

2024

WORKATION IN: SPAIN

Overview of Mandatory Employee Protection Law



Workation in: Spain – Mandatory employee protection law

In a connected world, mobile delivery of work performance is becoming increasingly more common. The most popular phenomenon here is probably the so-called "workation". When employers allow work from abroad, it is not uncommon for mandatory employee regulations to be ignored, regularly unintentionally and out of lack of knowledge.

However, according Art. 9 (1) Rome I Regulation, these must be taken into account. Usually, this concerns personal occupational health and safety law enacted in the public interest for reasons of public welfare.

When allowing an employee to work temporary in **Spain**, the following mandatory regulations are to be observed by any employer based in an EU member state regardless of the applicable laws in that state and any contractual choices of law.

The following list is only intended as an overview and cannot replace a specific case assessment.

- 1. Minimum wage** The minimum interprofessional wage in Spain for 2024 is set at 1,134 euros gross per month in 14 payments, up to 15,876 euros gross per year.

- 2. Minimum paid leave** It does not exist an analogous leave in Spain. However we must indicate that in Spain the employees are entitled to earn a public benefit, once they are on a sick leave, depending on the social security contributions accrued. The amount of the social security contribution depends on the duration of the sick leave. The maximum duration of the sick leave amounts to 545 days.

- 3. Public holidays** The period of paid annual holidays, not replaceable by financial compensation, shall be that agreed in the collective bargaining agreement or individual contract. In no case shall the duration be less than 30 calendar days.

Moreover, the employees are entitled to enjoy the following bank holidays:

Name	Date	Scope of application
New Year	January 1st	nationwide
Epiphany of the Lord	January 6th	nationwide

Easter	April 7th Can change according to the year	nationwide
Labour Day	May 1st	nationwide
Assumption of the Virgin Mary	August 15th	nationwide
Columbus Day	October 12th	nationwide
All Saints' Day	November 1st	nationwide
Constitution Day	December 6th	nationwide
Immaculate Conception Day	December 8th	nationwide
Christmas Day	December 25th	nationwide

* In addition to these, there are two regional and two local bank holidays, for a total of fourteen per year, which may not be exceeded.

4. Maximum working time

The maximum working time in Spain averages 40 hours per week on an annual basis (equivalent to 1,826 hours and 27 minutes per year). Additionally, the employee can execute overtime hours.

5. Minimum rest periods

Daily rest period: At least twelve hours must elapse between the end of one day and the beginning of the next.
Weekly rest period: At least one day and a half continued.

6. Occupational safety laws

The employees, in the provision of his services, shall have the right to effective protection in matters of occupational safety and health.

The employee is obliged to observe in his work the legal and regulatory measures of safety and health at work.

In the inspection and control of such measures that are mandatory for the employer, the employee has the right to participate through their legal representatives in the workplace, if there are no specialized centers competent in the matter according to the legislation in force.

The employer is obliged to ensure that each employee receives sufficient and appropriate theoretical and practical training in preventive matters both at the time of hiring, whatever the modality or duration of this, and when there are changes in the functions performed or when new technologies or changes in work equipment are introduced. The employee is obliged to follow the training and to carry out the practices. All of the above in the terms indicated in Law 31/1995, of November 8, 1995, on Occupational Risk Prevention, and in its implementing regulations, as applicable.

7. Maternity Protection provisions

The birth, which includes childbirth and the care of a child under twelve months of age, shall suspend the employment contract of the biological mother for 16 weeks, of which the six uninterrupted weeks immediately following the birth shall be mandatory, to be taken on a full-time basis, in order to ensure the protection of the mother's health.

The birth will suspend the employment contract of the parent other than the biological mother for 16 weeks, of which the six uninterrupted weeks immediately following the birth will be mandatory, to be taken full time, in order to comply with the duties of care provided for in article 68 of the Civil Code.

In cases of premature birth and in those in which, for any other reason, the newborn baby must remain hospitalized after birth, the period of suspension may be calculated, at the request of the biological mother or the other parent, from the date of hospital discharge. Excluded from this calculation are the six weeks following childbirth, of mandatory suspension of the birth mother's contract.

In the cases of premature birth with lack of weight and in those others in which the newborn needs, for some clinical condition, hospitalization after the birth, for a period of more than seven days, the period of suspension will be extended in as many days as the newborn is hospitalized, with a maximum of thirteen additional weeks, and in the terms in which it is developed in the regulations.

In the event of the death of the child, the suspension period will not be reduced, unless, once the six weeks of mandatory rest have expired, the reincorporation to the job is requested.

The suspension of the contract of each of the parents for the care of the minor, once the first six weeks immediately following the birth have elapsed, may be distributed at the will of the parents, in weekly periods to be taken cumulatively or interrupted and be exercised from the end of the mandatory suspension following the birth until the child reaches twelve months of age. However, the biological mother will be able to anticipate its exercise up to four weeks before the foreseeable date of the childbirth. The company must be notified at least fifteen days in advance of each weekly period or, as the case may be, of the accumulation of such periods.

This right is individual of the employee and cannot be transferred to the other parent.

The suspension of the work contract, after the first six weeks immediately following the birth, may be enjoyed on a full-time or part-

time basis, subject to agreement between the company and the employee, and in accordance with the regulations.

The employee must notify the company, at least fifteen days in advance, of the exercise of this right under the terms established, if applicable, in the collective bargaining agreements. When both parents exercising this right work for the same company, the company management may limit its simultaneous exercise for justified and objective reasons, duly motivated in writing.

For the purposes of the provisions of this paragraph, the term biological mother also includes pregnant trans persons.

8. Protection of young people at work

Admission to work is forbidden to minors under sixteen years of age.

Employees under eighteen years of age may not perform night work or those activities or jobs with respect to which limitations on their hiring are established in accordance with the provisions of Law 31/1995, of November 8, 1995, on Occupational Risk Prevention, and in the applicable regulations.

It is forbidden to work overtime for minors under eighteen years of age.

The intervention of minors under sixteen years of age in public shows will only be authorized in exceptional cases by the labour authority, if it does not suppose danger for their health nor for their professional and human formation. The permission will have to be in writing and for determined acts.

Employees under eighteen years of age may not work more than eight hours a day of actual work, including, where appropriate, the time devoted to training and, if they work for several employers, the hours worked with each of them.

In the case of employees under eighteen years of age, the rest period shall have a minimum duration of thirty minutes, and shall be established whenever the duration of the continuous daily working day exceeds four and a half hours.

The weekly rest period for minors under eighteen years of age shall be at least two uninterrupted days.

9. Anti-discrimination provisions

As in any EU-member state, employees working in Spain are protected by the European anti-discrimination provisions (f.ex. Art. 157 AEUV) as well as the corresponding Spain provision (f.ex. art 4 Workers Statute) including not be discriminated against directly or indirectly for employment, or once employed, for reasons of sex, marital status, age within the limits set by this law, racial or ethnic origin, social status, religion or beliefs, political ideas, sexual orientation and identity, gender expression, sexual characteristics, membership or not of a trade union, as well as for reasons of language, within the Spanish State.

Nor may they be discriminated against on the grounds of disability, provided that they are fit to perform the work or job in question.

Every Company must have a harrassement prevention policy to guarantee the anti-discriminations provision on the labour scope.

10. Reporting obligations to authorities when taking up work

There are no general reporting obligations for employees from EU member states. However, the employer must register the Company in the social security and then must register the employees in the social security.

11. Miscellaneous

All the information provided and this document is the minimum protection law in force by the Workers Statute. However, we must attend to the provision of the collective bargaining applicable to each sector that improves the aforementioned minimum rights.

Feel free to contact us if you have any questions about Spain labour law.

CONTACT

Álvaro Hernando de Larramendi Samaniego

Partner / Socio Fundador

Always available for questions regarding Spanish labour law.

Álvaro Leguina Casas

Lawyer / Abogado

Always available for questions regarding Spanish labour law.

EJASO ESTUDIO JURÍDICO

Goya nº 15 - 1ª Pl. 28001 Madrid

Tel +34 915 341 480

Fax +34 915 347 791

ahlarramendi@ejaso.com / aleguina@ejaso.com.