



Employment law in Europe, the need-to-know guide. This month – Spain

By **Dónall Breen** - 31 May 2018

This is part six in a series of articles exploring the employment law regime in jurisdictions where businesses may be considering moving some of their staff post-Brexit. It is intended to provide a high-level overview, drawing out the main legal requirements to consider. This month's focus: Spain.

Verdict

Spain is similar to its European neighbours in that its codified laws and collective bargaining agreements (CBAs) mean several layers of rules need to be understood and complied with, which can be difficult to navigate without the proper experience. Welcomed reforms in 2012 made dismissing employees both cheaper and clearer. Nonetheless, Spain remains a relatively pro-employee jurisdiction and early advice on how to onboard new staff will be essential for a smooth transition to operating there.

Quick Facts

- Language – Spanish
- Legal System – Civil Law
- Currency – Euro
- Population – 46.5 million (Madrid – 3.1m)

Overview – Employment Relationship

Worker Categories

There are two categories of employees:

- Normal employees working under a contract of employment
- 'Economically dependent autonomous employees' who are a particular category of the self-employed, regulated under a specific legal framework. To fall into this category, they need to:
 - Perform a professional activity for profit on a regular basis
 - Carry out that activity personally, directly and principally for one client
 - Depend on that client for at least 75% of their income

Only normal employees, the first category above, are entitled to full employment rights as outlined below.

Probationary periods

Probationary periods must be stated in writing and can be for a maximum of six months for qualified technicians and two months for other workers. During this period, employment may be terminated by either party for any reason, without giving any notice and without any compensation. Employees have the same rights and obligations as other workers on the workforce during that period.

Contracts of employment

There is no general requirement for an employment contract to be in writing, except for temporary contracts lasting for more than four weeks. If the contract is not in writing, employees must be provided with certain written particulars of employment, which is similar to the requirement here in the UK.

There are numerous statutory laws that imply rights and obligations into the employment contract, and to this extent working relationships are regulated mainly by the applicable CBA.

Minimum wage requirements

The current minimum wage in Spain is €835 per month. However, CBAs usually determine the minimum wage for categories of employees.

Holiday and holiday pay

Once employees have been continuously employed for one year, they are entitled to 30 calendar days' paid holiday every year. Holiday entitlement cannot be replaced by payment in lieu. Additionally, there are 14 public holidays per year in Spain. Spanish workers also get statutory holiday for certain life events, such as 15 days following a marriage or one day if moving to a new home.

Working time

Usually, employees work 40 hours per week and working time regulation is similar to here in the UK. The restrictions on working hours do not apply to executives and employees who have independent decision-making powers. Generally, all employees (including executives) must be granted both a daily rest period of 11 consecutive hours and a weekly rest period of 35 consecutive hours. Workers in Spain are permitted to work a maximum of 80 hours of overtime per year, with exceptions for urgent or extraordinary situations, such as the need for immediate damage repair.

Unlike the UK, it is not possible to opt-out of the Working Time Directive in Spain (the main exception being the medical profession). Opting-out was previously possible but since 2013 this has not been the case.

Registration with authorities

The employer must register each new employee with social security authorities any time before the start of employment and the national employment service within 6 days following the employee's start of employment. Contract changes or terminations must be registered within six days.

Taxes and employment related charges

Tax rates in Spain are not uniform across the country. However, for simplicity purposes, Spanish tax rates are a progressive tax rate, varying approximately from 19% for income up to €12,500 to 45% to income over €60,000.

The employer's share of social security contributions amounts to about 30% of the gross salary, while the employee's share amounts to about 6.3%. The employer must withhold the employee's share from the gross monthly salary.

Employee representatives

Under Spanish law, employee representation groups may be created on employees' initiative. The key function of these groups is to negotiate agreements with the employers at workplace level. Spanish law does not contain any specific provisions allowing the employees and/or their representatives to participate in the management of the company.

Overview - Termination

Notice periods

The minimum period of notice required for termination of employment in Spain is 15 days. This notice period may be extended by contract or by reference to a CBA. The parties must observe the required notice periods before an employment contract is terminated (except for gross misconduct). You can make payment in lieu of notice, however there is no concept of 'garden leave' in Spain.

Severance payments

Severance pay must be awarded when the employer terminates an employment contract. Currently the amount payable is 20 days' wages per year of service with a maximum of 12 months' salary. An employee who is dismissed for disciplinary reasons is not entitled to severance pay. Staff employed prior to 2012 are entitled to a higher severance payment.

Protection against dismissal

If a dismissal is made on disciplinary grounds and a judge subsequently rules that the dismissal is unfair, the employer will have the following options:

- Reinstatement of the employee in their job position and payment of the accrued salaries up to the date of notification of the court's decision; or
- Payment of a severance payment equivalent to 33 days of salary per year worked.

In any event, the amount of severance payment is capped at two years' salary.

Redundancy

National rules set out the procedure for redundancy in Spain. The dismissal must be served in writing and observe a notice period. Redundancy compensation amounts to 20 days' salary for each year of service in the company (up to a maximum of 12 months' salary). In enterprises of fewer than 25 employees, the state will pay 40% of the compensation in collective redundancy situations.

Protected employees

Similar to the UK, certain employees have varying levels of protection against dismissal and discriminatory action e.g. pregnant women, disabled employees and employees who take paternity leave. Employee representatives are also offered special protection.