

## **UNIT 06: WORKING TIME AND SALARY**

### **WORKING DAY. DEFINITION**

The worker performs/does his/her job during a period of time. That time is called “the working day”.

The working day is open to negotiation through collective agreements in any economic sector. The Law establishes:

- Maximum working hours a day or a week and - Minimum time off work.

#### **Dayly working hours:**

People under the age of 18 years cannot work more than 8 hours a day.

If you are older than eighteen years you may work 9 hours a day (adults). However, another working day may be established in a collective agreement or in the work contract. In this case weekly rest periods required by law must be respected. Let see these weekly rest periods that are fixed by the law:

- A daily rest period of 12 hours from the end of a workday until the beginning of the next. This time can't be interrupted.
- A weekly rest period of one day and a half for adults and two full days for those under 18 years old.

When an employee works 8/9 hours a day we say he/she has a full time job. However if the worker works less than 8/9 hours a day we say s/he has a part time job.

#### **Working/Work Week (U.K./U.S.A.):**

Minors cannot complete more than 40 hours per week of actual work. Adults may have a work week of more than 40 hours of actual labor. The legislature allows irregular working hours where a work week of 45 or 35 etc hours would be permitted, provided that the average annual calculation does not exceed 40 hours a week. The distribution of the irregular working hours must be agreed upon in a collective agreement or in an employment contract.

#### **Working Days per year:**

How many days a year do we have to work?

The law says nothing about the number of annual working days. We will have to check it on the collective agreement and on our own labour contract. However, the statute (the law) requires an annual rest period of at least 30 calendar days.

## **Continuous Working Day:**

A workday/work-day is considered continuous when there is a break of at least one hour during the working day.

In the event that the continuous working day exceeds 6 hours of work there must be a break period of no less than 15 minutes. These 15 minutes will be considered paid work time.

A continuous working day for a minor would be a working period of four and a half hours of uninterrupted work. In these cases, the legislature requires a break of 30 minutes and this time is considered to be part of actual paid work. (It is also said: "this time is considered to be on the clock").

## **Divided Work Day:**

A working day with a break lasting more than one hour, dividing the work day into two different periods of work. The collective hospitality agreement in Málaga states that the working day has only a single break of at least one hour. That means that the workday will only have two periods of work.

## **Expansion and reduction of the Working Day:**

For certain sectors and jobs, the government can expand and/or reduce work hours and breaks.

-Here are some examples of an **extension** of working hours:

- Guards/security services excluding those working for the railroad.
- Working in the field (agriculture).
- Commerce and hospitality sector.
- Transport and maritime workers.
- Work under certain specific conditions:
- Work in shifts.
- Jobs whose action initiates and / or prohibits the work of others.
- Jobs in special conditions of isolation or remoteness.
- Work with activities in fractionated days.

-Here are some examples of **reduced** working hours:

- Jobs exposed to environmental hazards.
- Working in the field (agriculture).
- Working inside mines.
- Underground work in construction and public works.
- Working in spaces of compressed air.
- Working in spaces of refrigeration or subzero temperatures.

## **Working time in Spain:**

The organisation of working time (maximum weekly or daily working hours, rest time during the working day, annual holidays, public holidays, paid leave and overtime) is regulated by Law (Statute of Workers' Rights); the working day is regulated by agreement between workers' and employers' organisations or in contracts.

The normal working hours must average 40 hours per week maximum of actual work, calculated on an annual basis. The actual number of normal working hours may never exceed nine per day unless a collective agreement or an agreement between the company and workers' representatives establishes a different distribution of daily working time, which must, in any event, respect the rest time between working days. Employees under 18 years of age may not do more than eight hours of actual work per day, including hours allotted to training, where applicable, and the hours worked for different employers if they work for more than one employer.

Working hours may be distributed irregularly throughout the year under the terms of a collective agreement or an agreement between the company and the workers' representatives provided the minimum periods of daily and weekly rest are respected. A worker may have a set work schedule or a flexible one. In the first case the employee has to enter and leave his/her job according to a fixed time.

A flexible schedule allows the employer and the employee to agree upon a time to start and leave work depending on the needs of the worker. For example, it could be agreed that the worker starts work between 8 and 9 in the morning and may leave work between 5 and 6 in the afternoon. Having flexible options allows the worker to reconcile his/her personal and family life with the responsibilities of his/her job.

## **Rest time:**

At least 12 hours must elapse between the end of one working day and the start of the following working day. When the duration of the continuous working day exceeds six hours, a rest period of at least 15 minutes must be allowed during the day.

Workers are entitled to a minimum weekly rest time of one and a half uninterrupted days, which generally include Saturday afternoon or, where applicable, Monday morning, and the whole of Sunday.

In the case of workers under 18 years of age, the rest period is a minimum of thirty minutes and must always be allowed when a duration of the continuous working day exceeds four and a half hours. The duration of the weekly rest time for people under 18 is a minimum of two uninterrupted days.

### **Night work and shift work:**

All aspects of this work pattern are regulated and subject to time restrictions. Under-18s may not carry out night work (or activities declared to be unhealthy, dangerous or distressing).

### **Overtime:**

It is quite often that the boss asks you to work another hour after finishing your working day. In this case we are talking about overtime.

Overtime includes all hours which exceed the working day that is set in the work contract or in the collective agreement.

The employer will ask the worker if he can work for another hour. The employee is free to accept or not accept overtime hours. Although the law says that the worker can work 80 overtime hours per year. People under 18 y.o. are not allowed to work overtime hours.

Overtime is considered to be hours of work carried out over and above the maximum number of normal working hours. Workers may work a maximum of 80 hours overtime per year, which does not include overtime compensated with rest time, or work carried out to prevent or repair extraordinary and urgent damage. The latter is obligatory for the worker and must be paid as overtime.

Overtime at night is prohibited, except in duly-specified and expressly authorised special activities. It is also prohibited for people under 18 years of age. Overtime may be remunerated or compensated for with equivalent paid rest time. If the worker works for fewer hours per year than the general company working hours, the restriction on hours is reduced proportionally.

### **Reduction of the working day for family reasons:**

Workers are entitled to a reduction of their working time, with a proportional reduction in wages, if they are directly responsible for a child under six years of age, people with disabilities or family members in certain specific circumstances.

### **Holidays:**

Holidays may be agreed individually or collectively and may not be less than 30 calendar days. Holidays cannot be replaced by financial compensation. When workers

with casual or temporary contracts cannot take the legal minimum holidays because they do not work for the company during holiday periods, they will receive a pro-rata payment for the holidays with their wages.

The holiday schedule is fixed in each company. Workers will be aware of the relevant holiday dates at least two months prior to their commencement, and if there is disagreement they may present a claim to the employment tribunal.

Every year companies establish an annual work calendar in which they set a total of 14 days paid vacation. These days are not recoverable. Two of these days must coincide with local holidays.

Annual leave is 30 calendar days. The law does not allow these days to be compensated monetarily. Vacation days must be agreed upon by the employer and the employee. The employer will display the schedule for vacation days in the place of work at least two months in advance.

### **Paid Leave/Licenses:**

A worker can ask to go on leave for several days, but he has to notify the company and he has to justify the time taken off work.

The worker will have the right to his/her time off work while still getting paid. These are the situations in which the worker may ask for this type of permission: Paid leave is subject to notice and subsequent justification to the company, workers may take paid time off for some of the reasons listed below with the number of days allowed:

- Birth of child or death, accident or serious illness or hospitalisation of relations, two calendar days or four if required to travel.
- Moving house, one day.
- Women are entitled to one hour off work each day for breastfeeding a child under nine months of age, or half an hour if taken at the start or the end of the day. This time off may be taken off either by the mother or the father if they both work.
- Meeting public and private obligations (jury service, appearance in court, etc.), as long as necessary.
- Performing trade union or workers' representative activities: as established by law or collective agreement.
- In every case, the worker must inform the employer in advance and justify his or her absence to be able to enjoy the right to take time off work.
- Public holidays are set on an annual basis: There are 14 per year, two of which will be local holidays. Christmas Day, New Year's Day, 1 May (Labour Day) and 12 October

(Spanish National Day) will in any event be observed as national public holidays. Any public holidays falling on a Sunday will, in any event, be transferred to the Monday immediately following.

- For the purposes of labour law, the performance of jury duties is treated as an unavoidable public and personal duty.
- Marriage: 15 calendar days.

### **Unpaid leave:**

This refers to time off work without pay that must be requested by the worker and may be granted at the discretion of the employer, but must always be set in an individual or collective agreement. Periods of unpaid leave are not regulated by law.

### **Sick leave:**

This protects a workers temporarily unable to work and in need of medical assistance due to illness or accident. In such cases the worker will be paid at least 60 percent income. The employer normally pays the worker this temporary sick pay, and is then reimbursed by the Social Security department. The maximum period of such leave is 18 months, after which the situation must be reviewed.

### **A temporary invalidity:**

A worker who is unable to work and in need of medical assistance for any of the following reasons: common illness or work-related illness, accident (whether work-related or not) or periods of observation for occupational diseases is being protected by law and can apply for a temporary invalidity.

### **Maternity and paternity leave in Spain:**

Maternity leave for a woman will last 16 uninterrupted weeks, which may be extended by two weeks for multiple births for each child from the second child onward. This period may be taken at the discretion of the person concerned, provided that six weeks fall immediately subsequent to the birth.

Irrespective of this obligatory post-birth time off for the mother, if both parents work, the mother may opt for the father to take a specific uninterrupted portion of the leave subsequent to the birth.

**Extended leave of absence:**

Extended leave of absence means a situation where the employment contract is suspended at the employee's request and may be either compulsory or voluntary. If it's the latter, at least one year's service in the company is required. The right to keep the job is not recognised, but priority is given when there is a vacancy.

The duration is between two and five years.

**Extended leave of absence to care for members of the family:**

Maximum duration of three years to care for each child. Employees are also entitled to leave of absence of one year, which may be extended by mutual agreement, to care for a blood relation or relation by marriage up to the second degree or similar, who for reasons of age, accident or illness cannot look after themselves and do not perform paid work.

**SALARY**

Section 25 of the Spanish Constitution says that all the Spanish people have the right to a sufficient income to satisfy their needs and the needs of their families. *"All the Spanish people have the right to have a sufficient income to satisfy their needs and those of their families"*

The Statute (E.T.) gives a definition of salary/wage in the section 26.1: "all type of payments either in cash or in kind that the worker receives to do his job as an employee".

Let's see some examples of payment in cash : checks, cash, direct deposits , or bank transfers. And now, let's see some examples of Payment in kind : free rent, a company car, a company cell phone, or time-shares including free stays at company vacation houses.

The Law establishes a limit to the payment in kind: it cannot exceed 30% of the total amount of money received by the worker.

For example: a worker will receive in cash 900€ and a free rent of the flat he lives in. Imagine the rent is 450€. This situation would not be correct from a legal point of view. However if his salary is 1.500€ and the rent is 450€ it would be correct.

Now that you have seen what a salary may be , let's see some payments that the law says they are not considered a salary: the compensation and expense payments to the worker.

## **The structure of salary:**

The law states what makes up the salary of the workers:

A) Base salary: the payment that is fixed per unit of time or work, for instance: basic salary per hour, per day or per month.

B) Complementary Wages: these are fixed according to the worker's personal circumstances, the nature of work, the results of the company etc. The most common wage complements are:

- Length of service in the company (seniority)
- More qualifications
- Extra payment (In summer and at Christmas “Christmas Bonus”)
- Commissions, bonuses, incentives
- A share in company profits.
- Complements based on the work post: others qualifications.
- Poisonous substances, risky work / hazardous work environment.
- Shifts, night work and so on.
- Rewards for production, quality or amount of work performed.

-These kinds of payments are called non wage complements. These are amounts that the employee receives to cover certain costs that are created by his/her work. Here are the most common examples: the expenses for balancing accounts, accommodation, food, travel pay for transportation, travel pay for distance, clothing, wear and tear of tools, compensation or social security benefits.

The statute says that the structure of the wages will be determined either in collective agreements or in the labour contract. That is, the collective agreements will decide the base salary for each professional category and the supplementary payments for the workers if any. Therefore the workers will have:

So, the salary of the workers includes:

-A base salary (basic wage/base pay/base wage- “Salario Base”): the fixed remuneration per hour, per day, per week, etc.....according to his/her professional category.

- Some complementary wages and
- Some non wage complements



## **The payment of wages:**

The worker has the right to:

- Receive his/her wages on the date and place agreed. Normally the place will be at the company during the work hours.
- A receipt that is called payslip (“nómina”) showing the wages paid.
- A worker should be paid every month. If the employer is not punctual when it is time to pay, the law will punish him/her and he/she will have to pay an interest for being delayed.
- To receive payments in advance with respect to work already done.

Imagine you are a cashier at a local department store and you are going to ask the company for a payment in advance. You would need to go to Human Resources and explain your situation. That is, you may need a payment in advance due to personal or financial reasons. If you have already worked three weeks of the month, you can ask for the money of those three weeks of completed work.

To receive an extra 10 per cent for delayed payment, with respect to the amount of wages in the case of a delay in payment.

It is very important to remember that the employer has to make the deductions from the worker's salary. That is why we can talk about net salary and gross salary. The worker has to contribute to the taxes and to the Social Security.

Every worker has to contribute to the Social Security and to Hacienda (Revenue Agency). The worker will pay a percentage of his salary. The worker is not obliged to do it by himself. The company, the employer must make the deductions in the worker's salary.

## **Payslip (The receipt for the wages):**

The employer or a company manager has to provide the worker, together with his wage, a “receipt of wage”. This document can be the official receipt that is already established by the Ministry of Labour and Immigration. The company can create its own receipt but it must contain the important points. It can be agreed in the Collective Agreement to use another form of receipt. It can be possible as well to formulate a specific receipt between the employer and the worker about the different amounts received and the deductions legally established. One way or another there must be some sort of established agreement regarding the receipt for the wages.

The payment of wages will be done in accordance with calendar months. Sometimes the companies can pay the workers' wages for lesser periods (every week, two weeks, bi-monthly payment).

For example a worker may say: “The company pays me 450€ a week”; “The company pays me 900€ bi-monthly”; “The company pays me 20 € a day”; the company pays me

2.50€ per hour.”

The receipt must be signed by the worker. He will be given a duplicate copy which will indicate all the money he has received either in legal tender (currency) or by other means.

The signing of the receipt will be a guarantee of good faith that he has received the remuneration of the amount in question, but it will not be interpreted that he is necessarily in agreement with the amount received.

When the payment is made by bank transfer/direct deposit, the employer will give the worker a duplicate of the receipt without requesting his signature. The receipts of wages paid will be filed and kept by the companies together with the bulletins of contributions made to Social Security, during a minimum period of five years.

For example, in the USA a contract may say, the employee will be paid by direct deposit on the 20<sup>th</sup> day of every month.

### **National Minimum Wage:**

#### **The amount of Minimum Inter-Professional Wage/National Minimum**

Beginning in 1998 the Minimum Professional Wage was fixed for all workers, no matter what their age.

[http://www.direct.gov.uk/en/Employment/Employees/Pay/DG\\_10027201](http://www.direct.gov.uk/en/Employment/Employees/Pay/DG_10027201)

- In 2008, the minimum salary for any activity was fixed at 20 euros per day, 600 per month and 8.400 per year.

- In 2009, the MS was fixed at 624€ per month.

- In 2010, the MS is fixed at 634€ per month.

<http://www.mtin.es/es/infpuntual/smi/RD176307.htm>

- Nowadays (2014) the MS is fixed at 655,20 € per month.

If the working day is less than full-time, the amount will be paid proportionally.

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