Hiring

- Collective bargaining agreements
- Hiring employees
- Types of contract
- Material modifications to working conditions
- Termination of employment contract
- Temporary employment agencies
- Foreigners and transferred employees

COLLECTIVE BARGAINING AGREEMENTS

Employment contracts are mostly regulated by the Workers Statute. However, collective bargaining regulates many aspects of the employment relationship between employer and employee. Negotiation concludes with the signing of a collective labor agreement.

Collective labor agreements are negotiated between workers representatives and companies to regulate employment and work conditions, binding both parties. They are applicable to all employees and companies within their scope of application.

Their applicability depends on the sector and on the geographical area.

Company collective bargaining agreements take precedence over collective sector bargaining agreements (at national, regional and provincial level) regarding some employment conditions including base salary complements, overtime payments, work schedule and distribution of working hours.

HIRING OF EMPLOYEES

Employment contract are agreements binding the company and the employee, and can be signed as permanent contracts (general rule) or for a specific term (when a temporary cause exists). It rules the individual employment relationship.

An employment contract must specify the following:

(i) The parties' identities.
(ii) The starting date of the employment relationship and, in the case of temporary labor relations, the duration.
(iii) The company's domicile or, where applicable, the employer's address and the workplace at which the employee will provide his or her services.
(iv) Trial period.
(v) The employee's professional group or job description.
(vi) Salary and the supplementary payments.
(vii) The duration and distribution of working hours.
(viii) Amount of vacation.
(ix) Notice period.
(x) The applicable collective bargaining agreement.

In addition, employers must notify the public employment services of any contract signed within 10 business days after they have been entered into.

TYPES OF CONTRACT

There are currently four types of contract: Permanent, Temporary, Training and Apprenticeship, with its own characteristics and peculiarities.

PERMANENT CONTRACT

These contracts do not specify a termination date.

They can be signed in writing or reached verbally. Either party can require that the contract be formalized in writing at any time.

Companies with fewer than 50 employees can provide one-year trial periods for permanent contracts. In other cases, the maximum trial period is six months for qualified technicians and two months for all other employees.

There are incentives for hiring people through permanent contracts.

TEMPORARY CONTRACTS

Temporary contracts regulate the employment relationship between employer and employee for a specified time. All temporary contracts must be in writing and specify the reason for their temporary nature in sufficient detail.

There are incentives for hiring people through temporary contracts.

There are different types of temporary contracts (see next slide).

TYPES OF CONTRACT

Temporary contracts			
Type	**Ground**	**Term**	**Observations**
Contract for project work or services	To carry out a specific, independent and self-contained project or service within the company's business.	Unspecified. This will depend on the time taken to perform the project or service, up to 3 years, which can be extended by 12 months (under the collective agreement).	Termination of this contract currently entitles the employee to receive severance equal to 12 days' salary per year worked.
Casual contract to cover temporary demand for production	To meet market demand, backlogs, work or orders.	Maximum of 6 months within a 12-month period (can be extended under a collective agreement to 18 months, but cannot exceed three quarters of that period, or the maximum term of 12 months).	
Relief contract	To substitute workers entitled to return to their job due to a statutory provision, or the provisions of a collective agreement or individual agreement.	From the beginning of the period until the return of the substituted worker, or expiry of the term established for the substitution.	One formal requirement is that the contract must state the name of the substituted worker and the grounds for substitution.

Source: Ministry of Employment and Social Economy

TYPES OF CONTRACT

TRAINING CONTRACT

Contract targeted at young people under 30 that lack the occupational qualifications recognized by the vocational training system or education system required for a work experience contract for the position or occupation for which the contract is entered into.

The term of the contract is between one and three years. This contract must be in writing.

There are several incentives for hiring people through training contracts.

APPRENTICESHIP CONTRACTS

This contract aims to hire university graduates or workers with higher or advanced vocational training qualifications (first degree, master's degree or doctorate), or officially recognized equivalent qualifications, or workers holding a vocational qualification certificate (*certificado de profesionalidad*) entitling them to work in their profession.

The term of the contract is between six months and two years. This contract must be in writing.

The minimum salary is 60% (during the first year) and 75% (during the second year) of the fixed salary established in the collective agreement for a worker in a similar or identical position.

There are several incentives for hiring people through apprenticeship contracts.

NON-STATUTORY TRAINING CONTRACTS

Companies can enter into non-statutory training contracts with unemployed persons aged between 18 and 25, which do not give rise to an employment relationship between the parties.

Requirements

University diploma or degree, professional mid-level training or professional certificate.

No previous employment relationship or professional experience exceeding three months in the same activity.

Duration

Between 3 and 9 months.

Compensation

Financial support of at least 80 % of IPREM (80% of 532.31 euros/month).

Companies must enter into an agreement with the public employment office (*Servicios Públicos de Empleo* ("SPEs"), including details on the selection process and the actions for the supervision and follow-up of the training to be carried out by the SPEs.

MATERIAL MODIFICATIONS TO WORKING CONDITIONS

Employers can make material modifications to the working conditions of their employees (such as working hours, timetable, salary, and functions) provided there are proven economic, technical, organizational or production-related grounds, and that the legally provided procedure is followed (15 days' advance notice where individual workers are affected, or a consultation period with the workers' representatives in the case of collective modifications).

There is also a specific procedure to opt out of the working conditions established in the applicable collective labor agreement (at industry or company level) on economic, technical, organizational or production-related grounds.

In this case, as the conditions were established by collective bargaining, as explained in the introduction to this chapter, the company and the workers' representatives must reach an agreement following a consultation period in accordance with the provisions for material modifications explained above.

The agreement must establish the new working conditions applicable at the company and their duration, which cannot go beyond the time when a new collective labor agreement applies at the company.

TERMINATION OF THE EMPLOYMENT CONTRACT

The employment contract will be terminated in the following cases:

- Mutual agreement by and between the parties.
- Expiry of the agreed term of the completion of the job or service under contract.
- The employee's resignation.
- Disciplinary dismissal of the employee. If the dismissal is declared unfair, the employee is entitled to the following severance pay: 33 days' salary per year of services rendered, with a monthly *pro rata* for periods shorter than one year, up to a maximum of 24 months' salary for services rendered after February 11, 2012. For services rendered before that date, the severance compensation amounts to 45 days' service up to 42 monthly instalments.
- Collective dismissal on economic, technical, organizational or productive grounds. If the dismissal is declared unfair, the employee would be entitled to the severance pay established for unfair disciplinary dismissal. When the dismissal is declared fair, the employee is entitled to a severance pay of 20 days' salary per year of service up to a maximum of 12 months' salary. Profit making companies with over 100 employees that dismiss a disproportionate number of employees aged over 50 must make an financial contribution to the Spanish Public Treasury.
- Individual dismissal due to legally objective causes (the same causes as for collective dismissal above). If the dismissal is declared unfair, the employee is entitled to the severance pay established for unfair disciplinary dismissal. If the dismissal is declared fair, the employee is entitled to a severance pay of 20 days' salary per year of service up to 12 months' salary
- Death, major disability, and full or total permanent disability to work, with the exclusions provided by law.
- Unilateral termination by the employee based on the employer's breach of contract. If the dismissal is declared unfair, the employer can compensate the employee with the severance pay established for unfair disciplinary dismissal.

TEMPORARY EMPLOYMENT AGENCIES

Hiring workers to lend them temporarily to another company can only be carried out by duly-authorized temporary employment agencies ("ETTs") and in the same scenarios in which temporary, training and apprenticeship contracts can be entered into.

Therefore, hiring workers through ETTs is only possible in specific cases and is prohibited in the following cases:

- To replace workers on strike at the user company.
- To perform activities subject to regulation because they pose a particular hazard to health or safety (such as jobs involving exposure to ionizing radiation, carcinogenic, mutagenic or reprotoxic chemicals, or to biological agents).
- If the company has abolished the job positions it intends to fill by unjustified dismissal, or on the grounds provided for termination of the contract unilaterally by the worker, collective dismissal or dismissal on economic grounds in the 12 months preceding the hiring date.
- To lend workers to other temporary employment agencies.

Workers hired to be loaned to user companies are entitled, during the period they provide services at the user company, to the basic working conditions and terms of employment they would have enjoyed if they had been hired directly by the user company for the same position. The remuneration of the loaned workers must include all economic components, fixed and variable, linked to the position to be filled in the collective labor agreement applicable at the user company.

In addition to temporarily loaning workers to other companies, ETTs can also act as placement agencies if they meet the legal requirements to do so

FOREIGNERS AND TRANSFERRED EMPLOYEES

Companies can only hire foreign employees that hold the necessary administrative work permit.

This rule does not apply to nationals from the European Union member states, or from third-party states who, due to family ties, are subject to the Community system.

In general, companies established in a member state of the European Union/Agreement on the European Economic Area that temporarily transfer their employees to Spain as part of a transnational provision of services must guarantee their employees the minimum working conditions provided under Spanish labor legislation on specific matters.

For more information, please visit www.investinspain.org

Social Security

Hiring

Social Security

Other matters of interest

Registration of businesses in the **social security system**

Application for the registration of **employees** in the **social security system**

Social security contributions

Hiring people: incentives to social security

THE REGISTRATION OF BUSINESSES ON THE SOCIAL SECURITY SYSTEM

Registration with the social security system is mandatory for all businesses that hire employees, and must be completed before they begin their activities.

Registration must be carried out at the General Treasury of the Social Security, submitting the following documents (in the case of businesses):

- Completed official application form for registration and for opening a main payments account (**TA.6**).
- Tax ID card.
- Identification of the individual proceeding on behalf of the company and legal title by virtue of which he or she proceeds.

Furthermore:

A) In the case of Spanish companies, the following must be provided:

- Deed of incorporation, duly registered or certified by the corresponding register.
- Photocopy of the national ID card of the individual signing the registration.
- Document certifying the powers of the signatory if they are not specified on the deed.
- Sworn statement of the company administrator specifying some information about the society.

B) In the case of foreign companies, the documents required depend on whether a work center will be set up in Spain.

THE REGISTRATION OF BUSINESSES ON THE SOCIAL SECURITY SYSTEM

In the first case, the documents listed in section A) are necessary for branch offices and companies that transfer their domiciles to Spain.

If a work center is not set up in Spain and if an attorney domiciled in Spain is appointed or given powers of attorney, the following will be necessary:

- A photocopy of the deed of incorporation of the foreign company with a certificate of its registration in the corresponding register or the equivalent register required by its legislation for European Union companies.

- A certificate issued by the Spanish consul of its legal incorporation and authorization in its country (in the case of third-party countries).

The employer must specify whether temporary disability derived from social security contingencies (including contingencies for work accidents) will be covered by the Social Security Institute (INSS) or by the collaborator institution or institutions (insurance companies).

The General Treasury of the Social Security will assign a payments account code for the company's domicile, to which all possible additional payments would be associated.

The employer must apply for a payments account code in each province in which it operates, as well as when required for identifying a certain collective of employees.

The employer's registration will be unique for the lifetime of the business-owner.

APPLICATION FOR REGISTRATION OF EMPLOYEES ON THE SOCIAL SECURITY SYSTEM

The employer must notify the registration of its employees before it begins providing services, using an internal electronic system.

Moreover, any change (registration, deregistration or change of details) must be notified to the above body. Employees can update these changes directly through the social security system.

SOCIAL SECURITY CONTRIBUTIONS

Employees registered in the general social security system must contribute to it. Employers are responsible for retaining from their employees' salaries the amounts their employees have to contribute.

The duty to contribute to the social security system begins when the labor relations begin, and continue throughout the working relationship.

Contributions must be paid during the month following that of accrual. In 2015, a system for liquidating of payments to the social security is being established.

The amount is calculated by applying a rate or percentage to each employee's contribution base, which is determined by the employee's salary. The rate varies every year for each contingency that is protected.

Five different components apply to pay the social security contribution: **general contingences; unemployment; vocational training; salary guarantee fund and accidents**.

The maximum monthly contribution base for 2020 is € 4,070.10 and the minimum is € 1,050 per month. Therefore, even if an employee receives more than € 4,070.10, the contribution cannot exceed this amount.

To encouraging hiring certain collectives of employees, exemptions are applied to the company's social security rates.

SOCIAL SECURITY CONTRIBUTIONS

Below is a practical example of social security contributions, based on the following premises: €20,000 annual salary, graduate employees, with a full-time, indefinite-term contract, who only perform office work (if the base scenario changes, contributions may vary).

Total Employers' Contribution to Social Security

	Group 1	
	Annual (€)	**Monthly (€)**
Salary	20,000.00	1,666.67
General Contingencies	4,720.00	393.33
Unemployment	1,100.00	91.67
Accidents	200.00	16.67
Salary Guarantee Fund	40.00	3.33
Professional Training	120.00	10.00
Total Employer's Contribution to S.S.	**6,180.00**	**515.00**
Total Cost	26,180.00	2,181.67
%	**30.90**	

Source: Ministry of Employment and Social Security

The Employer´s contribution to Social Security for a salary of €20,000 is €515 per month.

HIRING PEOPLE: INCENTIVES TO SOCIAL SECURITY CONTRIBUTIONS

Reduction in the employer's social security contribution

	Company Size	Annual Amount	Term
Research staff	All	40% for common contingences	Throughout the term of the contract
Trainee and apprenticeship contract	Less than 250 employees	100%	Throughout the term of the contract
Employee<25 years			
Unemployed persons registered as job seekers at the Unemployment Office	More than 250 employees	75%	

Tax Credit or Reduction in the employer's social security contribution

	Company Size	Annual Amount	Term
Conversion of contracts into Permanent Contracts from a			
Work experience contract Handover contract Replacement due to retirement contract	Less than 50 employees	Tax Credit of 700€/yearly for women. 500€/yearly for men	3 years
Trainee and apprenticeship contract	All	Reduction of 1,800€/yearly for women. 1,500€/yealry for men	3 years

Source: ICEX-Invest in Spain and Ministry of Employment and Social Economy

Other matters of interest

Hiring

Social Security

Other matters of interest

- **Opening a work center**
- **Working time**
- **Trial period**
- **Minimum wage**
- **Equal opportunities**
- The prevention of **occupational hazards**

OPENING A WORK CENTER

The employer is required to notify the labor authorities within 30 days of opening a work center.

It must use an official form that must be submitted to the corresponding unit in the autonomous community. In the case of Ceuta and Melilla, it must be served to the Provincial Department of Work and Social Affairs.

Every company must have an electronic visitors' book, which is to be made available to companies, *ex officio*, and with no need for registration, by the Works Inspectorate and Social Security.

WORKING TIME

One issue that is usually regulated by collective bargaining agreements is working time, specifying its distribution. However, parties to an employment contract can agree on working time within the limits provided in the collective bargaining agreement.

The maximum duration of the ordinary working time is 40 hours a week of actual work on average over a year, where no more than nine hours a day can be worked, unless the collective bargaining agreement or other kind of collective agreement entered into with the employees' representatives provides a different distribution of the daily working hours, which must observe resting periods between days of at least 12 hours.

The employer is entitled to a 10% irregular distribution of work outside the usual work schedule.

Overtime is time worked in excess of the maximum ordinary working hours. Paid overtime must not exceed 80 hours per year. Overtime can be taken as time in lieu within four months of the date on which overtime was worked.

The duration of vacations cannot be fewer than 30 calendar days and must be set by agreement by and between the employer and the employee in accordance with the collective bargaining agreement, where applicable. The vacation calendar must be set at each company two months before its commencement.

TRIAL PERIOD

Employers can assess a worker's abilities by agreeing on a trial period during which the employer or the worker can freely terminate the contract without having to allege or prove any cause, without prior notice and with no right to any indemnity in favor of the worker or the employer.

Where a trial period is agreed (provided the worker has not performed the same functions before at the company under any employment contract, in which case the trial period would be null), it must be put in writing.

Collective labor agreements may establish time limits for trial periods which, as a general rule and in the absence of any provision in the collective labor agreement, cannot exceed:

- Six months for college and junior college graduate specialists.
- Two months for all other employees. At companies with fewer than 25 employees, the trial period for employees that are not college or junior college graduate specialists cannot exceed three months.
- One month in the case of temporary fixed-term employment contracts agreed for a time-period of less than six months.

Companies with fewer than 50 employees can agree to trial periods of 1 year for permanent contracts. In other cases, the maximum trial period is 6 months for titled technicians and 2 months for all other employees.

MINIMUM WAGE

The official minimum wage is established by the government each year and currently amounts to €950 per month or €13,300 per year for persons over 18 years of age (including 12 monthly and 2 extra payroll payments) for 2020.

However, the minimum wages for each job category are usually regulated in collective labor agreements.

Salaries cannot be paid at intervals of more than one month.

At least two extra payroll payments must be paid each year: one at Christmas and the other on the date stipulated in the relevant collective labor agreement (generally before the summer vacation period).

Thus, an employee's gross annual salary is usually spread over 14 payroll payments; however, the prorating of the extra payroll payments within the 12 ordinary monthly installments can be agreed on in a collective labor agreement.

EQUAL OPPORTUNITIES

Companies are obliged to respect equal treatment and opportunities in the workplace, for which they must adopt measures aimed at avoiding any type of labor discrimination between women and men.

Companies with 50 or more workers need to implement and apply an equality plan, with the scope and content established by law, which must be negotiated with the legal representation of the workers.

Equality plans must contain an ordered set of evaluable measures aimed at removing obstacles that impede or hinder the effective equality of women and men. Before establishing the plan, a negotiated diagnosis should be drawn up, where appropriate, with the legal representation of the workers, which will contain at least the following subjects:

a. Selection and contracting process.
b. Professional classification.
c. Training.
d. Professional promotion.
e. Working conditions, including the salary audit between women and men.
f. Co-responsible exercise of the rights of personal, family and work life.
g. Under-representation of women.
h. Remuneration.
i. Prevention of sexual harassment and because of sex.

In addition, companies must keep a record with the average values of salaries, supplements and extra-salary perceptions, disaggregated by sex, professional groups, professional categories or positions of equal value. Employees have the right to access, through the legal representation of workers in the company, the salary record of their company.

When in a company with at least fifty workers, the average remuneration for workers of one sex is higher than the other by 25% or more, taking the whole of the payroll or the average of the salaries paid, the employer must include in the salary record a justification that said difference responds to reasons not related to the sex of the workers.

THE PREVENTION OF OCCUPATIONAL HAZARDS

Businesses must guarantee the health and safety of their employees at work.

Accordingly, the prevention of occupational hazards must form part of the business management system and must be implemented through an occupational hazards prevention plan.

The prevention activity can be carried out in different ways:

i. The prevention activity is assumed personally by the employer.
ii. The appointment of employees for the prevention activity.
iii. The creation of the company's own prevention services.
iv. Participation in a joint prevention service.
v. Hiring an outside prevention service provider.

The possibility of choosing one method or another will depend on the application of specific legal requirements.

THE PREVENTION OF OCCUPATIONAL HAZARDS

The occupational hazards prevention plan

The basic tool for implementing and integrating the prevention activity in a business is the occupational hazards prevention plan, which must include the organizational structure, responsibilities, procedures and resources required to integrate the prevention of hazards in each company.

The assessment of occupational hazards

The purpose of the prevention activity is to avoid occupational hazards and, if that is not possible, to minimize the hazards as far as possible.

The hazards assessment must be carried out or reviewed in the following situations: (i) at the start of the activity; (ii) when there is a change to the conditions that affect a work post; (iii) when a particularly sensitive employee is hired; (iv) when employees' health is damaged; (v) when the prevention activities are inappropriate or insufficient; (vi) when new technical or epidemiological information is known and affects the assessment of the magnitude of the hazards or their consequences; (vii) when so laid down in a specific provision.

The planning of prevention activities

The planning of the prevention activities must include the human and material resources required to implement the measures necessary for minimizing the hazards, the assignment of the necessary economic resources and the period of implementation for the measures that are planned. The planning of the prevention activities must be periodically drawn up.