Labour Guide

UGT Illes Balears

Govern de les Illes Balears

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This Labour Guide is mainly addressed to experts in social and workplace guidance and intercultural mediators in the hopes that it will be a useful tool in their everyday work.

We are grateful for the disinterested cooperation by the Director of the SOIB and the Director of Labour at the Ministry of Labour and Training for her interest in reviewing this guide.

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Introduction

Integration is at the heart of the mission of the Ministry of Immigration and Cooperation. What drives us is ensuring that immigrants who reach the islands seeking a better life have a real chance in every sense without having to suffer from any kind of discrimination. Indeed, on immigration matters, the Ministry's efforts revolve around implementing the 2nd Comprehensive Immigrant Care Plan, whose main goal is to achieve the integration and social cohesion of immigrants into Balearic society based on peaceful coexistence, tolerance and mutual respect.

It is true that we are unable to change the Spanish laws requiring immigrants to follow a certain pathway in terms of hiring and legalising their situation, but the autonomous communities, and especially this one, are making a concerted effort to raise the administration's awareness that one of the keys to integration is information, and we go to great lengths to ensure that the immigrants are aware of their rights and responsibilities. Creating the Immigrant Office is one of the Ministry's actions aimed at ensuring that newcomers feel welcomed and guided in their process of adapting to our community.

What is more, many of our efforts centre on raising the awareness of both enterprise and society that immigrants as a whole represent an impressive potential workforce. Most of them are young people eager to work, to learn, to earn money to help their families. All of us together would be wise to channel this enthusiasm and energy to the benefit of our future. In both our country and the rest of Europe, the ageing of the population will be a burden in the near future, which the immigrant population can help to alleviate. If we achieve full social integration of immigrants, they will be able to contribute to financing the social benefits, which will be in serious jeopardy if the population continues to age.

The same holds true in the labour market. The deep segmentation of the labour market leads simultaneously to high unemployment rates alongside unfilled jobs. This can be solved by training immigrants who did not have the chance to study in their country. We are aware that the training needs of immigrants are

highly diverse in terms of their educational levels, their lack language skills and their work skills. And this is another point on which we place special emphasis: training, which is the guarantee of a better future.

For all of these reasons, initiatives such as this guide are fundamental for highlighting the unfortunate fact that these equal conditions do not apply, especially in the labour market, and that consequently we must guide the parties involved in order to effectively resolve the problems. The Unión General de Trabajadores (UGT) has done immigrants a great service, as this guide is a key working instrument aimed at mediators in the field of labour and social orientation, as well as at immigrants themselves and business people in general.

Some people only perceive the downside of immigration, yet migratory movements have always existed and will continue to do so. In the future, we might be the ones to emigrate just as our grandparents did in the 20th century. If so, we could only hope to have a guide like this one and the help of groups such as the UGT to ensure that integration becomes a reality as quickly as possible.

Govern
de les Illes Balears
Ministry of Immigration
and Cooperation

Encarnación Pastor Sánchez
Minister of Immigration and Cooperation

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In the past several years, we have witnessed an intense debate on immigration, with opinions of all sorts ranging from messages of solidarity and integration to racist and xenophobic discourses. The longer we wait to deal head-on with the phenomenon with rigour and without demagogy, the more difficult it will be to solve. History has taught us that migratory movements take place in all epochs, which belies those who, pursuing their own interests, want to make us see that immigration is solely a problem of our day and age.

Throughout its extensive history, the General Workers' Union (UGT – Unión General de Trabajadores) has striven to ensure that migratory processes have taken place in favour of integration, without the immigrants being either excluded or exploited. This position still defines the Union's efforts, as it has shifted to viewing immigrants primarily as a workforce, yet one that faces difficulty in integrating into both the jobs market and the host society.

The Labour Guide you are holding is yet another contribution in UGT's history in favour of the social integration of immigrants through trade union initiatives of a different sort. This Labour Guide, which is being published thanks to the help of the Ministry of Immigration and Cooperation of the government of the Balearic Islands, is a key instrument that is addressed to any mediators working in the field of job placement and social orientation of this collective, and very especially at immigrant workers in general. One of the pillars of integration is the information that these workers receive on their rights and responsibilities, and to this end, the Labour Guide is a useful, comprehensive tool to help them clearly and understandably access the basic information on labour laws, regulations for foreigners and sector-based collective agreements that are applicable to them. To conclude, I wish to express my hope that this joint initiative between the UGT and the Ministry of Immigration and Cooperation will be furthered through other agreements within a broader framework of cooperation for the good of the immigrant population and Balearic society as a whole.

UGT Illes Balears

Lorenzo Bravo
Secretary-General of the UGT- Balearic Islands

1. Requirements for working in Spain

Is any kind of authorisation needed to work in Spain?

Yes, to undertake any type of work or professional activity, either as a self-employed or as employed person, you must have the corresponding administrative authorisation before working, as long as you are not a citizen of the countries within the European Economic Area (EEA).

Your situation can be changed by requesting the corresponding work authorisation if you have status of legal non-working resident.

You can also request authorisation to work or to change your residence with work rights by meeting certain requirements if you are studying or doing research in Spain.

If you are not a legal resident of Spain, the residence and work authorisation granted will allow you to obtain the corresponding visa for living and working in Spain in the corresponding Spanish Diplomatic Mission or Consular Office in your home country.

What type of work authorisation can be requested, and who can request it?

If you would like to perform a lucrative activity as an employed person, you can request the following authorisations:

- **Temporary residence and work authorisation for employed persons for a specific length of time:** This is requested by the employer.

- **Initial authorisation to work as an employed person:** This may be limited to one activity sector and specific geographic area. It is valid for one year. It must be personally requested by the employer or, in the case of companies, by the company's legal representative.

If you would like to perform a lucrative activity as a self-employed person, you can personally request the following authorisation:

- **Initial authorisation to work as a self-employed person:** This is valid for one year.

If you would like to look for work:

- **Job search visa:** This is valid for three months.

Where can I request them?

The requests must be submitted to the Office of Foreign Affairs, the Spanish Diplomatic Missions or Consular Offices when they are activities either as employed or self-employed, and to the Directorate General for Immigration for other situations.

What documents must be enclosed with the request for authorisation?

The documents that must be furnished are the following:

- Passport with at least four months remaining before it expires.
- A certificate of criminal record issued by the authorities in your home country or the countries where you have resided during the past five years. In this certificate there should not be any sentence for a crime existing in the Spanish Law
- A medical certificate.
- A copy of the conditional residence and work authorisation.

What procedures and steps must I follow once the authorisation to reside and work in Spain has been granted?

Once you have been notified that your authorisation has been granted, the worker must personally collect it at the Diplomatic Mission or Spanish Consular Office in your home country within one month, and you must enter Spain during the following three months.

S'ha de seguir algun altre tràmit un vegada obtinguda l'autorització de treball?

Yes, the worker must be enrolled or registered in the Social Security system.

Who should pay the Social Security – the company or the worker? What if the company refuses to pay it?

The obligation to pay Social Security begins as soon as you begin to work and lasts as long as you are working. This is a responsibility shared between both parties, although the company must deposit the payments in the Social Security Treasury, after having withdrawn the amount to be paid by the worker from his or her payroll. This is what is called **"delegated payment".**

The worker is responsible for paying for common contingencies (common illnesses and non-workplace accidents), unemployment (except for seasonal workers and students, or if you work in household service) and professional training.

If the employer refuses to register you and pay your Social Security, he or she is breaking the law and can consequently be punished.

If the employer has registered the worker in Social Security but is obliging the worker to pay the entire amount, this is also an illegal practice.

If you have doubts as to whether or not the company has actually made payments into the Social Security system, you can go to an office of the General Treasury of Social Security and ask for a **"labour life history"**, which shows all the periods that you have paid into the system.

Nevertheless, **the worker must pay the Social Security system directly in the following cases:**

- When he or she is a discontinuous worker in household service, that is, he or she works for several different employers, works less than 72 hours per month on at least 12 days each month. In this case, the worker must register in the Provincial Directorate of the General Treasury of Social Security or administrations of this authority within the six natural days after beginning the activity, and pay a fixed monthly amount.

- When the worker is an agricultural worker, the company has the obligation to register him or her in the Special Agricultural Regime, yet it is the worker's obligation to pay what are known as "coupons" or "stamps" to Social Security every month, consisting of a monthly set fee. That is, he or she pays the same amount each month regardless of whether that month he or she has worked fifteen, three or thirty days, or even no days at all.

VERY IMPORTANT NOTE FOR AGRICULTURAL WORKERS:

Although the company has the obligation to register the worker, the worker is responsible for unregistering in the Special Farm System when he or she stops working in this sector. Until this is done, you will be responsible for paying the coupons each month, and if you do not unregister, you will have a debt in Social Security that will have to be paid along with an addition fee for interest for late payment.

This can be especially serious for a worker with a temporary authorisation who is unaware of the obligation to pay these coupons and who also returns to his or her country once the season is over. When the workers have been hired in the home country, the farming company may voluntarily unregister the worker, although it is not obligated to do so, meaning that the worker should always unregister with Social Security.

Where can I request an identity card with a work authorisation (TIE)?

The TIE (abbreviation for Tarjeta de Identidad con Autorización de Trabajo) can be requested at the Foreign Affairs Office or the police station corresponding to the place where you plan to set up your home or residence. The request must be submitted within one month after having entered Spain, and you must prove payment of the corresponding fee. This card will be valid for the same period of time as the temporary residence authorisation, and you will have to renew it, just like the authorisation.

Can a permanent work authorisation be requested?

Yes, once you can prove legal residence in Spain for a five-year period. Once you have received the permanent residence authorisation, there will be no need to request the work authorisation.

Permanent residence authorises you to live in Spain indefinitely and work under the same conditions as any Spaniard.

Do I have to pay any kind of fee for the work authorisation to be issued?

If you are going to work as an employed person, the employer will be required to pay the fees for the initial work authorisation. However, if you are going to work as a self-employed person, you will be required to pay the fee yourself.

Is there any document accrediting that someone has a work authorisation?

When the activity lasts less than six months, it will be accredited by means of a visa. When the activity lasts for more than six months, once in Spain you must request the Foreign Identity Card (Tarjeta de Identidad de Extranjero) within a period of one month, which accredits the fact that you are authorised to live and work here.

In special circumstances, such as students, researchers or holders of residency rights due to exceptional circumstances (among others), this authorisation will be accredited by means of a express resolution of the work authorisation.

1.1. Temporary work and residence authorisation as an employed person for a certain period of time

Who can get this authorisation?

Workers who are hired in their home country and meet the conditions needed to fill the vacant jobs.

The worker has the obligation to return to his or her home country once the working relationship has ended, and must present him- or herself to the Diplomatic Mission or Consular Office that issued the visa during the month after his or her authorisation in Spain has finished. It is important to fulfil this obligation as should you fail to do so, you may be denied future requests for work authorisations during the three years following the end of the authorisation granted.

What requirements are necessary?

In addition to the general requirements, the employer or business person must:

- Provide adequate housing for the worker, meeting the legal conditions of dignity and health.
- Organise the arrival journey to Spain and the return journey to the home country, and defray at least the cost of the first of these journeys and the two-way costs of commutes between the worker's entry point into Spain and the site of the housing.

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What activities does this authorisation allow?

The activities it allows are as follows:

- Work during one season or campaign, with a length equal to that of the work contract(s), for a maximum of nine months within a period of twelve consecutive months.
- Specific work or service in industrial or electrical plants, the construction of infrastructures, buildings and electrical, gas, railway and telephone supply networks, installation and maintenance of manufacturing equipment, as well as start-ups and repairs.
- Temporary work for high-level executives, professional athletes and other groups determined by orders from the Ministry of Labour and Social Affairs of Spain.
- For training and doing professional internships.

1.2. Work authorisation as an employed person

Who can obtain an initial work authorisation as an employed person?

Workers who have a job offer, in which the national job situation allows them to work and who are either in Spain legally or hired from their home country.

The national job situation is the prospect of covering job offers with the workforce available in the country, and this situation will not exist when:

- The worker comes from a country with which Spain has signed a reciprocity agreement.
- The job to be filled is confidential.
- The spouse or children of a resident of Spain with an authorisation that has already been renewed.
- The child of a nationalised Spaniard or Community member with one year of legal residence in Spain.
- Els titulars, durant quatre anys naturals, d'autoritzacions de treball per a activitats de temporada que hagin retornat al seu país al terme de cada contracte.

NOTE:

The employer or business person that would like to hire the foreign worker must submit the request for initial work and residence authorisation to the Office of Foreign Affairs.

Once the employer has been notified that the corresponding permit has been granted, the worker will have one month to request the work visa at the Diplomatic Mission or Consular Office within whose jurisdiction he or she resides, or another authorised one.

What is the Catalogue of Difficult-to-Fill Jobs?

To grant a residence and work authorisation, one of the requirements that will be taken into account is that the national employment situation allows for this hire. The national employment situation is determined through the Catalogue of Difficult-to-Fill Jobs.

This catalogue is generated by provinces and is updated on a quarterly basis, and unless the worker falls within one of the exemptions in which it does not apply, the request for initial residence and work authorisation must be for a job or occupation catalogued as "difficult-to-fill". Otherwise, the employer must accredit that he or she has come upon difficulties filling this job through a certificate from the Public Employment (SOIB) stating that this job offer had been processed but that qualified, available job seekers for the position have not been found.

You may see the Catalogue of Difficult-to-Fill Jobs on the website of the National Employment Institute: ***http://www.inem.es.***

What is the Contingent?

This is the procedure which allows the programmed hiring of workers who are not in or residing in Spain, chosen in their home countries based on generic offers submitted by business people, although personal offers are also accepted.

A generic offer is one that depends on the occupations that companies are seeking to fill and thus can include as many jobs as the company would like to fill. Personal offers are those made to a specific worker in his or her name.

Contracts signed by the workers chosen must contain information on the identity of the parties, the starting date and the duration of the activity, the location of the work centre, the professional category, a forecast of the net salary the worker is to earn and how often he or she is to be paid, the workday, prior notice in case of termination of the contract and the collective agreement applicable.

The visa granted within this procedure will include the initial residence and work authorisation as an employed person, to last one year starting on the date the worker enters Spain, and it will be limited to a certain geographic region and activity sector.

Can I change activities or go to work in another city with an initial work authorisation?

As the initial residence and work authorisation is limited to a certain activity sector and geographic area, this means that should you want to change jobs you can only work at jobs within this activity sector and within the province for which the authorisation was granted. For example, if you want to leave domestic service to work in the hotel and restaurant business, or go to work in another province, **the new company must previously request authorisation at the Office of Foreign Affairs,** but the national employment situation will be applied

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and there is no guarantee that the change will be granted. Thus, it is preferable to wait until the validity of this initial authorisation expires and make the change when renewing this authorisation, which would be granted for a two-year period without any constraints on the activity sector nor the geographic area.

The national employment situation will not be applicable in the following cases (amongst other cases):

- Spouse or child of a resident of Spain with an authorisation that has already been renewed.
- The child of a nationalised Spaniard or Community member, as long as he or she has been legally residing in Spain for a least one year and to whom the EU system is not applied.
- Child or grandchild of a native Spaniard.
- Foreigner born and residing in Spain.
- Foreigner who is responsible for ascendants or descendants with Spanish citizenship.
- Foreigner who has held work authorisations for seasonal activities for four natural years who have returned to his or her country when the contract is over.
- Holder of a previous work authorisation that he or she would like to renew.
- Citizen of Peru or Chile through International Agreements.

Changing companies within the same activity sector and the same province for which the initial authorisation was granted is allowed without having to submit a request.

Can I change my work authorisation as an employed person to one as a self-employed?

That depends. You may not request this change while you still hold an initial authorisation. However, once the authorisation is renewed, this change may be requested provided that certain requirements are met:

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- That the worker has been actively working and thus paying into the Social Security system during the length of the previous authorisation for the length of time needed that would be required for the renewal (usually six months).

- That the requirements needed to grant an authorisation as a self-employed person are met.

What do I have to do in order to renew the work authorisation, and how long will it be valid?

If the work and residence authorisation must be renewed, it must be done in t**he 60 natural days before** the expiration date of the authorisation (holidays are also counted). The renewal may also be requested within the three months after this date. In both **cases, submitting the request for renewal extends the expired authorisation until the decision on whether or not this renewal is granted and is handed down.**

If within a three-month period the administration has not responded to the renewal request submitted, it will be considered granted. This is what is known as **administrative silence.**

For the authorisation renewal to be granted without problems, **you must accredit, by the corresponding Social Security payments:**

- That you have regularly performed the activity for which the authorisation was granted for at least **six months per year and/or:**

- That you remain in the same job for which the expired authorisation was granted.

- That you have signed a new contract with another employer that meets the characteristics of the authorisation (activity sector and province), and that at the time of the renewal you are either enrolled or in a situation similar to being enrolled in Social Security.

- Or that you have a new job offer that meets all the requirements needed to request the authorisation; however, this time the national employment situation will no longer be applied.

- If the period of activity has been at least **three months per year**, it can also be renewed as long as you can accredit:

  - That the job for which the authorisation was granted has ended due to causes beyond the control and will of the worker.

  - That a new job has actively been sought and all the actions suggested by the Public Employment Service have been heeded, or that you have participated in social-labour insertion programmes offered by public or private entities and subsidised by the administration.

  - That when the renewal is requested you have a valid job contract.

- The renewal will also be granted when **you are earning:**

  - The unemployment benefit; in this case it will be renewed for the period of time that this benefit is to last.

  - A public economic aid benefit aimed at social or job insertion; in this case the authorisation will also be renewed for the period of time that this benefit is to last.

NOTE:

With regard to the length of the new authorisation:

- **If it is the first renewal (if you previously had an initial authorisation), it shall last two years.**
- **The second authorisation shall also last two years.**
- **With the third renewal, you can get a permanent permit that lasts five years.**

1.3. Work authorisation as a self employed person

What documentation do I need to furnish in order to request an initial work authorisation as a self employed person?

If you wish to perform economic activities as a self employed person, the visa request must be submitted in your home country along with the following documentation:

- A copy of your valid passport.
- A certificate of criminal record issued by the authorities in your home country or the countries where you have resided during the past five years. In this certificate there should not be any sentence for a crime existing in the Spanish Law)
- A medical certificate.
- Duly notarised deed or accreditation that you have the training needed to exercise the profession, when applicable.
- Accreditation that you have the economic investment needed, or a sufficient commitment for support by financial or other institutions.
- Start-up plan of activity to be performed, indicating the planned investment, its expected profitability and, if applicable, jobs expected to be created.
- A list of the authorisations or licences required to install, open or start-up the professional activity planned, indicating the status of the paperwork to attain them and including, if applicable, certificates that these requests have been submitted to the corresponding authorities.
- Forecast showing that the exercise of the activity will produce enough economic resources starting from the first year to at least feed and house the applicant once the costs needed for upkeep of the activity have been deducted.

- Not be in Spain illegally.

Can the work authorisation as a self employed person be renewed?

Yes, as long as you can accredit that the activity for which the authorisation was granted is still being performed and that any tax and Social Security obligations have been fulfilled.

Just like the work authorisation as an employed person, the work authorisation as a self employed person can be renewed one year after being authorised. The first renewal will be valid for two years and the second for another two years. After that, you can get the permanent renewal which lasts five years.

1.4. Job search visa

What is a job search visa in Spain?

This is a visa allowing you to travel to Spain to look for work for a three-month period. If you do not secure a job contract within this period, you must leave Spain.

What types of job search visas exist?

There are two types:

- Those aimed at children and grandchildren of a native Spaniard who are exempt from application of the national employment situation.
- For certain activity sectors and occupations.

Both are determined in accordance with what is set forth in the Contingent.

2. Access to the jobs market

2.1. The Public Employment Service (SOIB)

The Public Employment Service is a public body charged with planning, managing and coordinating actions related to employment policy. In the Balearic Islands, it is called by the Catalan name Servei d'Ocupació de les Illes Balears (abbreviated SOIB) and is implemented throughout the archipelago with different offices on each island.

What is a job request?

This is the request for a job submitted by a worker, either unemployed or employed, to a Public Employment Service Office (SOIB).

Where can a job search be submitted?

It must be personally submitted to the Public Employment Service Office (SOIB) corresponding to your home. More than one occupation can be requested. The Employment Office will provide you with a receipt or card justifying your registration.

What are the requirements to submit one?

You need:

- To be of working age (between 16 and 65). If you are under the age of 18 you need the express consent of your parents or guardians if you life independently, or their authorisation if you live with them.
- To be fit to work.
- To be a Spaniard or citizen of a European Union member country, or a legal and not separated spouse, or child under the age of 21 or over this age in your charge.
- As a non-EU foreigner you must have recognition of access to the national jobs market via one of the following:
  - Temporary residence and work authorisation.
  - Permanent residence authorisation.
  - To be included in one of the exceptions for obtaining a work authorisation.
  - To have a residence authorisation for exceptional causes.
  - To have the status of refugee or reunited family member.
  - If you have requested renewal of a work authorisation.

What documents do I need to furnish?

- Your foreign identity card (TIE) that accredits the type of authorisation you hold and its dates of validity.
- The necessary certification from the Area or Provincial Office of Employment and Social Affairs, or a valid work authorisation.
- Your Social Security card, should you have worked previously in Spain.

- Proof of your professional or academic qualifications, should you have any.

What rules must be followed with the Employment Office (SOIB)?

Job seekers registered at an office of the Public Employment service must:

- Periodically renew their request on the dates indicated in advance.
- Go to the Employment Office when asked to do so.
- Notify the results of the interview with the company to which you have been sent.
- Notify of any modifications in your professional profile (courses taken, degrees earned, etc.).

What are the services provided by the Employment Offices (SOIB) for job seekers?

Job seekers will receive the following services from these offices free-of-charge:

- Enrolment and registration as a job seeker or person seeking to improve their job.
- Processing of job offers.
- Information on means of promoting employment (self-employment, cooperatives, labour companies, types of contracts, etc.).
- Information on professional occupational training.
- Information and processing of unemployment benefits and subsidies.
- If applicable, information and processing of the Active Income for Job Insertion.
- Professional guidance.
- Professional qualification by applying theoretical and practical professional tests and analyses, if applicable, of your professional training needs.

3. Hiring

There are different types of hiring and different types of contracts.

3.1. The job contract

What is it?

The job contract is an agreement between the worker and the employer through which the worker voluntarily agrees to provide services to the employer in exchange for remuneration or a salary.

Who is allowed to hire?

The following are allowed to hire:

- Persons over the age of 18 in full command of their capacities.
- Persons under the age of 18 who are legally emancipated.
- Persons over the age of 16 but under the age of 18, if they live independently, and with the express or tacit consent of their parents and guardians, or with the authorisation of their parents or whomever is in charge of them.
- Foreigners, in accordance with the applicable laws.

What is the contract like?

The work contract can be either written or verbal, although it must be put into writing when required by a legal provision. Should this provision not be heeded, the contract will be assumed to be full-time and for an indefinite period, unless otherwise stated.

Either party, worker or employer, may demand that the contract be put into writing, even after the working relationship has commenced.

When the contract is in writing, it must include the following points:

- The identity of the parties: employer and worker.
- The date on which the working relationship begins, and if it is temporary, the expected length of the relationship.
- The legal address of the company or the address of the business person and the work centre where the worker shall usually provide his or her services. If the worker provides his or her services in different centres or as a travelling worker, this must be stipulated in the contract.
- The professional category of the job to be performed by the worker and a description outlining the specific content of the job.
- The amount of the base salary and any supplements, as well as how often the salary is to be paid.
- The length and distribution of hours on an ordinary workday.
- The length of vacations and, if applicable, the ways that vacation days will be determined.
- The prior notice periods that, if applicable, the employer and worker are required to uphold should either wish to terminate the contract.
- The collective agreement applicable to the working relationship, containing the specific data that allow it to identified.

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How long does a contract last?

Job contracts can be either indefinite or for a specific length of time. Any contract made outside the law is automatically regarded as indefinite.

Is there a trial period?

Trial periods are optional, and if there is one it must be stipulated in writing in the contract. The maximum length will be determined by the collective agreements; in their absence the length may not exceed six months for workers with degrees and two months for other workers.

It should be borne in mind that in companies with fewer than 25 workers, the trial period may not exceed three months for workers who do not hold technical degrees.

- During this period the worker will have the same rights and responsibilities as the workers on staff.
- The working relationship may be rescinded by either party, worker or employer, without having to cite any cause and without prior notice, unless there is an agreement stipulating otherwise.
- The trial period shall be included in calculations of seniority.
- Any leave of absence, maternity leave, etc. affecting the worker during the trial period will not be included in calculations of this period, as long as it takes place with the mutual agreement of both parties.
- There is no trial period if the worker has already performed the same functions previously in the company, even if under a different type of contract.

What is prior notice?

This means notifying the employer that you wish to terminate the working relationship or resign without citing any specific cause. The period in which this notice must be given is stipulated in the different collective agreements, but it tends to be fifteen days. If notice is not given at least fifteen days in advance, the employer may subtract from the final payslip an indemnification for damages, the amount of which will depend on the collective agreement applicable.

If the worker leaves the job, he or she will have no right to apply for the unemployment benefit.

Is it necessary to register the contract in the Employment Office?

Yes, the employer is required to register the contract at the SOIB within ten days after the written contract is signed. The SOIB must also be notified of any verbal contract.

Must the employer notify the worker and his or her representatives?

If the contractual relationship is for more than four months, the employer must provide the worker with a copy of the contract including its essential characteristics and the main working conditions, in writing and within a period of two months after the working relationship begins.

If there are workers' representatives in the working centre, the employer is also required to give them a basic copy of the contract.

3.2. Different types of contracts

What types of contracts are there?

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There are many different types of contracts, but the most common ones are:

- **The indefinite contract:** This contract is valid for an unlimited period of time contract becomes indefinite regardless of the original type of contract drawn up if:
  - Workers were not enrolled in Social Security once the period equivalent to what is legally established as a trial period has elapsed, unless due to the nature of the job to be performed it can clearly be deduced that it is temporary in nature.
  - Workers with illegal temporary contracts.
  - Workers who within a period of thirty months have been contracted for a period of more than twenty-four months, consecutive or not, for the same job with the same company, by means of two or more temporary contracts, either directly or through temporary work agencies, with the same or different types of contracts.
- **The fixed discontinuous indefinite contract:** This is to perform jobs that are fixed yet discontinuous and are not repeated on certain dates, within the normal volume of activity within the company. They must be put into writing and the contract must contain:
  - The estimated duration of the activity.
  - The form and order of call-up established in the collective agreement applicable.
  - The estimated workday and distribution of hours.
- **The training contract:** The goal of this contract is for workers to gain the theoretical and practical training needed to effectively perform a trade or job that requires a certain level of qualification. The workers who may be given this type of contract are:
  - Persons over the age of 16 and under the age of 21, although this age limit shall not be applied when the contract concerns unemployed persons falling within the following groups:

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- Disabled persons.
- Foreign workers during the first two years that their work permit is valid, unless they accredit that they have the training and experience needed to perform the job.
- Persons who have been out of work for over three years.
- Persons who have been in a situation of social exclusion.
- Student workers at workshop-schools, trade shops and employment workshops.
- Etc.

- **The internship contract:** The purpose of this contract is for workers to gain professional experience in addition to their studies for workers with university or middle- or upper-level vocational training degrees and degrees that are officially recognised as equivalent, which qualify the workers to work professionally. Consequently, for foreign workers, legal validation of their degree will be necessary.
- **The contract for a specific job or service:** This is used for a worker to perform a job or render a service with its own autonomy and substance within the company's activity and which although limited in time, should theoretically last an uncertain length of time. The duration of this contract shall be the time required to perform the job or render the service.
- **The temporary contract for production circumstances:** The purpose of this contract is to meet the circumstantial needs of the market, or to solve an accumulation of jobs or excess of orders, even though it covers the normal activity of the company.
- **The replacement contract:** This is the contract signed with an unemployed worker, or one who had a contract with a company for a certain period of time, to partially replace a worker from the company who is partially using the retirement pension.
- **The interim contract:** This is used to replace a worker who has the right for his or her job to be reserved, or to temporarily cover a job during a process of recruitment or promotion, until it is definitively filled. It is also used to replace workers in training by workers who are beneficiaries of unemployment benefits.
- **The contract for family household service:** Also known as domestic service, this is the contract that covers relations contracted by the owner of a family home, who is the employer, with people who are dependent on and paid by the owner to render remunerated services in the family household that are regarded as domestic chores. Work performed by friends, family members and neighbours in exchange for food, lodging or reimbursement for expenses is not included. This is a type of contract that need not be put into writing.

All of these types of contract can be either full-time or part-time.

3.3. Temporary Work Agencies (TWAs)

What is a TWA?

A Temporary Work Agency is a company whose activity consists of placing in a client company workers temporarily hired by the agency.

What is the cession of workers?

This is contracting workers in order to cede them temporarily to client companies, and this can only take place through a Temporary Work Agency (TWA).

By means of a placement contract between the TWA and the client company, the workers' services are ceded and the workers are then subjected to the authority of management of the client company.

What type of labour relations exist in a TWA?

When the worker is hired by the TWA to provide services in client companies, it can be for either an indefinite period or for a certain length of time coinciding with the length of the placement contract. Another option is to sign with the worker a contract to cover several different successive placement contracts with different client companies, as long as those contracts are fully determined at the time of signing and fall within a temporary hiring stipulations included within letter b) of article 15 of the Workers' Statute.

This contract must be formalised in writing in triplicate in accordance with the provisions set for each type of contract, and the Public Employment Service must be notified as to the contents of the contract within ten working days after it is signed.

The work contract for a certain period of time, coinciding with the length of the placement contract, must contain at least the following data:

- Identification of the contracting parties, which for the Temporary Work Agency must state the administrative authorisation number and its validity in time, the tax identification number and the code of the Social Security account to be paid into.
- Identification of the client company, specifying the tax identification number and the code of the Social Security account to be paid into.
- The reason for the placement contract.
- The content of the job to be performed and qualifications required.
- Professional risks of the job.
- Estimated length of the work contract.
- Work venue and timetable.
- Compensation agreed to.

When the worker has been hired indefinitely, every time he or she renders services in a client company, he or she must be given a corresponding service order, which shall indicate:

- Identification of the client company where he or she must render the service.
- The reason for the placement contract.
- The content of the job to be performed.
- Professional risks of the job to be performed.
- Work venue and timetable.

The Temporary Work Agency cannot sign training contracts with workers to be placed in client companies.

The compensation shall be in accordance with the job to be performed, which in turn must be in accordance with the collective agreement applicable in the client company. This compensation must include the proportional amount corresponding to days off per week, extraordinary payments, holidays and vacation. For this purpose, the client company must specify this salary in the placement contract.

Should they be contracted for a certain period of time, workers shall receive a monetary indemnification at the end of the placement contract equivalent to the proportion of the amount that would result from paying twelve days of salary for each year of service.

What obligations do TWAs have?

Their obligations include:

- To comply with salary and Social Security obligations with the workers placed by them.
- To provide sufficient, appropriate training needed for the characteristics of the job to be performed by allocating at least one percent of the mass of workers ceded per year.
- To periodically monitor workers' health, bearing in mind the characteristics

of the job to be performed, the results of the risk assessment performed by the client company and any other supplementary information that might be requested by the doctor in charge.

- In order to implement the placement contract, to hire or assign the service to a worker who meets or might meet, if applicable, with the necessary information, the requirements set forth in terms of the prevention of workplace risks, by ensuring the appropriateness of the candidate in this sense.
- To provide all the information received from the client company about the job, the tasks to be performed and the risks of the job. This information will also be included in the work contract for a certain period of time or service order, if applicable.
- To ensure that the worker, after being placed in the client company, has the theoretical and practical training on risk prevention needed for the job to be performed. Should this not be the case, the TWA must provide the worker with this training, either internally or via an outside contractor, before the worker begins to render the services.
- To accredit through documents to the client company that the worker placed has received all the information on the risks and preventative measures, that he or she has specific training needed and a state of health that is compatible with the job to be performed. This documentation will also be available to the risk prevention delegates or, in their absence, the legal representatives of the TWA workers and the people or bodies with authority in the realm of risk prevention. If special training in risk prevention is needed for the job, this part of the training can be undertaken by the TWA in the client company itself before beginning work. This training may also be provided by the client company with a charge to the TWA, with a prior written agreement between both companies.
- To maintain an organisational structure that meet the characteristics that were assessed in order to grant the authorisation.
- To put the placement work contracts into writing.
- To exclusively perform the activity for which it was established or do it without

the organisational structure corresponding to its authorisation.

- To not cede workers with temporary contracts to another Temporary Work Agency or other companies in order for them to later be ceded to third parties.
- To not charge workers any fee for selection, training or hiring.

Temporary Work Agencies that place their workers into established client companies or ones that perform their activities in other European Union member states or states belonging to the European Economic Area must guarantee them the same working conditions as provided for in the host country by the national norms that transpose Directive 96/71/EC of the European Parliament and Council, dated 16th December, on the displacement of workers to provide services.

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4. Workplace compensation

4.1. Salary

This can also be called wages, compensation, remuneration, etc.

What is it?

All of workers' economic benefits in money or in kind, without discrimination on the basis of sex, for rendering professional work services, compensating either effective work or rest periods that are counted as work.

Under no circumstances may in-kind salary exceed thirty per cent of the worker's salary benefits.

Salary can be either gross or net. Net is what remains after taking a series of deductions from the gross salary received by the worker.

These deductions are the amounts that are subtracted from the gross salary for Social Security and taxes, namely the income tax (called IRPF in Spanish) or tax on personal income in Spain.

Thus, the worker contributes to sustaining the Social Security system by subtracting part of his or her gross salary, which is then deposited in the Social Security treasury.

The deductions are made for several different reasons and contingencies, including:

- Common contingencies: This includes common illnesses and non-workplace accidents.
- Contingencies for unemployment and professional training.

IMPORTANT:

In foreign hires with work authorisations for activities for a certain period of time, that is, for a specific season or campaign, and for students, no deductions will be made for the unemployment contingency.

Who is responsible for the deductions?

The employer, who delegates the deposits and thus withholds the tax and Social Security payments from the worker's salary. This holds true except in the case of a domestic service worker employed by several different employers, in which the worker will have to deposit the payments into the Social Security treasury.

What does the salary consist of?

The contents of the salary is determined by means of collective bargaining or, in its absence, the individual contract. It must include:

- **The base salary: T**his is the amount set per unit of time or work, according to the professional category. It is the basis upon which many salary supplements are calculated.
- **Salary supplements:** These are the amounts that, if applicable, are added to the base salary for the following items:
  - Personal supplements that are linked to the worker's personal conditions and were not included when setting the base salary, such as seniority, degrees, special knowledge, etc.
    - Job supplements that are linked to the job as opposed to the person and thus are not fixed, so that when a person changes jobs he or she loses the right to this supplement. They may include shift work, night shifts, harsh working

conditions, toxicity, hazardousness, etc.

- Supplements according to the quality or quantity of work set depending on higher or lower performance. These might include bonuses, incentives, extras for activity, etc.
- Supplements paid on a regular frequency longer than one month. These might include rewards, participation in profits, etc.
- In-kind supplements, such as per diems, lodging, etc.

Is there any compensation that is not regarded as part of the salary?

Yes, namely the amounts paid to the worker for::

- Indemnifications or reimbursements for expenditures made as a result of his or her job.
- Social Security benefits or indemnifications.
- Indemnifications for moves.
- Indemnifications for suspension or dismissal.

What rights does a worker have when paid a salary?

The worker has the right to:

- Be paid the salary in the place and on the date agreed to.
- Be given a salary receipt or payslip.
- Ensure that periodic and regular payment does not take place in intervals exceeding one month.
- To be paid, either to himself or herself or to his or her legal representatives, advances for work already performed.
- To be paid a ten percent annual interest over the salary should payment be delayed.

In Spain, there are also two extraordinary salary payments, one payable at Christmas and the other in the month set by the collective agreement or by agreement between the employer and the workers' representative. These payments may be prorated on a monthly basis, that is, the amount of the two extraordinary payments may be divided and distributed to be paid each month.

Is there a receipt proving that workers have received their salary?

The employer is required to provide the worker a salary receipt or payslip along with his or her salary, which shall conform to the model established by the Ministry of Labour and Social Affairs, or another one instead which shall be set by collective agreement or, in its absence, another model that is decided upon through an agreement reached between the company and the workers' representatives. This receipt or payslip must contain, with duly clear and enumerated, the different items paid to the worker as well as any legal deductions.

Any salary receipts that, without eliminating any of the items contained in the aforementioned model nor altering its name, contain purely formal modifications or include additional information for the worker on the compensation paid will also be considered in line with the official model.

The salary receipt or payslip will be issued for natural months. Companies that pay workers' salaries for periods of under one month must document these payments as advances on the definitive amount, which shall be included in the monthly salary receipt.

The salary receipt shall be signed by the worker when handed over to him or her in duplicate, and the amounts payable shall be paid either in legal tender or through bank cheque. Signing the receipt will be interpreted as confirmation that the worker has received this amount, without necessarily entailing his or her agreement with the amount.

When payment is made via bank transfer, the employer shall give the worker the duplicate of the receipt without any need for it to be signed. For the purposes stated in the paragraph above, this shall serve as proof of the payment issued by the bank.

The salary receipts issued shall be filed and saved by the employers along with the notices of payment to Social Security for a period of at least five years, should pertinent examinations be necessary.

4.2. The Minimum Interprofessional Wage (SMI)

What is it?

Every year, after consultations with the most representative trade unions and business associations, the government sets the "Minimum Interprofessional Wage", for both fixed and temporary workers, as well as for people working in domestic service. To do so, it takes into account the Consumer Price Index (CPI), the average national productivity, the increase in the participation of labour in the national revenue and the overall situation of the economy at the time.

Although it is set every year, the SMI can be reviewed every six months if the Consumer Price Index (CPI) exceeds the government's forecasts. It is currently set as follows:

- For any activity:

  19,02 €/day

  570,60 €/month

  Minimum:: 7.988,40 €/year

- Temporary workers

  Minimum: 27,02 €/legal workday

- Domestic service:

  4,47 €/hour worked

The amounts set are a minimum wage, meaning that they can be exceeded by a collective agreement or individual agreement with the employer. However, the annual wages agreed to in a collective agreement may under no circumstances be lower than the amount approved by the government in the corresponding provision, which acts as a salary guarantee.

The review of the Minimum Interprofessional Wage does not affect either the structure or the amount of professional salaries that workers have earned when annual calculations of these salaries as a whole are higher than this minimum wage.

The amount of the Minimum Interprofessional Wage may not be garnished.

4.3. The Public Indicator of Multiple Effect Income (IPREM)

What is it?

This is a new indicator that replaces the SMI as a benchmark index for calculating income. It is used to determine the amount of the unemployment benefit and subsidy.

It is determined by taking into account at least the inflation forecast or target of the state's general budgets. In practice, even if the SMI rises, this allows the other benchmarks calculated based on the IPREM not to rise in a parallel fashion.

Just like the Minimum Interprofessional Wage, the IPREM is also updated at the beginning of each year.

5. The workday

5.1. The workday

The workday refers to the time worked as set by law or collective agreement. A certain number of hours per day, week, month or year is set. This limits the provision of services and is used to set the salary.

How long does it last and how are the hours distributed?

The length of the workday will be agreed to by either collective agreements or job contracts. The ordinary maximum workweek is forty hours of effective work on average in the annual calculations.

The number of ordinary hours of effective work cannot exceed nine per day, unless through collective agreement or, in its absence, an agreement between the company and the workers' representatives, in which another distribution of daily work time is set, as long as it respects the time off between workdays.

Workers under the age of 18 may not work more than eight hours per day of effective work, including, if applicable, time spent on training and, if they work for several different employers, hours worked with each of them.

The excess hours worked to prevent or repair breakdowns or other extraordinary, urgent damages will not be taken into account for the maximum length of the ordinary workday or for the calculations of the maximum number of overtime hours authorised, although they should be compensated as overtime.

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Through collective agreement or, in its absence, agreement between the employer and the workers' representatives, an irregular distribution of the workday throughout the year can be agreed upon. This distribution must respect the minimum periods of daily and weekly time off.

The work time shall be calculated when the worker is on the job at both the beginning and end of the workday.

Is there a right to time off?

Yes, there must be at least twelve hours of time off between the end of one workday and the beginning of the next, and when the length of the continuous workday exceeds six hours, there must be a break during the workday for no less than fifteen minutes. This period shall be considered effective work time when set in this way or through a collective agreement or job contract.

In the case of workers under the age of 18, the break shall last at least thirty minutes, and it must be given as long as the length of the continuous workday exceeds four hours and thirty minutes.

Workers shall have the right to a minimum amount of time off per week of one and a half days, uninterrupted, which may be accumulated for periods of up to fourteen days. As a general rule, these days shall include Saturday afternoon, or possibly Monday morning, and all day Sunday.

The length of the weekly time off for minors under the age of eighteen must be at least two full days, uninterrupted.

What are special workdays?

Special workdays are those that allow workdays and breaks or time off to be extended or shortened within the limits and conditions specified for the sectors and jobs which require it because of their unique features. At the behest of the Ministry of Labour and Social Affairs, and after prior consultations with the most representative trade unions and business organisations, the government may set extensions or reductions in the system and length of workdays and breaks or time off.

The sectors and activities in which the workday and time off may be extended are:

- Employees in urban estates, guards and non-railway watchmen
- Farm workers
- Retail and hotel/restaurant business
- Transports and jobs at sea
- Jobs in certain specific conditions
- Shift work
- Jobs whose actions start up and/or close the jobs of other people
- Jobs in special conditions of isolation or remoteness
- Jobs in activities with split workdays

The reduction of the workday is regulated for the following sectors:

- Jobs exposed to environmental risks
- Farm workers
- Jobs inside mines
- Jobs in construction or public works

- Jobs in compressed air chambers
- Jobs in freezer chambers

Reductions in the time off between workdays and workweeks must be compensated through alternative time off lasting no less than the reduction made, which can be taken within the periods regulated in each sector, in a way to be determined by agreement. Nevertheless, in the collective agreements may contain authorisations so that upon prior agreement between the employer and the employee affected, all or part of the compensatory time off may be accumulated to be taken in conjunction with the yearly vacation.

Likewise, the compensation involved may be accumulated for half a day of weekly time off.

Compensatory time off may not be replaced by monetary compensation except for cases in which a working relationship is being terminated for causes other than those derived from the expiration of the contract.

Application of special workday schemes for workers with contracts for a certain period of time or temporary contracts, or those hired part-time to provide services in fixed discontinuous jobs, will be conditioned upon the possibility of taking compensatory time off within the reference periods in each sector before the contract or activity period has terminated.

May I reduce my workday for family reasons?

Yes, female workers have the right to one hour of absence from work to breastfeed an infant under the age of nine months. This hour can be divided into two parts, or the normal workday can be reduced by half an hour. This leave may be used by either the mother or father should both be working.

Workers have the right to reduce their workday by at least one-third and at most one-half of its normal length, with the proportional reduction in salary, under the following circumstances:

- Whoever, for reasons of legal guardianship, has under his or her custody a minor under the age of six or a person who is physically, mentally or sensorially handicapped who does not work at a wage-earning job.
- Whoever is directly in charge of caring for a close family member who because of age, accident or illness cannot care for himself or herself and who does not work at a wage-earning job.

Within his or her workday, the worker has the right to decide on the timetable and length of these leaves and must give fifteen days' prior notice to the employer when he or she wishes to resume the normal workday.

May I reduce my workday for reasons of gender violence?

Yes, for their protection or for comprehensive social assistance, workers who are victims of gender violence have the right to reduce their workday with the proportional reduction in salary, to adapt their timetable, to apply flextime or other ways of organising work time used in the company.

These rights may be exercised in the terms that are established in collective agreements or in agreements between the company and workers' representatives for these specific circumstances, or in accordance with an agreement between the employer and the affected employee. In absence of an agreement this will correspond to the worker.

5.2. The work timetable

What does work timetable mean?

This is the distribution of the periods of work and time off in the workday, with indications as to the hours when work begins and ends. A system of flextime (flexible work timetables) can be established by collective agreement or by an agreement between the employer and the workers' representatives.

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What is night-time work?

Night-time work is work performed between 10 pm and 6 am. The Labour Authority must be advised of any employer that regularly performs night-time work.

Night-time workers include:

- Those who regularly work at least three hours of their workday between these times.
- Those who forecast that they may perform no less than one-third of their annual work time during these hours.

The length of the workday may not exceed eight hours per day on average within a fifteen-day period. Overtime is not allowed except:

- In the activity sectors in which the extended workday is approved.
- To prevent and repair breakdowns or extraordinary and urgent damage.
- Shift work in the case of irregularities in changes of shifts that are not caused by the company.
- Needs derived from anomalies in changes of shifts that are not caused by the company.

Exceptions to workday limits for night-time workers in these cases cannot result in a workday of over eight hours per day of effective work on average within a four-month period for sectors with extended workdays, or four week-periods for other cases.

When the workday extension takes place through overtime, the workday of workers affected must be reduced in subsequent days until reaching the aforementioned average within the corresponding period.

In collective agreements, extensions of this period can be stipulated for sectors with extended workdays up to a maximum of six months.

Night-time workers who have acknowledged health problems linked to their

night-time work will have the right to be assigned a daytime job existing in the company for which they are professionally suited.

The hours worked at night, unless they are due to the very nature of the job and the salary has been set according to this, will have a specific increase in compensation in accordance with what it set in the collective negotiation.

Night-time workers must always benefit from health and safety protection that is adapted to the nature of their job. The employer must guarantee that night-time workers have a free health examination before they begin the night-time work, and thereafter at regular intervals.

What is shift work?

Shift work is any way of organising work within a team in which workers successively occupy the same jobs following a certain rotation, either continuous or discontinuous, which implies for the worker the need to provide his or her services at different times within a given period of days or weeks.

Companies with continuous manufacturing processes twenty-four hours a day will have to remember that no worker may work a night-time shift for more than two consecutive weeks unless he or she volunteers to do so.

Companies that, due to the nature of their activity, have shift work, including Sundays and holidays, may organise it either by teams of workers performing the same activity for an entire week, or by hiring staff to complement the teams needed for one or more days a week.

In companies with shift work, when it becomes necessary in order to organise the work, the half-day of weekly time off can be accumulated for periods up to four weeks, or it can be separated from the corresponding full day off to be used

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on another day during the week.

When changing shifts, if the worker cannot have the minimum time off between workdays, the time off on the day when this happens may be reduced up to a minimum of seven hours, and the difference between the twelve hours generally required can be offset in the days immediately following.

Shift workers must always have a high level of health and safety protection adapted to the nature of their job.

What is the work calendar?

The work calendar is drawn up by the company every year and must be displayed in a visible place within each work centre showing the work timetable and the annual distribution of workdays, holidays and time off.

Workers' representatives must be consulted before the work calendar is drawn up, and they must issue a report.

Does everyone have the right to yearly vacation?

Yes, yearly vacation is agreed to either individually or collectively, and it cannot be less than thirty natural days or the corresponding proportion for the time worked.

The vacation calendar shall be set by each company through an agreement between the employer and the worker in accordance with what is stated in the collective agreements, if applicable. Workers shall be informed of the dates of his or her vacation at least two months in advance the date when they are planned to start.

Taking vacation cannot be replaced by any economic benefit, unless the work contract has terminated before the date set for the vacation period and the worker has not been able to take this vacation.

5.3. Overtime

What is overtime?

Overtime refers to the hours that go beyond the maximum length of the ordinary workday.

Doing overtime shall always be voluntary, and the employer may not either impose or require that the worker works overtime, although overtime will be obligatory when breakdowns or other extraordinary, urgent damages must be prevented or repaired.

Generally speaking, overtime may not exceed eighty hours per year, although exemptions include the following:

- Lower number of hours worked per year than the general number in the company
- Prevention or repair of breakdowns
- Government authority

IMPORTANT:

Minors under the age of eighteen cannot work overtime.

How is overtime paid?

Payment for overtime shall be established in a collective agreement or, in its absence, by individual agreement. The choices include:

- Paying the overtime hours with an amount set that shall be at least equal to payment for ordinary hours.
- Compensating overtime with the equivalent paid time off.

If there is no specific agreement, overtime must be compensated with time off within the four months following the overtime worked

6. Workplace health

6.1. Workplace health

The prevention of workplace risks is an activity whose goal is to promote improved working conditions in order to raise workers' levels of health and safety protection. The UGT's Office of Workplace Health has noticed a steep increase in workplace accidents due to non-compliance by companies, to job instability, to the lack of safety measures and to the lack of training and information. Both the employer and the worker must act to help prevent workplace risks.

What kind of actions are included in workplace health?

- The employer's actions aimed at preventing workplace risks should guarantee the health and safety of workers in their service in all aspects related to their jobs. To this end, employer must:
  - Draw up, implement and apply a workplace risk prevention plan.
  - Perform a risk assessment.
  - Plan and execute preventative activities.
- Workers' actions in the area of preventing workplace risks entail a series of rights and responsibilities that are contained in the Law on Preventing Workplace Risks.

For appropriate preventative actions, the worker has the right to:

- Be directly informed about the health and safety risks and the preventative measures adopted, including those in place to handle emergency situations.
- Receive sufficient, appropriate theoretical and practical training when hired and when the content of his or her job changes. This training must be specifically centred on each worker's job or function, it must adapt to the evolution of risks and the appearance of other new risks. It must also be repeated periodically, if needed.
- Stop his or her activity and if necessary leave the workplace when it is believed that the activity entails a serious, imminent risks for his or her life or health.
- Be assured of a periodic health examination in line with the risks inherent in the job.
- Have specific protection measures in place when due to his or her personal characteristics, known biological state or physical, mental or sensorial disability, he or she is particularly vulnerable to certain job-derived risks.
- Be consulted and participate in all issues affecting workplace safety and health. Workers shall have the right to submit proposals to the employer and participatory and representative bodies (risk prevention delegates, safety and health committee), through which they exercise their right to participate.

The workers' obligations must include ensuring, to the extent possible and through compliance with the risk prevention measures that are adopted in each case, their own safety and health and that of the other people whom their professional activity may affect. Thus, in accordance with their training, and following the employer's instructions, they must:

- Properly use machines, tools, hazardous substances, equipment and any other element of work.
- Properly use the protection devices and equipment provided by the employer and following its instructions.
- Properly use the safety devices of the means and places of work.

- Immediately inform his or her superior in the hierarchy and subordinates to undertake risk protection and prevention activities, and with regard to prevention, to inform about any situation that in his or her judgement entails a risk for the safety and health of the workers.
- Contribute to compliance with the obligations set by the competent authority.
- Cooperate with the employer so that he or she may ensure working conditions that are safe and do not pose risks to the safety and health of the workers.

7. Terminating the working relationship

7.1. Ways

What does terminating the job contract mean?

This means ending the working relationship between the company and the worker. The causes for terminating the job contract can be as follows:

- Mutual agreement between both parties.
- Causes that are validly outlined in the contract.
- Expiration of the length of the contract or performance of the job or service for which the contract was drawn up.

- Resignation by the worker.
- Death, serious disability or permanent, total or absolute incapacity of the worker.
- Retirement by the worker.
- Death, retirement, disability or termination of the legal personality of the employer.
- Collective dismissal founded on economic, technical, organisation or manufacturing reasons.
- The worker's will with justified reason.
- Disciplinary dismissal.
- Legally valid objective causes.
- By decision of the worker who feels legally required to leave his or her job permanently as a result of being a victim of gender violence.

When the contract is terminated, the employer, when notifying workers of a complaint or, if applicable, of prior notice of termination of the contract, must accompany this notification with a document proposing liquidation of the amounts applicable.

What is the final settlement?

Proof of the final settlement is a common, though not obligatory, practice. This is when the worker, at the end of the job contract, signs a receipt which officially terminates the working relationship and states that the employer has paid him or her everything due.

Once the working relationship is over, either because the contract has terminated or because there has been a dismissal or because the worker has voluntarily left the job, the employer must pay:

- The salary for the days that the worker has worked but has not yet been paid for.

- The proportion corresponding to extraordinary payments.
- The vacation days owed that have not yet been taken.
- There may also be an indemnification. For example, if a contract for a determined job or service or a temporary contract due to production circumstances has terminated, eight days of salary per year worked must be paid.

The employer may subtract from this payment any days that the worker has missed without justification, or if the worker has left the job without prior notice (prior notice tends to be fifteen days). This amount can be considered an indemnification for damages.

IMPORTANT:

We recommend that before signing a final settlement or liquidation, workers go to UGT to inform themselves as to the amount due (this must be done far enough in advance to ensure that everything is correct) and whether the termination of the contract is legal. You should never sign a blank form nor should you sign if the amounts are not correct, because once you have signed you may claim nothing from the employer. The worker also has the right to have a member of the workers' committee or a staff delegate, if applicable, with him or her when signing the final settlement.

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What can be done if the employer does not pay and wants to dismiss the worker?

In the case that the employer has **not paid the salary**, you must first try to reach an amicable agreement with the employer to pay the amounts owed. If this is ultimately not achieved, **you should file what is called a "conciliation paper" ("papeleta de conciliación") to the Arbitration and Mediation Court of the Balearic Islands (TAMIB).**

The deadline for these claims is one year after the payment was due and not paid.

In the event that the employer dismisses the worker, **if this dismissal is regarded as illegal, there is a twenty-day deadline,** starting on the day after this dismissal took place. In this case you must also first submit a "conciliation paper", as conciliation is a compulsory prior step before filing the corresponding lawsuit either for dismissal or to demand the amount owed.

Dismissal can be for the following reasons: disciplinary, force majeure, economic, technical, organisational and manufacturing, as well as dismissal for objective causes.

The causes that are liable to a disciplinary dismissal are the following:

- Missed work or lack of punctuality at work, either one on a repeated, unjustified basis.
- Lack of discipline or disobedience at work.
- Verbal or physical assault.
- Jeopardising the good faith of the contract, such as: abuse of trust, violating loyalty duties, disloyal competition, fraudulently pursuing profits, negligent behaviour, etc.
- Lowering the performance of the habitual work on an ongoing, voluntary basis.
- Intoxication or drug abuse on a regular basis that negatively affects one's job performance.
- Exercising sexual harassment or harassment for reasons of race, ethnicity, religion or beliefs, handicap, age or sexual orientation.

If **the worker is the victim of gender violence**, any absences or lack of punctuality at work due to the physical or psychological situation are regarded as justified and cannot be used by the employer for disciplinary dismissals. In this case, it is necessary for the social services or healthcare centre to accredit the worker's condition as a victim of gender violence and to notify the company of this condition.

Dismissal for objective causes may be due to:

- The worker's lack of aptitude, which is discovered or takes place after being hired.
- The worker's failure to adapt to the technical modifications of his or her job.
- Absenteeism, that is, intermittent lack of attendance at work, even if justified. Absences due to a legally called strike, workplace accident, maternity leave, vacation leaves of absence for illness and other circumstances will not be regarded as absenteeism.
- Economic, technical, organisational and manufacturing reasons.

In all these cases, the indispensable requirement is that the employer give notice of the dismissal in writing, stating the deeds motivating the dismissal and the date on which it is to take effect.

It is also important to know **that it is forbidden to dismiss due to discrimination for reasons of sex, and this includes protecting pregnant women whose contracts are terminated due to the pregnancy. If a woman is dismissed for any cause related to a pregnancy, this dismissal is considered discriminatory and is thus regarded as null and void, even if it takes place during the trial period.**

If the dismissal takes place during the trial period, the employer is not required to cite any particular cause nor to either give prior notice or indemnify. This trial period, which must be put into writing in the contract, cannot be longer than six months for workers with degrees and two months for the remaining workers.

Can the employer speak with the police in order to withdraw the worker's residence and work authorisation if the worker decides to leave the company?

No. Even if the worker has been granted the residence and work authorisation based on a specific contract or job offer, the employer may not obligate the worker to work until the contract expires. If workers are offered a better paid job with better working conditions, or simply a job that interests them more, they have the right to improve their job and change companies. However, **it should be borne in mind that if the initial authorisation is limited during its year of validity both geographically and per activity sector, the holder may only change jobs without a previous request provided that the new job is in the same sector and within the same province for which the authorisation was granted.**

Before leaving a job, it is advisable to give the employer prior notice. The usual period for prior notice is fifteen days, and should prior notice not be given the employer may subtract these days from the final settlement to be paid. It is also important to bear in mind that in order to renew your card you will be required to have paid into Social Security for a minimum period of time, usually six months and exceptionally three months.

Nevertheless, if you regard the working conditions as abusive, do not hesitate to go seek advice at UGT, where you will be informed as to your rights and, if necessary, you can get help filing complaints.

7.2. How to proceed in the event of dismissal

The worker whose working relationship is terminated via the unilateral will of the employer, and who is not in agreement with this decision, may proceed to the following actions:actuacions següents:

7.2.1. Act of conciliation

What is an act of conciliation?

This is the process that workers should follow if they are dismissed and regard this dismissal as unjustified.

This is a prerequisite for filing any procedure related to dismissal before the Labour Court. Only processes that require prior administrative claims are exempt from this requirement.

Workers who receive a letter of dismissal citing any cause, or workers who are verbally dismissed and prevented from performing their jobs, may initiate conciliation actions if they feel the employer's actions are unjustified.

What is the procedure?

The request for conciliation must be submitted to the Arbitration and Mediation Court of the Balearic Islands (abbreviated TAMIB) **within twenty working days (Sundays and holidays not included) from the day of dismissal. Submitting the request for conciliation suspends the expiration dates. The calculation of expiration will be resumed the day after the attempted conciliation or when fifteen days have elapsed from the submission without it having been held. In any event, thirty days after having submitted the request for conciliation, the procedure will be considered terminated and the procedure finished.**

How is it resolved?

The TAMIB convenes both parties for a hearing, which might result in:

- An agreement: Both parties must adhere to the agreement (returning to the job or indemnification, including the processing fees).
- A lack of agreement: The worker must submit a claim to the Labour Court in the days remaining before reaching the twenty-day deadline once the days from

the dismissal until the submission of the demand for conciliation have been subtracted.

What happens if one party does not appear at the hearing?

When the parties are duly convened for the act of conciliation, if the plaintiff neither appears nor provides valid justification for the absence, the conciliation paper will be considered not submitted and all paperwork until then will be duly archived.

If the other party does not appear, the act of conciliation will be considered attempted to no effect, and the judge or court must determine either recklessness or bad faith in case of unjustified absence and impose a fine of up to 601.01 if the ruling handed down essentially agrees with the purpose contained in the conciliation paper. This party will also be responsible for paying the lawyer's fees.

May the decision be appealed?

The conciliation agreement may be appealed by either of the two parties and by anyone suffering damages from it, before the competent judge or tribunal to examine the affair that is the subject of the conciliation. This ruling can be deemed null and void due to the causes that invalidate contracts.

The action shall expire thirty days after the agreement was reached. For possible damaged parties, the deadline will be counted starting when they were made aware of the decision.

Is it compulsory for the contents of the agreement to be executed?

What is agreed in the act of conciliation must be executed by the participating parties without the need for the judge or court to ratify it, and can be done through the process of executing rulings.

7.2.2. Lawsuit in the Labour Court

What is it?

Once the act of conciliation has been held or there have been attempts to hold it to no avail, the worker must submit the corresponding lawsuit in the Labour Court by providing the voucher of the results of the act of conciliation should he or she have it, or otherwise by providing it within a fifteen-day period starting on the day after the notification.

The worker may file the lawsuit either alone or with the counsel or representation of a lawyer, attorney, paralegal or trade union. Generally speaking, the competent court will be the one with jurisdiction where the services of the plaintiff were provided or where the headquarters of the defendant is, to be chosen at the plaintiff's discretion.

The lawsuit must be submitted within twenty working days after the dismissal (to calculate these twenty days, the days elapsed between the day after the dismissal and the submission of the act of conciliation will be added to those elapsed between the day after the conciliation was held and the day the lawsuit is submitted in the Labour Court). The expiry of this deadline shall be final. If there is a lawsuit due to dismissal against a person who has been erroneously identified as the employer, and it was accredited in the trial that the employer was a third party, the worker may submit another lawsuit against the latter without the calculations of the expiry deadline beginning until the date when the true employer is identified.

What are the characteristics of the lawsuit?

It must be put into writing and it must contain the following information:

- Data of the plaintiff, with the TIE number if he or she is foreign or the DNI if he or she is a Spanish citizen, and those of the other interested parties that must be called to the trial and their addresses; the full name of the individuals

and the business name of the natural person and legal entities. If the lawsuit is filed against a group that is lacking in personality, the full names of those appearing as organisers, directors or managers of the group and their addresses must appear.

- A clear, specific list of the deeds by the employer and anyone who according to the legislation is necessary to resolve the matter. Under no circumstances may any deeds other than those mentioned in the act of conciliation be listed, unless they have taken place after the act.
- The place of work, professional category, particular characteristics, if any, of the job performed prior to the dismissal, salary, time and method of payment, and seniority in the company.
- Effective date of dismissal and how it took place.
- If the worker has, or had before the dismissal, the quality of legal or trade union representative of the workers.
- If the worker is a member of any trade union, in the event that the complaint involves improper dismissal because it was not undertaken without first consulting with the trade union delegates, if applicable.
- If the plaintiff is representing himself or herself, he or she shall designate a home address within the jurisdiction of the court or tribunal, where all communication with him or her shall be addressed.
- Date and signature.

When is the ruling handed down?

Once the trial has been held, the Labour Court shall hand down a sentence within a five-day period, in which it will determine whether the dismissal has been null and void, illegal or legal. Both parties will be notified of the ruling within the following two days.

May the ruling be appealed?

The employer or worker may appeal the ruling in the Labour Court of the Higher Court of Justice within the five days following notification of the ruling.

In the trials where actions derived from the dismissal are exercised and the ruling from the court declares that the dismissal by the employer is null and void or illegal, and the employer submits an appeal, the employer shall be obligated for the duration of the process to pay the worker the same compensation he or she was being paid prior to the dismissal. The worker shall continue to provide his or her services at the company, unless the employer plans to pay this amount without any labour compensation.

The employer shall have the same obligation if the appeal is filed by the worker and the ruling had declared the dismissal null and void, or if the worker has decided to rejoin the company.

8. Social Security unemployment protection

8.1. Social Security

Through its Social Security system, the state of Spain guarantees to Spaniards residing in Spain and foreigners either residing here or legally in Spain, to perform a professional activity in a contributory mode or to fulfil the requirements of the non-contributory mode, as well as their family members or

similar in their charge, the proper protection in the events and situations defined by law provided that, in both cases, they exercise their activities on Spanish soil and are:

- Employed persons
- Self-employed persons or freelancers
- Working partners in Associated Work Cooperatives
- Students
- Public, civil or military workers

All Spaniards residing on Spanish soil and foreigners legally residing in Spain will be included in the non-contributory mode,

What is the composition of the Social Security system?

It consists of the General System and the following Special Systems:

- Agriculture
- Workers at sea
- Self-employed persons
- Domestic employees
- Coal mining
- Students (school insurance)
- Civil servants

What are the main Social Security benefits?

The main ones include:

- Healthcare
- Pharmaceutical benefits

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- Temporary disability, such as:
  - Common or professional illness.
  - Workplace or common accident.
  - Observation period for workplace illnesses.
- Maternity.
- Risk during pregnancy.
- Permanent disability.
- Permanent, non-disabling injuries
- Retirement.
- Protection for death and survivors.
- Family benefits.
- Obligatory Insurance for Old Age and Disability (S.O.V.I).
- Extraordinary pensions motivated by acts of terrorism.

Is it obligatory to enrol in and pay into the Social Security system?

Yes, enrolment in Social Security is obligatory for anyone included within its sphere of application in the contributory mode, and everyone enrols once for their entire lifetime and for the entire system.

Paying into the Social Security system is compulsory for anyone performing an activity that includes them within the sphere of application of any of the systems within Social Security in the contributory mode.

Foreign workers must enrol in the Social Security system once they have obtained their residence and work authorisation.

If when requesting their foreign identity card, or one month after having entered Spain, there is no proof of the worker who was initially authorised to reside and

work here having enrolled in the system, the competent authority may proceed to nullify this authorisation.

If the employer does not fulfil its obligation, workers may enrol themselves directly in the Social Security system. This body may also enrol the worker.

IMPORTANT:

The contribution is the amount that the employer withdraws from payrolls and deposits into Social Security, and the amount the worker must pay for common contingencies (common illnesses and non-workplace accidents), unemployment (with the exception of seasonal workers and students) and professional training. Payment into the system is necessary in order to renew the residence and work

8.2.Bilateral agreements

Are there any bilateral agreements between Spain and other countries on Social Security benefits?

Yes, Spain has international bilateral agreements on Social Security benefits with twenty countries around the world.

Each of them has different characteristics, yet all are applicable to workers who are or have been subjected to the Social Security legislation in one or both countries signing the agreement, and shall benefit from Social Security in the same conditions as national employed or self-employed persons.

With regard to contributory benefits, it should be borne in mind that in almost all the agreements, insured periods completed in Spain and the country with which it has signed the agreement may be added up.

Additionally, these benefits can be paid regardless of whether the beneficiary resides in Spain or his or her country.

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For further information, please check the following website: ***http://www.seg-social.es/inicio/.***

8.3. Special system for domestic workers

If I work in domestic service, who should pay my Social Security and what rights do I have?

Domestic service falls within the Special System of Household Workers, and the obligation to pay into Social Security falls upon:

- The employer, who must enrol the worker and pay if the worker works in his or her house eighty or more hours per month. The employer will only have to deduct from the salary the part that the workers must pay in. There is a flat fee to pay to Social Security within this system, and it must be paid every month and is indivisible (and independent of the real salary). It is calculated by applying the fee percentage based on annual base payment, both of which are set by the government every year.
- The worker, if he or she works for several different employers at least 72 hours per month on at least twelve days per month. In this case, the worker is responsible for paying the entire Social Security fee.

The bases and percentage of the fee set by the government each year can be seen at: ***http://www.seg-social.es/inicio/.***

With regard to domestic workers' rights, they have fewer rights than workers included in the General System of Social Security. Briefly, they are as follows:

- If the contract is not in writing (and there is no requirement for it to be in writing) it is understood to last one year, which may be extended by further one-year periods.
- If the employer does not notify the worker of his or her intention to end the contract at least seven days before this one-year period is completed, the contract is implicitly extended.

- Unless otherwise agreed, the trial period shall be fifteen days, within which both the worker and employer may end the working relationship without any consequences.
- The maximum work week is forty hours (without including the agreed upon times that the worker must be present) and may not exceed nine hours per day.
- For this workday, the minimum wage must correspond to the Minimum Interprofessional Wage set by the government each year.
- Weekly time off is 36 hours, with the right to take at least 24 consecutive hours, preferably on Sunday.
- Overtime must be paid extra. Doing overtime is voluntary and cannot exceed eighty hours per year.
- For every three years of work with the same employer, up to a maximum of five three-year periods, the worker has the right to a 3% monetary salary increase.
- The worker has the right to two extraordinary payments per year, each corresponding to payment for fifteen natural days of work.
- The worker has the right to following paid leaves of absence: fifteen natural days for marriage; one day for changing residence; two days for the birth of a child, serious illness or death of family members including spouse, children, parents, grandparents and grandchildren, both one's own and in-laws (four days if the worker must travel to another city); the time needed to take the necessary prenatal tests and classes on birth preparation techniques.
- The worker has the right to fourteen holidays per year, two of them local holidays. The following shall always be considered holidays: Christmas, New Year's Day, 1st May and 12th October.
- The yearly vacation period shall last thirty natural days (holidays are counted), and at least fifteen of them must be taken consecutively.
- In the event that the employer dismisses the worker, the latter has the right to an indemnification of at least seven days of salary per year worked, with a limit of six months' worth of salary.

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In this system, workers may not benefit from:

- Leave for breastfeeding and the reduced workday to take care of children under the age of six.
- The unemployment benefit, as this system does not contribute to the Social Security unemployment benefit.
- The employer is not required to furnish a payslip justifying the salary nor to put the contract into writing.
- Up to 45% of the salary may be withheld for lodging and meals.
- Should the worker fall ill and have a "temporary disability", he or she does not begin to be paid the benefit until 29 days after it is granted.

8.4. Unemployment protection

How are workers protected in the event of unemployment?

There are many different situations in which one can earn unemployment benefits, as well as a variety of different types of aid.

There are two types of legal protection in the event of unemployment:

- Contributory benefit (unemployment benefit)
- Non-contributory benefit (unemployment subsidy)

8.4.1. Contributory benefit

What are the requirements for earning it?

The requirements are as follows:

- To be enrolled in and paying into the Social Security system.
- To be legally unemployed.
- For the worker to accredit his or her availability to actively seek work and to accept an appropriate placement and sign a Commitment to Activity.
- To have covered a minimum payment period of twelve months within the six years prior to being legally unemployed.
- To not be of retirement age.

IMPORTANT:

To request the unemployment benefit, one of the documents you are going to need is the Company Certificate. The employer is required to give you this when signing the final settlement. This document shows the worker's data, the type of contract, the reason for the end of the contract, the base salary that determined the Social Security fee paid in the past six months, etc. If the employer does not automatically give you this certificate, you must ask for it.

When is one considered legally unemployed?

People who can and want to work are considered legally unemployed when they lose their job either temporarily or permanently, or when at least one-third of their workday is reduced with the corresponding loss or reduction in salary. The reasons can include the following:

- Collective dismissal, which is accredited with a ruling by the Labour Authority.
- Illegal dismissal of the worker.
- Death, retirement or disability of the individual employer.
- Dismissal: A legal dismissal is accredited by means of the notification of dismissal via the dismissal letter, or by the administrative or judicial act of conciliation or legal ruling declaring whether or not the dismissal was legal.
- Dismissal of the worker for objective reasons, without the need for a claim for dismissal.
- Termination of the contract through expiry of its duration or through fulfilment of the job or service for which the contract was drawn up.
- End of the working relationship during the trial period at the behest of the employer, as long as this cancellation of the previous working relationship was due to one of the circumstances that determine being legally unemployed, or if a period of three months has elapsed from the date of the end of the trial period to the cancellation of the previous working relationship, or from the ruling that declared the dismissal legal.
- Voluntary resignation by the worker for moving to another work centre of the company which requires a change in residence.
- Voluntary resignation by the worker for a justified reason. This is accredited by a definitive legal ruling.
- Temporary suspension through a "Redundancy Procedure" or a temporary reduction in the workday by at least one-third.
- Return of emigrants whose working relationship abroad is over.
- Prisoners released for having fulfilled their sentence or who are on probation.
- End or interruption of the intermittent activity of fixed discontinuous or seasonal workers.

How much is the benefit?

The benefit consists of a monthly amount that is calculated based on the average of the payment bases for Workplace Accidents and Professional Illnesses in the last 180 days prior to unemployment.

The amount of the benefit shall be:

- During the first 180 days, 70% of the regulating base salary.

- Starting on day 181 and thereafter, 60% of the same.

The minimum amount shall be 80% of the Public Indicator of Multiple Effect Income (IPREM), raised by one-sixth (the proportion of extra payments) when the worker has no children under his or her care. When the worker has at least one child under his or her care, it shall be 107% of the IPREM raised by one-sixth.

The maximum amount of the benefit shall be set according to the number of children under the care of the beneficiary:

- No children: 175% of the IPREM, raised by 1/6
- With one child: 200% of the IPREM , raised by 1/6
- With two or more children: 225% of the IPREM, raised by 1/6

It should be borne in mind that unemployment benefits will always be subject to income tax and Social Security deductions.

How long will the benefits last?

The length of a benefit is related to the period of employment paying into the Social Security system in the past six years.

Who may be a beneficiary?

The groups listed below may earn the unemployment benefit:

- Employed persons included in the General System of Social Security belonging to the European Union or the European Economic Area, and citizens of other countries who are legally residing in Spain and can accredit:
  - Initial, valid temporary residence and work authorisation as an employed person.
  - Renewed, valid temporary residence and work authorisation as an employed person.
  - Initial or renewed and expired temporary residence and work authorisation as an employed person., along with the request for renewal.
  - Valid exceptional temporary residence authorisations when they came with or have enabled the holder to obtain a work authorisation in accordance with the provision in article 45.7 of the regulations of Organic Law 4/2000, approved by Royal Decree 2393/2004.
  - Holders the status of "foreigners exempt from obtaining the work authorisation" in accordance with the provisions in article 68 of the regulations of Organic Law 4/2000, approved by Royal Decree 2393/2004, and who after the end of the working relationship have a valid residence permit.
  - Permanent residence authorisation.
  - Authorisation to stay in Spain by refugees or stateless individuals along with the valid request for a temporary residence authorisation due to exceptional circumstances, or the expired one along with the request for renewal.
- Spanish staff hired at the service of the Spanish administration abroad, as long as the unemployed person moves to Spain to live and meets the remaining legal requirements.
- Employment and staff civil servants hired for temporary help in the Administrative Law system in the public administrations who are included in the General System of Social Security, and interim employment civil servants in the Justice Administration.
- Employed persons included in the special systems of Social Security that provide protection for this unemployment contingency (coal mining workers, fixed and temporary employed workers within the Special Agriculture System, workers at sea, including those paid for providing services on fishing boats weighing up to 20 tonnes).
- Working partners in associated work cooperatives included within a Social Security system that provides protection for this contingency.
- Convicts that have been released from prison for having fulfilled their sentences or on probation.

- Returned emigrant workers.
- Supplementary military officers and professional army troops or marines.

IMPORTANT:

Once the benefit has been acknowledged, individuals must meet these requirements in order to be paid it.

Where can I do the paperwork and what documentation has to be submitted?

The paperwork is done at the Public Employment Service (SOIB) offices, and the following documents must be attached to the request:

- Document accrediting legal unemployed status: letter of dismissal.
- Certificate(s) from the company or companies where you have worked within the past six months.
- Official Commitment to Activity form.
- Official documents of the payments into the Social Security system made during the last 180 days in which you were paying into the system.
- DNI or TIE and Social Security card.
- Declaration of family members under your care and income on a standardised model that will be provided by the Employment Office.
- Form for automatic bank transfer of the benefit, if you choose this payment method.

8.4.2. Unemployment subsidy

What is it and who has the right to it?

This is a non-contributory benefit. Workers who are in one of the following situations have the right to it:

- Those who have used up their contributory unemployment benefit and have family members under their care.
- Workers over the age of 45 who have used up their contributory unemployment benefit of at least twelve months and who have no family members under their care.
- Returned emigrant workers.
- Workers who, when finding themselves legally unemployed, have not covered the minimum period paying into the Social Security system needed to earn a contributory benefit.
- Released prisoners.
- Workers who are declared fully unable to work or partially disabled as a result of the review procedure to improve a situation of major disability, permanent absolute or partial disability for their usual profession.

How long does this benefit last?

The length of this benefit is as follows:

- Six months, which may be extended by two further six-month periods until a maximum of eighteen months, with the following exceptions:
  - Persons under the age of 45 who have used up a contributory benefit of at least six months shall have the right to another six-month extension until reaching a total of 24 months.

- Persons over the age of 45 who have used up a benefit of at least four months shall also have the right to another six-month extension until reaching a total of 24 months.
- Persons over the age of 45 who have used up a benefit of at least six months shall also have the right to two further six-month extensions until reaching a total of thirty months.

IMPORTANT:

It is the employer's obligation to provide the worker with the documentation needed to earn the unemployment protection. The laws shall punish non-compliance with this obligation as a serious infraction.

9. Collective representation and trade union action

9.1 Unionisation of workers

What is a trade union?

This is a democratic workers' organisation that defends their interests.

Who may join a union?

All workers have the right to freely join a trade union to promote and defend their economic and social interests. Agreement no. 87 of the International Labour Organisation (ILO) on freedom of trade union organisation and the right to join unions, which has been ratified by Spain, states that all workers, with no distinction whatsoever and without any prior authorisation, have the right to join trade union organisations.

It is important for you to know that in Spain the right to join the trade union of your choice is an individual right that is contained in both the Spanish constitution and the Workers' Statute, and that the freedom to join a trade union is a right that has special protection.

What does trade union action mean?

Once you are a member, workers also have the right to undertake trade union action, which consists of being able to exercise union actions or participate in activities organised by the union, both inside and outside the company, without any fear whatsoever of retaliation by the company:

- You have the right to take part in meetings of workers who are member of the union, held in the company, as long as the employer is notified in advance and the meetings are held outside working hours and do not affect the normal activity of the company.
- You may also enjoy the freedom to spread information about the trade union in the company, as well as to receive information, within the limits set for the right to assembly.
- You have the right to freely and democratically choose the representatives within the union.

Workers are not obligated to tell the company that they are trade union members. The Spanish constitution guarantees freedom of ideology, religion and worship, as well as the right to privacy and dignity at work. This means that you can freely

choose your ideas and religious, political and trade union convictions without anybody, including the employer, having the right to require you to share these ideas and convictions, or to tell whether or not you are a trade union member.

The Workers' Statute also bans discrimination when hiring or once employed based on whether or not an individual is a trade union member.

9.2.Workers' participation in the company

The workers' right to participate in the company is expressed through the staff delegates and Workers' Committees, although there may also be other forms of participation.

What are staff delegates?

These are bodies that act jointly in small work centres. They are the representatives of the workers in companies or work centres with fewer than fifty and more than ten workers. There may also be a staff delegate in companies or work centres with between six and ten workers, if the majority of the workers so choose.

What is the Workers' Committee?

This is the representative, collegial body of all the workers in the company or work centre, which are required in each work centre with fifty or more workers.

Who can elect the staff delegates and/or members of the Workers' Committee?

All the national or foreign workers in the company or work centre over the age of sixteen and with at least one month of seniority in the company.

Who can be elected to be a delegate and/or a member of the Workers' Committee?

National or foreign workers who are at least eighteen years of age and have at least six months of seniority in the company, with the exception of those activities that due to staff mobility have a shorter period as stipulated in a collective agreement, with a minimum of three months of seniority.

10.Collective bargaining

Collective bargaining is the ultimate expression and fundamental tool through which most trade union action should take place. It encompasses more than the processes of drawing up an agreement; it also entails all the activities involved in joint management and administration of what has been negotiated, and more generally speaking of labour relations. Through collective bargaining, the workers' organisation, unity and solidarity is strengthened.

10.1. The collective agreement

What is a collective agreement?

This is an agreement signed by the workers' representatives and employers to set the working conditions and productivity. It may also regulate workplace peace through the obligations that are agreed to.

Compliance is obligatory for the signatories, and its status is comparable to the state-wide legal regulations.

It is the ultimate expression or outcome of a process of collective bargaining, in the guise of an agreement, and for a specific sphere: company, sector, etc.

Who has the authority to negotiate?

In company contracts or those covering a smaller sphere:

- Staff delegates and the Workers' Committee.
- Trade union representatives (if there are any) with the majority on the Workers' Committee when the collective agreement affects all the workers in the company.
- The employer or its legal representatives.

In sectorial collective agreements:

- The most representative trade unions on a national scale or within the specific Spanish autonomous community.
- Trade unions with at least 10% of the members of the Workers' Committees or staff delegates, within the geographical or functional sphere of the agreement.
- Business associations that have at least 10% of the workers included in the sphere of the agreement and which also employ at least 10% of the workers in this sphere.

In all events, both parties must acknowledge each other as interlocutors.

What must the collective agreement contain?

Every agreement has its own content because the union and workplace situation in each company and sector is different.

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Nevertheless, generally speaking the matters contained in the agreement are the same. Thus, in any agreement you can find articles and clauses grouped into three main sections:

- Whom it affects and for what length of time, that is, the sphere of application or sector, geographic area or territory where it applies, to which people and for how long.
- The content of the agreement itself, which may include matters such as:
  - The salary and payroll structure, a salary table, salary raises, revision clause, supplements and bonuses, etc.
  - Conditions and procedures when the company does not have to apply the salary scheme agreed to in the collective agreement pertaining to a broader sphere of application.
  - Procedure for keeping track of time and organising work.
  - Workday, timetable, overtime and irregular distribution of the workday.
  - Joining the company, training, professional promotion and changing jobs inside the company.
  - Workplace health, risk prevention and protection measures, rules, medical services, workplace safety and hygiene, etc.
  - Social improvements and benefits, advances, loans, credits, insurance and study grants.
  - Policy on promoting employment and hiring.
  - Procedures for resolving conflicts that arise in the consultation periods with the workers' representatives due to issues such as geographic mobility, substantial changes in working conditions, suspension of contracts or collective dismissals.
  - Rights of the union members in the company, Workers' Committees or staff delegates.

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  - Training plans: Courses available, who will receive training, centres offering training and periods granted as paid absence from work.
  - Etc.
- Monitoring of and compliance with the agreement. The agreements must create Joint Commissions made up of representatives of both workers and management to ensure compliance with the agreement and interpret its content when doubts arise.

Why are collective agreements important?

Because it is an obligatory rule for signatories of the agreement and because the agreement improves and outlines many of the rights and responsibilities contained in the Workers' Statute.

Once signed, the collective agreement must be published free-of-charge in the Official Newsletter of the Balearic Islands (abbreviated BOIB).

10.2. Collective conflicts

What are collective conflicts?

They are an expression of labour-related discrepancies between workers and employers that affect the interests of the former. They can take on the form of:

- A collective conflict about the interpretation and application of the legal norms or conventions, decisions or practices of the employer.
- A conflict of interests in which the goal is to amend or replace one of the regulatory rules currently applicable.

What is a strike?

This is when workers collectively agree to suspend work.

In order for a strike to be legal, the following procedure must be followed:

- The agreement, in a joint meeting with workers' representatives, to be decided by majority, with the corresponding minutes drawn up. By vote of the workers themselves when they choose to do so: in this case, voting must be by secret ballot and the decision will be taken by simple majority. By an agreement adopted by the trade union organisations to be implemented in the labour sphere which the strike covers.
- Notification to the employer(s) affected and to the Labour Authority, in writing and five natural days prior to the start of the strike. In the case of companies providing public services, ten days of advance notice is required.
- The creation of a strike committee, which is made up of a maximum of twelve workers from the work centres affected. This committee is in charge of participating in any union, administrative or judicial actions undertaken to resolve the conflict, and it must guarantee the provision of the services needed for the safety and maintenance of the company for as long as the strike lasts.

The effects of a strike are as follows:

- Participating in a strike does not terminate the working relationship.
- During the strike, the job contract is considered suspended and the worker will not have the right to his or her salary. His or her status in Social Security will shift to a special system of enrolment.
- For those workers who do not wish to participate in the strike, their right to work must be respected.
- Although workers may exercise their right to participate in a strike, some workers may be obligated to continue working if they have to cover services that ensure the safety or maintenance of the company, or if the company must cover an essential service for the community (the latter case to be decided by

the government authority).

- The worker has no right to an economic benefit for temporary disability that might begin during the strike and for as long as it lasts.
- The worker will have no right to the unemployment benefit due to suspension of the job contract.

The strike is resolved as follows:

From the moment of the prior notice and during the strike, the strike committee and the employer and, if applicable, the representatives appointed by the different strike committees and by the employers affected, must negotiate to reach an agreement. The agreement that puts an end to the strike shall have the same validity as what is contained in the collective agreement.

What is a lock-out?

This is when the employer closes the work centre in the case of strike or any other type of collective irregularity when any of the following situations arise:

- Significant danger of violence to people or serious damage to things.
- Illegal occupation of the work centre or imminent threat that this might take place.
- Absence or irregularities at work that seriously hinder the normal production process.

The employer that closes down the work centre must notify the Labour Authority within twelve hours.

Once the causes behind the lock-out have disappeared, the work centre must be reopened at the initiative of the employer itself or at the behest of the workers or a ruling from the Labour Authority.

The effects of this are as follows:

- During the lock-out the job contract is regarded as suspended and the worker has no right to his or her salary. His or her status in Social Security will shift to a special system of enrolment.
- The worker has no right to an economic benefit for temporary disability if it begins during the lock-out.
- The worker will have no right to the unemployment benefit due to suspension of the job contract.

Labour Guide

Addresses and telephones of interest

Ministry of Immigration and Cooperation

Palma

San Juan de la Salle, 7

Tel.: 971.17.74.34

http://www.caib.es

Foreign Affairs Office

Palma de Mallorca:

Ciudad de Querétano, s/n
Tel. 971.989.170
http://www.extranjeros.mtas.es

Eivissa:

P° Juan Carlos I, s/n. (Casa del Mar)
Tel. 971.989.055

Menorca:

Pza. Augusto Miranda, 22
Tel. 971.989.280

Public Employment Service

Palma de Mallorca:

Gremio de Tejedores, 38 (Polígono de Castelló)
Tel. 971.176.300
http://www.caib.es
Miquel Marqués, 13
Tel. 971.770.975
Mateu Enric Lladó, 21
Tel. 971.728.625
Jordi Villalonga i Velasco, 2
Tel. 971.469.151

Mallorca:

Alcudia
Teodoro Canet, 31
Tel. 971.549.398

Magalluf
Crta. Sa Porrassa, 6
Tel. 971.132.182

Felanitx
San Agustin, 13
Tel. 971.827.017

Inca
Avda. Des Raiguer, 99
Tel. 971.881.103

Manacor
Jaume II, 26
Tel. 971.553.397

Menorca:

Ciutadella
Antoni Maria Claret, 70
Tel. 971.385.914

Maó
Pza. Miranda, s/n
Tel. 971.362.930

Eivissa:

Sant Antoni
Bisbe Torres, 7
Tel. 971.348.066

Ciutat
Isidor Macabich, 57
Tel. 971.300.012

Formentera
San Juan, 46
Tel. 971.321.141

Social/labour guidance services specifically for foreigners

Confederación General de Trabajadores, CGT (General Workers' Confederation, CGT)

Palma de Mallorca:

Angel Gimerá, 48D
Tel. 971.440.637

Llucmajor
San Cristofol, 33
Tel. 971.2031.81

Balearic island Foundation for training business people and workers in the tourism industry

Palma de Mallorca:
Cardenal Rosell, 35 (Coll d'en Rebassa)
Tel. 971.910.190

Magalluf:
Lope de Vega, 8
Tel. 971.130.301

Institute of Training and Social Studies

Palma de Mallorca:
Son Ferragut, 1 Bajos
Tel. 900.502.637

Arbitration and Mediation Court of the Balearic Islands (TAMIB).

Palma de Mallorca:

Avda. Conde Sallent, 11 2°
Tel. 971.763.545
http://www.tamib.es

Menorca:
Artrutx, 10B 1° 1a. (POIMA)
Tf: 971.356.554

Eivissa:
Baleares, 2 1° E (Ibiza)
Tel. 971.398.271

General Workers' Union (UGT).

Palma de Mallorca:
Arquitecto Bennazar, 69 5°
Tel. 971.764.448
http://www.ugt.es

Mallorca:
Alcudia
De la Asamblea, 2 B.
Tel. 971.546.839

Arenal
Bartolomé Calafell, 16
Tel. 971.490714

Felanitx
Nuño Sanz, 14
Tel. 971.827.555

Inca
Joanot Colom, 4
Tel. 971.881.819

Magalluf
Crta. De la Portassa, s/n.
Tel. 971.131.764

Manacor
Principe, 23 Bajos
Tel. 971.552.522

Sa Pobla
Pau, 13 1°
971.540.850

Soller
Gran Via, 43
Tel. 971.633.704

Menorca:
Ciudadela
Avda. De Palma, s/n.
Tel. 971.382.786

Ferreries
San Joan, 10
971.373.479

Mahón
Plaza Miranda, s/n
Tel. 971.369.920

Eivissa:
Avda. Ignacio Wallis, s/n
Tel. 971.315.198

SUBJECT INDEX

Govern de les Illes Balears
Conselleria de Treball i Formació

SOIB
Servei d'Ocupació
Govern de les Illes Balears
Xarxa d'orientació laboral

http://treballiformacio.caib.es/portal

Immigration Information and Orientation Centre

We are open to the public from 9 am to 1 pm, Tuesday and Thursday only from 5 pm to 7 pm.

Don't give up your rights

Register

in your municipality

No renuncies a tus derechos. Empadrónate en tu ayuntamiento.
No renunciïs als teus drets. Empadrona't en el teu ajuntament.
Verzichte nicht auf deine Rechte. Melde dich bei deinem Rathaus an.
Ne renoncez pas à vos droits. Faites-vous recenser à la mairie de votre domicile.
لا تتخلى عن حقوقك وسجل نفسك في البلدية التي تسكن فيها

Col·labora:
MINISTERIO DE TRABAJO Y ASUNTOS SOCIALES

Govern
de les Illes Balears

II Pla Integral d'atenció a les persones immigrants
II Plan Integral de atención a las personas inmigrantes

Conselleria d'Immigració i Cooperació

www.caib.es

UGT - Illes Balears

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