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Spain: Wage guarantee in case of insolvency

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Spain

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 10 December, 2021

Native name:

Real Decreto Legislativo 1/1995, Ley 22/2003, Real Decreto 20/2012

English name:

Legal Decree 1/1995, Law 22/2003, Royal Decree 20/2012

Article

Article 33 of the Legal Decree 1/1995; Articles 84, 90, 91 of Law 22/2003; Article 19 of Royal Decree 20/2012

Description

There is a special insolvency state fund (Fogasa) addressed to workers whose employer has been declared insolvent or bankrupt, or who had to stop paying wages for certain economic reasons. Law 22/2003 defines insolvency as the situation in which a debtor company cannot regularly meet its required debtor obligations.

The insolvency law from 2003 establishes the workers' privilege as creditors in cases where the company becomes insolvent. The claims of the workers of the company (wages for the 30 days before the opening of the collective procedures; wages for work after the start of the collective procedures; economic compensation related to termination of the employment contract etc.) have the priority, ranking ahead of all other claims.

The wage guarantee fund only becomes active if there are not enough assets available.

Anyone providing services for an employer and receiving wage for this, including part-time and fixed-term workers, irrespective of the duration of employment is eligible by the wage guarantee fund.

Domestic servants employed by families, artists, partners of workers' cooperatives are exempted.

The guarantee covers wages, bonuses and fringe benefits as well as financial employee participation that arises up to one year before the insolvency.

In terms of wages pending to be paid, the fund pays an amount equivalent to the double of the daily National Minimum Wage per each unpaid working day. Since the Royal Decree 20/2012 entered into force, on the 15 July 2012, a maximum of 120 days can be covered with the fund. Before, it was 150 days.

In terms of severance pay, there is a maximum payment of 12 months per year worked. However, the wage taken into consideration in order to calculate the severance pay cannot be higher than the double daily minimum wage (national monthly minimum wage was set at €950 as of February 2021, according to Royal Decree 742/2016). FOGASA covers only severance pay acknowledged by a court sentence or deriving from a resolution of the Labour Authority, and when dismissal is applied because the company is considered insolvent or goes bankrupt.

The guarantee is administered by the Guarantee Institution Fogasa of the labour ministry and financed by employer contributions.

Comments

In 2007, 39,032 applications were solved, and claims of 20,498 companies and 73,447 workers were satisfied. In 2008, figures remained more or less stable compared to 2007: 49,792 applications were solved and claims of 25,637 companies and 90,320 workers were satisfied. Figures increased compared to 2008: in 2010, 135,577 applications were solved, and claims of 71,866 companies and 232,722 workers were satisfied. In 2012, 160,036 applications were satisfied, and claims of 84,257 companies and 254,931 workers were satisfied. That increase led the government to reduce the level of payment by means of Royal Decree 20/2012. In 2015, claims of 43,112 companies and 165,288 were satisfied. In 2013, claims of 82,373 companies (-2% compared to 2012) and 234,686 workers (-8%) were satisfied. In 2017, 90,321 workers' application and claims by 24,069 companies were made, for a total amount of €590.60 million. In 2018, 81,790 workers' application and claims by 21,324 companies were made, for a total amount of €556.10 million. In 2019, 72,369 workers' application and claims by 19,514 companies were made, for a total amount of €520.98 million. In 2020, 64,585 workers' application and claims by 15,620 companies were made, for a total amount of €459.15 million.

Cost covered by

Companies

Involved actors other than national government

Other








Involvement others

Guarantee Institution Fogasa

Thresholds

No, applicable in all circumstances

Sources

-  [Annual Report Fogasa 2013](#)
-  [FOGASA](#)
-  [Real Decreto 231/2020, de 4 de febrero, por el que se fija el salario mínimo interprofesional para 2020.](#)
-  [Royal Decree 20/2012](#)
-  [Royal Decree 1/1995](#)
-  [Law 22/2003](#)
-  [Boletín Oficial del Estado -27-12-2018](#)
-  [ERM database on restructuring support instruments](#)
-  [FOGASA -Memoria de actividade 2017](#)
-  [Deutsch, A. \(2011\), Europäische Beispiele für die Insolvenzentgeltsicherung, Vienna, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF](#)
-  [Sargent, M. \(2007\), Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC \[protection of employees in the event of the insolvency of their employer\], Human European Consultancy/Middlesex University Business School](#)
-  [Watson Wyatt \(2006\), Employment Terms and Conditions Report Europe, Volume I, Brussels, Belgium](#)

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