfer of property affects them.

Furthermore, it is established that both businesses must open a consultation period with the representatives of the employees when, as a consequence of the transfer, measures concerning the workforce are going to be taken.

If the change of ownership brings relevant changes in the business activity, its philosophy or management, senior executives can terminate their work contract within the three months subsequent to the change, and receive an indemnity of 7 salary days per year at work with a maximum of 6 months of salary, or the indemnity that was agreed.

3.9 Reallocation of Workers

Reallocation means the move of part or the whole of a business, pre-existent or newly created, to another national territory different to the present one, the place and the form of the destiny of the activity reallocated has a relevant paper.

Businesses often use this formula of business restructuring in order to save both labour and non-labour costs. As for labour costs, the move to other countries with less protection in labour issues can imply savings regarding salary, or a productivity increase from the perspective of the working day, among other issues.

As for non labour costs, the destination countries have usually a tax or environment protection laws more relaxed than in the European Union.

In this sense, reallocation can be based on speculative processes, looking for an environment which is political and socially stable, the existence of a business network offering supplies, existence of incentives and subsidies, absence of idiom or cultural barriers, among others.

The effects of the reallocation at the short term are often negative in the place of origin, for the following reasons: destruction of direct employment, reduction of opportunities in the job market, loss of activity and indirect employment in the suppliers and local companies, competitiveness problems in the businesses of the same sector that remain in the country of origin, or the increase in the public spending.

As positive effects that can be pointed out, firstly the increase of opportunities of adaptation of business in a competitive environment more and more internationalized, and with a higher degree of uncertainty, and in the second place, that it favours the development of the countries of destiny of the reallocation.

Given the negative effects that the reallocation processes causes in the countries of origin, the European Social Fund has been considering in its strategic plan for the period 2007-2013, some measures giving special attention to underdeveloped areas which include particularly some areas specially affected by processes of businesses reallocation.

3.10 Visas and work and residency authorizations

It is understood that a foreigner is a person that is not a Spanish citizen.

Foreigners will enjoy in Spain the rights and freedoms granted in *Title I of the Constitution*, in the terms established in the International Treaties, in the Law on rights and freedoms of foreign citizens living in Spain and their social integration, and in the Laws that govern each one of their rights. As a general rule, it will be understood that foreigner can exercise the rights recognized by the Law in the same terms as if they were Spanish citizens.

On the other hand, we must differentiate between foreigners that are citizens of countries that belong to the European Union or to the European Economic Space or the Swiss Confederation, and other foreigners.

Foreigners under the European Community regime can live and work in Spain without having to apply and obtain a work permit. On the contrary, foreigners from outside the European Community will need an authorization to live and work in Spain. The employer that wants to hire a foreigner from outside the EC must obtain an authorization from the Ministry of Labour and Social Affairs. Nevertheless, the absence of authorization does not imply that the labour contract is not valid regarding the rights acquired by the employee, nor will be an obstacle to provide the employee with the benefits that corresponds to him.

Citizens of the countries that belong to the European Union, and those to which the Community regime is applied, will apply the regulations of the European Union, being in particular of application the Law on rights and freedoms of foreign citizens living in Spain and their social integration, regarding the issues that could be more favourable to them.

3.10.1 European Community foreigners

Citizens of other Countries that belong to the European Union, and of the other countries that belong to the European Economic Space or the Swiss Confederation, and their close relatives, whichever their citizenry, have the right to enter, abandon, move, and live freely in the Spanish territory, as well as to develop any activity, both by their own means or working for others, or rendering services or study, in the same conditions as if they were Spanish.

Countries that are members of the European Union and European Economic Space are: Germany, Island, Austria, Italy, Belgium, Lithuania, Bulgaria, Liechtenstein, Cyprus, Lithuania, Denmark, Luxembourg, Slovakia, Malt, Slovenia, Norway, Spain, The Netherlands, Estonia, Poland, Finland, Portugal, France, United Kingdom, Greece, Czech Republic, Hungary, Romania, Ireland, and Sweden.

Citizens of any of the countries mentioned above, which are going to stay or establish their residency in Spain for more than three months, are nevertheless required to apply for their inscription in the Census Registry of Foreigners.

The application must be filed in an official form before the Foreigners Office of the province where they intend to stay or reside, or in its default, in the corresponding Police Station, within three months after the date of entry in Spain.

Family members of a citizen of a country that belongs to the European Union or the European Economic Space, which are not citizens of any of the countries mentioned, must apply for a residency card of family member citizen of the European Union. They will be able to reside in Spain for a period longer than 3 months when they accompany the EU citizen or they meet him.

That residency card will have a validity of five years after the date of its issue, or for the period of residency of the citizen of the country that belongs to the European Union or the European Economic Space, if shorter.

Nevertheless, it will be required to the family members, in order to allow their entrance in Spain, a residency visa if they are citizens of any of the countries listed in Annex I of (CE) Regulation 539/2001.

3.10.2 Foreigner with citizenry outside the European Community

Foreigners, older than 16 years, which pretend to exercise in Spain an economic activity, labour relationship or professional, on their behalf or under a labour contract, will have to obtain previously an administrative authorization.

The *initial authorization to reside and work under a labour relationship* will have a maximum duration of one year, and can be restricted to a geographical area or a sector of activity. The foreigner that obtains the initial

authorization, will have also to obtain a residency visa and a work permit, and will be able to start a labour relationship, although will be required to apply for the affiliation in the Social Security within a month and to obtain a Identification Car for Foreigners also within a month, when the validity of the authorization exceeds six months.

The initial residency and work authorization, once the initial period has expired, can be renewed for a two year period, and must be applied for within the sixty days previous to the date of expiry of the authorization.

The concession of work authorizations is conditioned to the meeting of certain requirements, one of which is that the employment situation of the country allows hiring foreign workers. In this respect, the National Public Employment Service will draft quarterly a catalogue of jobs of difficult coverage, for each province; such qualification implies that it will be possible to file applications for the authorization to reside and work directed to foreigners. In case that the job is not included in the catalogue, the employer must file an offer in the employment office.

The employment situation of the country will not be taken into account when the labour contract or the job offer is directed to foreigners with special circumstances, such as the coverage of confidence positions meeting the requirements established by the regulations, the husband or wife of the foreigner residing in Spain with an authorization just renewed, as well as the son of a naturalized Spanish citizen, or naturalized in another country of the European Union, foreigners born and residing in Spain, sons or nephews of Spanish, among others.

The *authorization to reside and work on its own behalf* will be given for an initial period of one year, and once the period expires, it can be renewed in two year periods.

Foreigners that prove that they have resided under the law and continuously in Spain during five years are entitled to obtain a permanent residency authorization.

Foreigners that have been granted a permanent residency authorization must apply for the renewal of the authorization each five years, within the sixty days before the date of expiry of the authorization.

The Government can approve each year, by an agreement of the Cabinet, the contingent of foreign workers, which will allow the programmed hiring of workers not residing in Spain, convoked to develop jobs with a stability purpose, and which will be chosen in their countries of origin, from the offers issued by the employers. The contingent of non-European Community workers for Fiscal Year 2009 has been approved by Decree of 26th December of 2008 of the State Secretary for Immigration and Emigration.

It must be mentioned the creation of the Big Companies Unit, as a consequence of the Decree of 28th February of 2007, of the State Secretary for Immigration and Emigration, by which the Cabinet Agreement of the 16th February of 2007 is published, which approves the Instructions for the procedure of authorization of the entry, residency and work in Spain of foreigners, in which professional activity concurs reasons of economic, social or labour reasons, or concerning the development of research and development activities, or teaching activities, which require a high qualification, or artistic performances of an special cultural interest.

The Big Companies Unit is responsible for managing residency authorizations, temporary authorizations, and work under a labour relationship, temporal residency and work in the framework of an international service rendering, which are often applied in favour of executives and technicians of high qualification, Scientifics, State-Owned University professors, and artists recognized internationally, in which concurs economic, social, labour or cultural reasons.

There are other types of authorizations, being relevant the following ones:

Work authorization on own account or under labour relationship of cross-borders workers

It can be granted to workers that live in the frontier area of a nearby country, to which they go each day to work and return daily, developing an economic activity, employment or professional, on their own account or under a labour relationship, in the border areas of Spain.

Main issues:

Their validity is limited to this area, with a maximum duration of five years, and can be renewed.

The foreigner must apply for and obtain a card that credits its condition of cross-border worker, which will allow its entry and exit of the Spanish territory for the development of the activity.

This work authorization will be renewed at the expiry date if the owner remains active and the circumstances that granted the authorization are the same.

The cross-borders work authorization will be denied, apart from the general causes established in the Decree for the authorization of residency and work, for the loss of the character of cross-border worker.

Temporal residency and work developed in a framework of international services

It is considered that a foreign worker is in a situation of temporal residency and works in the framework of an international service rendering that depends, in a labour relationship, of a company established in a country that does not belong to the European Union or the European Economic Space, in the following cases:

- When the temporary movement is made on behalf and under the management of the foreign company, in the execution of a contract celebrated between her and the person or entity that receives the services, which is established that develops its activity in Spain in the framework of an international rendering of services.
- When it is a temporary movement of employees from work centres of companies established outside Spain to work centres in Spain of the same company, or another related company of the same group.
- When it is a temporary movement of employees highly qualified for the supervision or advisory related to works or services that companies established in Spain were to develop outside Spain.

This residency and work authorization will be restricted to a certain activity and geographical area. Its duration will coincide with the time of movement of the worker, with the limit of one year, which can be prorogued another year if it is proved that the same conditions persist.

Authorization of temporary works

This authorization allows the development of the following activities: season and campaign, works and services, senior executives, professional sportsmen, artists, and training and placement contracts.

They will be valid with the same duration of the contract, although with a maximum of one year (except the season contract), and the renewal is not possible.

3.11 The Social Security System

As a general rule, any individual that develops an activity or renders a service, be it under a labour relationship or on its own behalf, must be affiliated and must contribute to the Spanish Social Security System.

There are certain Bilateral Treaties on Social Security between Spain and other countries that regulate the effects in the benefits granted by the Spanish Social Security due to the periods in which a worker contributes to the Social Security of another country. Furthermore, it is established in which country the contribution must be paid in case of movement or service rendering, temporary or permanently.

Following the European regulation of Social Security, the following rules must be observed:

- Workers can only be subject at once to the Social Security of one of its members. As a general rule, the Social Security regulation applied will be the one of the country in which the worker develops its activity. There are certain exceptions to this rule.
- If an employee of the European Union is temporarily moved to another country of the EU, to develop a work for the same employer in the second country, the employee will remain under the scope of the Social Security of the first country, provided that the foreseeable duration of the work does not exceeds 12 months and that he has not been sent to substitute other worker whose displacement period has been fulfilled. This 12 month period can be prorogued by a new period of the same duration, and can be prorogued subsequently if it is agreed between the competent authorities of both countries.
- If certain requirements are met, the time that an employee of the EU contributes to the Social Security of another country of the EU, will be computed as contribution period for the Security Social of its own country, in order to fulfil the waiting period required for future benefits in its own Social Security system.

There are different regimes of contribution to the Social Security, that is, the General Regime of the Social Security, and several special regimes:

- Special Regime for Autonomous Workers
- Special Regime for Domestic Employees
- Special Regime for Agricultural Employees
- Special Regime for Sailors
- Special Regime for Coal Mining
- Special Regime for Students
- Special Regime for Government Employees and the military

The assignment into each one of the regimes depends on the nature, conditions and characteristics of the activities developed in Spain.

In the General Regime, the subjects obliged to contribute are both the employee and the employer, although the responsibility of the payment falls in the employer. The employees are classified in several labour and professional categories in order to determinate the payable debt to the Social Security. Each category has a minimum and maximum base, which are revised each year. Employees whose contribution exceeds the maximum base, or the ones that do not reach the minimum base, will adjust their contribution to the bases corresponding to their professional category.

For Fiscal Year 2009, the maximum base of contribution is 3,166.20€ per month for every group and professional category. On the other hand, the minimum bases have been increased, depending on the professional category and contribution group.

The bases and contribution rates for 2009 are the following:

CONTRIBUTION BASES:

PROFESSIONAL CATEGORIES	MINIMUM BASE	MAXIMUM BASE
Engineers, Graduates and Senior Executives	1,016.40 Euros/month	3,166.20 Euros/month
Technical engineers, technicians, and qualified assistants	843.30 Euros/month	3,166.20 Euros/month
Chiefs of Administration and of Workshops	733.50 Euros/month	3,166.20 Euros/month
Unqualified Assistants	728.10 Euros/month	3,166.20 Euros/month
Administrative Officers	728.10 Euros/month	3,166.20 Euros/month
Juniors	728.10 Euros/month	3,166.20 Euros/month
Administrative assistants	728.10 Euros/month	3,166.20 Euros/month
First and Second Officers	24.27 Euros/day	105.54 Euros/day
Third Officers and specialists	24.27 Euros/day	105.54 Euros/day
Unskilled labourers	24.27 Euros/day	105.54 Euros/day
Workers younger than 18 years	24.27 Euros/day	105.54 Euros/day

TIPOS DE COTIZACIÓN

	EMPLOYER (%)	EMPLOYEE (%)	TOTAL
Common contingencies	23.6	4.7	28.3
Unemployment:			
- General rate	5.5	1.55	7.05
- Finite duration at full time	6.7	1.6	8.3
- Finite duration at part time	7.7	1.6	9.3
Salary Guarantee Fund	0.2		0.2
Professional Training	0.6	0.1	0.7

