



European Monitoring Centre on Change

Spain: Severance pay/redundancy compensation

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Spain

Phase:

Management

Type:

Severance pay/redundancy compensation

Last modified: 24 October, 2017

Native name:	Estatuto de los Trabajadores (ET); Real-Decreto ley 10/2010, de 16 de junio, de medidas urgentes para la reforma del mercado de trabajo; Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral
English name:	Statute of Workers' Rights; Royal Decree law 10/2010 of 16 June on urgent measures to reform the labour market; Law 3/2012 of 6 July on urgent measures to reform the labour market

Article

Art. 33; 47 (modified by article 13.1 of Law 3/2012); 49 (modified by article 1.7 of Royal-Decree law 10/2010); 51 (modified by article 18.3 of Law 3/2012) ; 52; 56 (modified by article 18.7 of Law 3/2012) of Statute of Workers' Rights

Description

In the event of fair dismissal, legislation requires that employees are paid a minimum legal compensation of 20 days' pay for each year of service, up to a maximum of 12 months' pay.

In the event of unfair dismissal of an employee who had an open-ended contract, legislation requires that employees are paid a minimum legal compensation of 33 days' pay for each year of service, up to a maximum of 24 months' pay.

In enterprises of fewer than 25 employees, the Public Fund of Wage Warranty (*Fondo de Garantía Salarial*) will pay 40% of the legal indemnification of employees in collective redundancies (within 90 days, more than 5 employees made redundant if the whole workforce is affected; at least 10 employees in companies with fewer than 100 employees; 10% of the employees in companies between 100 and 299 employees; and at least 30 employees in companies with more than 299 employees).

Severance pay for temporary contracts was modified by Royal Decree 10/2010. It established that the severance pay will increase annually by one day per year of service, from the eight days per year of service paid in 2010 to 12 days as of 1 January 2015. Thus, severance pay for temporary contracts is now fixed at 12 days per year worked. If the employer dismisses a temporary worker before his/her contract expires and dismissal is declared unfair, severance pay will be equal to 33 days' pay for each year of service, up to maximum of 24 months' pay.

Temporary substitutes that replace workers (for example, for maternity leave) do not receive severance payment.

Comments

Prior to the 2012 reform severance pay for unfair dismissal was 45 days per year worked, up to a maximum of 42 months' pay. The 2012 labour market reform also removed the worker's right to interim wages between the effective date of dismissal and the final court ruling. It also redefined the conditions for a fair dismissal in a less restrictive way. Dismissing a worker for economic reasons is now considered valid if a company makes or foresees a loss, or experiences a persistent drop (defined as occurring for nine consecutive months) in its revenues or sales. In addition, the company does not have to prove that the dismissal is essential for the future profitability of the company.

On the other hand, a new open-ended contract has been created for enterprises with fewer than 50 employees. Under this contract, the trial period lasts one year.

The union section or work council can agree a higher severance pay with the company.

A ruling by the Court of Justice of the European Union that temporary and permanent workers in Spain should receive the same severance pay has led to some confusion, with different Spanish courts coming to different decisions in separate cases. Despite the different courts' decisions, current Spanish regulation on severance payments remains the same, stressing the differences for different types of contracts (Eurofound, EURWork, 2017).

Cost covered by

Employer
National government

Involved actors other than national government

Other

Involvement others

Public Fund of Wage Warranty

Thresholds

No, applicable in all circumstances

Sources

-  DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
-  Ius Laboris (2009), Collective Redundancies Guide, Brussels
-  Alpha Consulting (2003), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate restructuring, Brussels, European Commission
-  Rodriguez, R. and Calvo, J. (2010), National background paper Spain, Anticipating and managing restructuring in enterprises: 27 national seminars, ARENAS Report, European Commission, Brussels
-  Eurofound (2010), EMCC legal framework of restructuring, Dublin
-  OECD (2013), The 2012 labour market reform in Spain: a preliminary assessment
-  Statute of Workers' Rights
-  Royal Decree law 10/2010
-  Law 3/2012
-  Eurofound, EURWork (2017), 'Spain: Implications of court rulings on severance payments for temporary employees', 28 April

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