

## Spain

### I. Legal notice – disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning terms and conditions of employment to be respected in accordance with the legislation transposing Directive 96/71/CE concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very nature, such a sheet can only summarise and does not necessarily contain all information relevant in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, who have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date. Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its services consider the rules presented in this way to be in conformity with Community law.

### II. Instrument transposing Directive 96/71/EC

Act 45/1999 of 29 November 1999 concerning the posting of workers in the framework of the transnational provision of services

Officially published: *Boletín Oficial del Estado*, 30 November 1999

Consolidated version:

<http://www.boe.es/buscar/act.php?id=BOE-A-1999-22895>

### III. Information on legislation applicable in accordance with the Directive

Information on legislation applicable to undertakings which, for a limited period of time, post workers to the territory of another Member State can be obtained at the following address: see list of liaison offices in the pdf file entitled "Posting of workers - national liaison offices" in the right column at this link:

<http://ec.europa.eu/social/main.jsp?catId=726&langId=en>

Information can also be obtained at:

Full information on Spanish labour legislation, including information on posting of workers, may be found in the Labour **Guide** issued annually by the Ministry of Employment and Social Security. Easy access to this information is provided by the link to the Guide on the Ministry's website:

<http://www.empleo.gob.es/es/Guia/index.htm>

The page of the Labour Guide dealing with posting of workers for cross-border service provision gives a general overview. The relevant links are given below:

The websites of the most representative **trade unions** at national level are:

<http://www.ccoo.es/cscceo/menu.do>

[www.ugt.es](http://www.ugt.es)

The websites of the most representative **employers' associations** at national level are:

<http://www.ceoe.es/>

[www.cepyme.es](http://www.cepyme.es) (for SMEs)

#### **IV. Failure to comply with the prescribed terms and conditions of employment**

Cases of failure to comply with the prescribed terms and conditions of employment in Spain and possible cases of illegal transnational activities can be reported to the Labour and Social Security Inspectorate of the province concerned or the competent liaison office. Details of monitoring authorities in Spain can be found in the pdf file in the right column of this website:

<http://ec.europa.eu/social/main.jsp?catId=726&langId=en>

Where there is doubt as to the territorial unit within which non-compliance has occurred, the central inspection authority may be contacted:

Dirección General de Inspección de Trabajo y Seguridad Social

Subdirección General de Relaciones Institucionales y Asistencia Técnica

C/. Agustín de Bethencourt, 4

28003 Madrid

Tel.: (+34) 91.363.11.63

Fax: (+34) 91.363.06.78 / (+34) 91.363.06.82

#### **V. Situations constituting a posting [Article 1 of the Directive]**

Act 45/1999 concerning the posting of workers in the framework of the transnational provision of services applies to undertakings established in a Member State of the European Union or in a Contracting Party to the Agreement on the European Economic Area which post workers to Spain for purposes of cross-border service provision, except for merchant navy undertakings as regards seagoing personnel.

For the purposes of this Act, "posting of workers in the framework of the transnational provision of services" means posting to Spain by the undertakings falling within the scope of this Act for a limited period of time in any of the following cases:

a) Posting of a worker for the account and under the direction of the undertaking making the posting, under a contract concluded between that undertaking and the party established or operating in Spain for whom the services are intended.

b) Posting of a worker to an establishment of the same undertaking or another undertaking of the group to which it belongs.

For the purposes of the above paragraph, "group of undertakings" means a group formed by an undertaking which exercises control and the controlled undertakings within the meaning of Article 4 of the Community-scale Undertakings and Groups (Information and Consultation Rights) Act 10/1997 of 24 April 1997.

c) Posting of a worker by a temporary work agency for hiring out to a user undertaking established or operating in Spain.

## **VI. Posted workers [Article 2 of the Directive]**

Directive 96/71/EC applies to workers who, for a limited period, carry out their work in the territory of a Member State other than the State in which they normally work.

In Spain, a worker is understood to be any person who voluntarily performs paid services for another party and subject to the organisation and direction of another physical or legal person, known as the employer. This definition applies irrespective of the former person's title in the country of origin.

According to the case law of the Court of Justice of the European Communities, the temporary nature of an activity carried out on the territory of a Member State in the context of free provision of services cannot be determined abstractly but should be judged on a case-by-case basis, depending on the duration and frequency and whether it is periodic or continuous.

It should be noted that if an occupational activity in Spain can no longer be considered as being exercised temporarily, taking account of the above-mentioned criteria, but is stable and continuous, all the binding rules and regulations in force in Spain apply.

## **VII. Work periods and rest periods [Article 3(1)(a) of the Directive]**

The basic rules on work periods and rest periods in Spain are contained in two instruments.

- The first is generally applicable: the Workers' Statute, Articles 34 to 37 of which regulate working time.

The working day is that stipulated in collective agreements or employment contracts. Maximum normal working time is 40 hours of actual work per week, as an annual average.

At least 12 hours must elapse between the end of one working day and the start of the next.

Normal working time may not exceed nine hours of actual work per day, unless a different distribution of the daily working time is stipulated by collective agreement or, failing that, agreement between the undertaking and the workers' representatives. The rest period between working days must in any case be observed.

The working time of workers under the age of 18 may not exceed eight hours of actual work per day, including any time spent on training and the hours worked with each of their employers, if they have more than one.

In general, not more than 80 hours of overtime may be worked per year.

Night work is regarded as work performed between 10 p.m. and 6 a.m. Employers who regularly resort to night work must inform the labour authority. Night workers may not work more than eight hours per day, averaged over a reference period of 15 days. Such workers may not work overtime.

Workers are entitled to a minimum weekly rest period, which may be accumulated over periods of up to fourteen days, of one and a half days without interruption, normally comprising Saturday afternoon or Monday morning and the whole of Sunday. The weekly rest period for workers under the age of 18 must be at least two days without interruption.

- Royal Decree 151/1995 on special working hours applies to particular sectors such as mines and underground construction, cold stores, the transport sector, etc.
- In Spain it is normal for collective agreements to enter into greater detail than the statutory provisions. When workers are posted, it is thus necessary to know the terms of the collective agreement applying in the territorial unit to which they are sent and for the work performed.

The website of the Ministry of Employment and Social Security includes a database of Nation Wide Collective Agreements, which is updated at intervals.

However, many sectors (e.g. the building industry) have provincial collective agreements with special provisions on working time. It would thus always be wise to consult the competent liaison office (see section IV), the social and labour information office in each province or the social partners at regional level.

The labour competent office in each autonomous community could also be consulted.

A further possibility is to engage consultants, to whom the management and conduct of labour and other matters may be entrusted. The use of such professionals is common practice in Spain. There is a General Council of Official Spanish Guilds of Labour Legislation Specialists which can provide contacts with experts in the region to which workers are to be posted.

#### **VIII. Paid annual holidays [Article 3(1)(b) of the Directive]**

- Article 38 of the Workers' Statute prescribes a minimum of 30 calendar days of paid holidays.
- In Spain it is normal for collective agreements to enter into greater detail than the statutory provisions. When workers are posted, it is thus necessary to know the terms of the collective agreement applying in the territorial unit to which they are sent and for the work performed.

The website of the Ministry of Employment and Social Security includes a database of Nation Wide Collective Agreements, which is updated at intervals.

However, many sectors have provincial collective agreements with special provisions on holidays. It would thus always be wise to consult the competent liaison office (see section IV), the social and labour information office in each province or the social partners at regional level.

The labour competent office in each autonomous community could also be consulted.

A further possibility is to engage consultants, to whom the management and conduct of labour and other matters may be entrusted. The use of such professionals is common practice in Spain. There is a General Council of Official Spanish Guilds of Labour Legislation Specialists which can provide contacts with experts in the region to which workers are to be posted.

#### **IX. Pay [Article 3(1)(c) of the Directive]**

- The basic rules on workers' pay are to be found in Articles 26 to 33 of the Workers' Statute.

In 2015, the national minimum wage, including the two exceptional payments, amounts to EUR 9.080,40 per year.

- However, pay in Spain is determined by collective agreements, which set minimum levels for each territorial unit and sector of activity. When workers are posted, it is thus essential to know the terms of the collective agreement applying in the territorial unit to which they are sent and for the work performed.

The website of the Ministry of Employment and Social Security includes a database of Nation Wide Collective Agreements, which is updated at intervals.

However, many sectors have provincial collective agreements, and it is then these agreements that set the various rates of pay. It would thus always be wise to consult the competent ~~liaison office~~ liaison office (see section IV), the social and labour information office in each province or the social partners at regional level.

A further possibility is to engage consultants, to whom the management and conduct of labour and other matters may be entrusted. The use of such professionals is common practice in Spain. There is a General Council of Official Spanish Guilds of Labour Legislation Specialists which can provide contacts with experts in the region to which workers are to be posted.

#### **X. Rules concerning hiring-out of workers and terms and conditions which apply to temporary workers [Articles 3(1)(d) and 3(9) of the Directive]**

The rules concerning hiring-out of workers by temporary work agencies are laid down by the Temporary Work Agencies Act 14/1994 of 1 June 1994.

The instrument transposing Directive 96/71/EC (Act 45/1999) thus inserted a chapter –Chapter VI- on Cross border activity of temporary work agencies Temporary Work Agencies Act. *Inter alia*, this chapter sets out the requirements and the rules to be observed by temporary work agencies from the European Union/European Economic Area in order to operate in Spain.

#### **XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]**

As a general rule, it must be borne in mind that Spanish safety and health legislation results from the transposition into Spanish law of the pertinent European Directives. Both the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and the individual Directives pursuant to it are reflected in Spanish national law.

An exhaustive compendium of occupational safety and health law in Spain may be found on the website of the [National Institute for Safety and Hygiene at Work](#), which has a database that can be consulted in Spanish, and in some cases in [English](#).

The instruments regarded as most important in this field are indicated below, with references to both the Spanish and the English versions:

### **Versión española**

[Ley de Prevención de Riesgos Laborales](#)

[Reglamento de Servicios de Prevención](#)

Link to a full and comprehensive compendium of Spanish occupational safety and health legislation:

[Normativa | Instituto Nacional de Seguridad e Higiene en el Trabajo \(INSHT\)](#)

### **ENGLISH VERSION**

[Act on prevention of occupational risks \(2011 version\)](#)

[Regulations for Prevention services \(2011 version\)](#)

### **XII. Rules concerning terms and conditions of employment of pregnant women and women who have recently given birth [Article 3(1)(f) of the Directive]**

The basic provision on maternity protection is Article 26 of the [Act on prevention of occupational risks](#).

Some of the Royal Decrees mentioned in section XI on "Health, safety and hygiene at work" also contain particular maternity protection requirements (e.g. the Royal Decree on workplaces requires rest areas to be provided for pregnant women).

### **XIII. Rules concerning terms and conditions of employment of children and young people [Article 3(1)(f) of the Directive]**

The basic provisions regulating work by minors are as follows:

- [Workers' Statute](#), Articles 6, 7, 34, 35 and 37.
- [Act on prevention of occupational risks](#), Article 27

At all events, the following rules must be observed:

- In Spain, minors under the age of 16 may not work, apart from exceptional participation in public performances, subject to prior authorisation.
- Minors aged between 16 and 18 may work, but:
  - they require permission from their parents or guardians;

- they may not do night work or overtime;
  - they may not work more than eight hours per day;
  - they must have a 30-minute break if the working day exceeds four and a half consecutive hours;
  - they must have at least 12 hours' rest per day and two consecutive days' rest per week;
  - they may not perform tasks classed in a Decree of 26 July 1957 as strenuous, dangerous or prejudicial to their health or education.
- Before setting young people under the age of 18 to work, and before any important change in their conditions of work, the employer must carry out an assessment of the jobs they are to perform, in order to determine the nature, degree and duration of their exposure, in any activity in which such a risk may arise, to agents, processes or working conditions which may endanger their safety or health.

To this end, the assessment must take special account of the specific risks to the safety, health and development of the young people resulting from their lack of experience, their lack of the maturity required to assess the actual or potential risks and the fact that they are not yet fully developed.

At all events, the employer must inform such young people, and parents or guardians involved in their recruitment, of the possible risks and all the measures taken to safeguard their safety and health.

#### **XIV. Equality and non-discrimination [Article 3(1)(g) of the Directive]**

Act 45/1999 includes various non-discrimination provisions in the "hard core" of rules to be observed by any service provider:

- no discrimination against temporary or part-time workers;
- equal treatment and no direct or indirect discrimination on grounds of sex, origin, including racial or ethnic origin, marital status, age within the statutory limits, social status, religion or beliefs, political views, sexual orientation, membership or non-membership of a trade union or acceptance of trade union agreements, family links with other workers in the undertaking, language or disability, provided the workers are capable of the work or occupation in question;
- protection against verbal or physical aggression of a sexual nature, which also falls within the scope of discrimination, since Directive 2002/73/EC treats sexual harassment as an act of discrimination.

The basic equality and non-discrimination safeguards are to be found in Articles 4.2 c), 15.6, 16, 17 and 28 of the Workers' Statute.

#### **XV. Terms and conditions of employment concerning other matters [Article 3(10) of the Directive]**

Act 45/1999 includes various other aspects in the core of host-country provisions to be observed by service providers, such as respect for privacy, dignity, freedom of association and the rights to strike and to hold meetings.

The reason for their inclusion lies in the need to safeguard a set of workers' rights that are enshrined in the Spanish Constitution and are thus regarded as fundamental and inalienable. They thus have the status of rules of public order, which must be observed by all, irrespective of the nationality of the worker, the nationality of the undertaking providing services and the law applying to the employment contract. In any case, these are rights which are fully recognised in international law (e.g. the Universal Declaration of Human Rights, the European Social Charter) and Community law (e.g. the Community Charter of the Fundamental Social Rights of Workers).

In addition to the non-discrimination provisions mentioned above, the following must be respected:

- the right to **privacy**: Workers' Statute, Articles 4.2.e), 18 and 20;
- the right to **hold meetings**: Workers' Statute, Articles 77 to 81;
- the right to **strike**: Royal Decree-Law 17/1977 on labour relations;
- **freedom of association**: Organic Act 11/1985.

#### **XVI. Procedural and administrative requirements**

Act 45/1999 imposes the following obligations on employers who post workers to Spain for the purpose of cross-border service provision:

- **To notify the posting, before it starts and provided it is to last more than eight days**, to the Spanish labour authority competent for the territorial unit in which the services are to be provided. (<http://www.empleo.gob.es/es/enlaces/enlaces-comunidades.htm>)

**This notification must contain the following:**

- identification of the undertaking which is posting the worker;
- the fiscal residence of that undertaking and its VAT code;
- the personal and occupational particulars of the posted workers;
- identification of the undertaking or undertakings and, if appropriate, the establishment or establishments in which the posted workers will work;
- the starting date and expected duration of the posting;
- details of the service to be performed by the posted workers in Spain, specifying which of the types of posting distinguished in Article 2.1.1 of the Act applies.

If the undertaking which is posting workers to Spain is a temporary work agency, the notification of posting, in addition to the above information, must include the following:

- certification that the undertaking satisfies the statutory requirements of the state in which it is established for temporarily hiring out its contracted workers to another user undertaking;
- in addition to specifying which of the types of posting distinguished in Article 2.1.1 of Act 45/1999 applies, the notification must state what temporary needs of the user undertaking are to be met by the hiring out contract, specifying the case applying under Article 6 of the Temporary Work Agencies Act.



- **To appear, when so required by the Labour and Social Security Inspectorate**, at the public offices designated for the purpose and submit all documentation demanded as evidence of compliance with the Act, including the documentation certifying that the undertaking has been properly established.

#### **XVII. Mediation mechanisms in case of conflict**

#### **XVIII. Information on judicial enforcement procedures**

Information on possible judicial remedies in Spain can be obtained from the following address: [www.poderjudicial.es](http://www.poderjudicial.es).

The Labour and Social Security Inspectorate provides advice and technical assistance to employers and workers. Should the employer fail to fulfil his obligations under labour law, workers posted in accordance with Act 45/1999 may seek assistance from the Inspectorate in the province in which they are working.

The labour courts will also be competent to hear disputes in connection with Act 45/1999, when the worker is or has been temporarily posted to Spain, without prejudice to the jurisdictional criteria laid down by other Community or international instruments.

In every event, litigation must always be preceded by an attempt at conciliation before one of the administrative mediation, arbitration and conciliation bodies run by the various Autonomous Communities. The liaison offices (see section IV) can provide information on the mediation service for the territorial unit in which the services are performed.