

## AN INTRODUCTION TO SPANISH EMPLOYMENT LAW

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This report tries to give a general idea about the Spanish Labour Legislation. The “Statute of the Employees” (“Estatuto de los Trabajadores”) is the main rule in the Spanish system, which regulates the main and basic conditions (rights and obligations) in a labour relationship. Nevertheless, the majority of rules which regulate the labour relationship are the Collective Agreements and the agreements between employers associations and the representatives of the employees of each area of activity.

### **Notice periods**

The notice period is regulated by the Collective Agreements and it depends on the professional category of the employee; the higher is the employee’s category, the larger is the notice period. In general, the minimum notice period is fifteen days and the maximum two months.

Moreover, the notice period also depends on the kind of termination of the labour contract:

Temporary contracts: The notice period is fifteen days if the contract has a duration larger than one year.

Disciplinary contracts: There is not any notice period and the dismissal takes place automatically when the employer understands that the employee has infringed any of the labour obligations.

Dismissal for objective reasons: When the reasons of the dismissal are economical, technical or organizational problems of the company, the notice period is one month.

Termination during the trial period: There is not any notice period.

According to Spanish Law, there is not any problem to cancel an employment contract in the case the employee is sick, pregnant, in a maternity leave or in a voluntary retirement provided that the termination of the contract is not for any of the discriminatory reasons mentioned.

### **Remedies**

After the dismissal there is a period of twenty days to bring an action against the employer if the employee thinks that the termination of the contract is not according to law and an indemnity is due.

Before starting the legal proceeding, there is the obligation for the parties to submit themselves to a mediation in order to try to come to an economical agreement. Just in the case the agreement is not possible, the lawsuit will be lodged in the court.

The labour court is able to adopt any of the following decisions:

1.- The dismissal is according to law. In this case, the labour relationship is finished and the employee has not the right to receive any economical compensation.

2.- The dismissal is wrongful. In this case, the employer can choose either to readmit the employee or to pay him/her an indemnity equal to forty five days of gross salary per worked year and the gross salary from the day of the dismissal to the date of the notification of the judgement. If the dismissed employee is a legal representative of the employees he has the right to choose between the two above mentioned options.

3.- The dismissal is void. That happens if the reason of the dismissal is due to sexual, religious or racial discrimination. In these cases, the employer must readmit the employee in the same position as before. There is not any legal option to pay an indemnity instead.

In the case of a dismissal for objective, technical and organizational reasons, an indemnity equal to twenty days of gross salary per worked year is due. However, if the judge considers that the dismissal is wrongful, then the indemnity shall raise to the gross salary of forty five days per worked year.

### **Jurisdiction of the court**

The labour proceedings are held before an specific court, which judges all the cases concerning employment relationships.

### **Written contract**

The employer is required to conclude an employment contract in writing. An unwritten contract is valid too, but there is the presumption that the contract is for an indefinite period of time and a full time contract. The temporary contracts and the part time contracts must be always formalized in written.

### **Transfer of (a part) of a business**

In general all the obligations concerning the employment relationships form the selling company will be transferred to the buying company.