

UNIT 05: LABOUR LAW. LABOUR RELATIONSHIP. LABOUR CONTRACTS. COLLECTIVE BARGAINING.

In this unit you will study the characteristics of a labour relationship. You will see the special labour relationships and those situations that could be a labour relationship but that aren't.

You will also see the definition of a labour contract and the different types of labour contracts.

Labour relation:

A labour relation is a relationship between an **employer** and an **employee**. The worker must do a task, his or her job, following the orders of the employer. The boss must pay a **wage** or salary for that job.

Characteristics of the labour relationship:

- **Voluntary relation:**

The worker does the job freely, that is, the labour relationship is not valid if the worker is forced to work. For example this happens when a citizen is called to participate in a polling station before a municipal, regional or national election. He has to go but it doesn't mean that his job is in fact a real labour relationship.

- **Work for someone:**

This means that the result of the job carried out by the employee is not for the worker himself, but for the employer. The benefits of the work don't go to the workers but to the employer. For example, a worker that goes to a house to repair a washing machine, once he has finished the job he bills the client for the work completed. The worker then has to turn over the money to the company he is working for. A waiter who charges for the meal he has served does not keep the money for himself, but instead he must give it to his boss.

- **Remunerated relation:**

The worker carries out a job in exchange for a wage or a salary, it does not matter if the company is successful or not. Every one works for money.

- **Personal working relationship:**

The work must be performed personally by the worker, no other person on his behalf.

- **Dependent relation:**

When you work in a company you must follow the orders of your boss. The worker is forced to carry out a task following the orders of the employer, the worker must obey

the boss and therefore, he must do the job the way the boss orders, at the time and place said by the boss.

Special Labour Relations:

There are some labour relations that are “special labour relations”. The reason is that they have specific characteristics. Therefore they have a special law that regulates them.

Let us see some of them:

- Upper level Managers.
- Domestic Services.
- The work done by inmates in prisons.
- Professional athletes.

Non Labour Relationships:

Some relationships lack one or several characteristics of the typical labour relation. Let's take a look at some of them:

- The relationship between the state and its civil servants is not a normal labour relationship. It is an administrative relationship regulated by another legal law: The Law of Public Function.
- The work that people do to help a friend, a neighbour or a relative that have a business. The work that one spouse does for the other, or for other family members.

Labour contracts:

Definition:

It is an agreement between an employer and a worker. The worker must provide a service for the employer. The employer must pay the worker a salary or a wage.

Worker's Capacity or Capacity to sign a labour contract:

The workers have the capacity to sign a contract by themselves when they are 18 years old. They are able to sign it when they're 18 years old. If they are between the ages of 16 and 18, they need their parents consent to sign the contract. In Spain you are not able to work if you are under 16 years old. If a teenager is under 16 years old he can't work. For instance, Rosemary is 19 years old; she can sign a contract for herself. She is of age. Christopher is 17 years old; he is a minor or under age; he is a juvenile.

Note that the minimum working age in Spain is 16, although permission from parents or guardians is required up to 18 years of age, unless the person is legally emancipated.

You can look at the rights and duties of workers under 18 years old under "Workers' Statute".

This is a very important law in Spain.

The law says that people under 16 are not allowed to work in Spain. It is forbidden.

People under eighteen can't work night shifts (from 10.00 P.M till 6.00 A.M.)

People between 16 and 18 years old can't do any dangerous work

People between 16 and 18 can't do overtime.

People under 16 years old that are working in public shows need a specific authorization from the Labour Administration.

Workers between 16 and 18 years old are not allowed to work more than 8 hours a week.

These workers will have two days off per week.

The Form of the contract:

A working contract can be verbal or written. Most of the contracts are written. So, your Spanish employment contract may be in writing or verbal, but a verbal contract is only allowed in the types of contract listed on the Workers' Statute. Contracts in Spain are sent to the Public State Employment Service within 10 days from their coming into force. A simple copy of the employment contracts, previously handed into the legal representative of the workers, should also be sent to the Public State Employment Service.

These are the contracts that the law says that must be written:

- contracts for work practice and for training
- part-time contracts
- fixed but discontinuous work (seasonal work)
- for changes of personnel, contracts for housework, contracts for insertion, temporary contracts, etc...
- Permanent Contract to support entrepreneurs.
- Working from home.

Probationary/trial period:

"A trial period is the time during which your character and abilities are tested to see whether you are suitable for working or for membership".

(www.thefreedictionary.com).

The law says that if you are working for a trial period it must be clearly written in the contract. During this time the employer may check if the employee meets the professional profile that he was looking for. At the same time, the worker may test, as well, the job to see if it was what he expected. During the trial period, the workers have the same rights and benefits as any other regular worker of the company. That means the employer must pay the salary, the Social Security ...

During the trial period the employer can end the relationship at any time.

Now with the new permanent contract to support entrepreneurs the companies with less than 50 workers can offer a trial period of up to one year.

If a worker is sacked during that time, he will not have any compensation at all. (when a worker is dismissed, that is when the boss asks you to leave the company, to go away forever).

A probationary/trial period may be required, although it is not compulsory. If required, it must be stated in writing and the maximum duration of the probationary/trial period is six months for qualified technicians and two months for other workers, or even three months when there are less than 25 workers in the company. During the probationary/trial period, the working relationship may be terminated by either of the parties for any reason, without giving any notice and without any compensation, unless otherwise agreed. The probationary/trial period is included when calculating seniority and workers have the same rights and obligations as other workers on the workforce during that period.

When a working relationship exceeds four weeks and the contract has not been drawn up in writing, the employee must inform the worker of the essential points of the work contract and the conditions under which the work is carried out within two months of the date on which the working relationship commences.

Points that should be covered include in the labour contract:

- Identity of the parties, address of the company and the workplace where the worker performs his duties.
- Date on which the working relationship starts, category or professional group of the job performed, duration of an ordinary working day and how this is spread out.
- Amount of initial basic salary and supplements to pay and also when paid (monthly, weekly, etc.)
- Number of days of holidays and, where applicable, how holiday dates are determined.
- Period of notice that the employer and employee must give, should the contract be terminated, or at least how this period must be worked out.
- The collective agreement applicable to the employment relationship, stating the specific features by which it can be identified.

Types of contracts.

Indefinite contracts:

The aim of this contract is to enter into a working relationship without establishing a time limit. Such contracts may be drawn up verbally or in writing for full or part-time agreements.

Temporary contracts:

Temporary contracts may be drawn up in the following circumstances:

- Contract for the performance of a specific task or service: These are agreed for carrying out a task or performing a specific service, whose execution, though limited in time, is of uncertain duration at the outset. If the duration exceeds one year,

advance notice of 15 days before the end of the task or service is required to terminate the contract. If the employer fails to provide this notice, the worker is entitled to compensation

- Contract for production contingencies: The aim of this contract is to meet circumstantial requirements associated with the employment market, a back-log or glut of orders. This contract may not run for more than 6 months within a 12 month period, with exceptions.
- Temporary replacement contract: When it is necessary to replace a worker with the right to retain the position. Must specify the worker replaced and the reason for the replacement.

Training contracts

These may be drawn up with workers aged over 16 and under 21 who lack the qualifications required to draw up a work experience contract*. Some groups may be employed under the terms of a training agreement even though they are over the age limit. This contract must run for at least six months but cannot be longer than two years, with **exceptions**.

Who is allowed to sign this contract?

*Young people between 16 and 25 years. When the unemployment rate is more than 15% people between 25 and 30 years will be able to sign this type of contract. If the worker is disabled there is no age limit.

How long can this contract last?

Between one and three years.

How is the working day?

The worker may sign a part-time job or a full time job. Part of the working time has to be in a training course, meaning that the worker has a time for training and time to work.

The employee will receive a salary for the time actually worked and can never be less than the National Minimum Wage according to the time really worked.

At the end of the contract, the employee is not entitled to any kind of compensation.

Training contracts (or Work Experience contracts)

Who can sign this contract?

Young adults who have a degree (University, vocational/technical school degrees) can sign them.

The worker can put into practice his/her studies within five years since he/she finished his/her studies. If the person is disabled, the limit increases to a maximum of 6 years after the date in which the studies were completed.

A worker can sign this contract between 6 months and 2 years. The work week may be full time or part time.

In this kind of contract the trial period is different. That is, if the worker is a specialized one the trial period won't be longer than two months. In the rest of the cases the trial period will only be a month.

In terms will be paid depending on the established collective agreement.

Therefore, the following requirements must be fulfilled in order to enter into this contract:

- *The worker must possess one of the following qualifications: University or Vocational Training qualification, or equivalent.*
- *More than four years should not have elapsed since ending the corresponding studies or since the studies were validated in Spain if the qualification was obtained abroad, or six years if the contract is drawn up with a disabled worker.*

This contract must run for at least six months but cannot be longer than two years, with exceptions.

Home-work and part-time contracts

The duration of such contracts may be indefinite or fixed. In both cases, they will always be drawn up in writing, specifying the place where the services are provided and the duration of the working day.

Other temporary contracts:

The worker can sign a contract with a determined period of time, for example, a six month contract.

A temporary contract must be written. These are the possible situations:

To replace a worker on leave:

When the company needs to replace a worker on leave (illness, injury, or other legal reasons). The replacement worker can do the job until the worker on leave returns. At the end of the contract the replacement worker will not have a right to any type of compensation.

When a company is in the process of selecting someone to cover a vacancy within the company.

Accumulation of work or a delay:

When a company has an accumulation of work or a delay for any reason. The worker will not work more than a total of 6 months in a 12month period. At the end of the contract the worker has the right to receive compensation for 12 days of salary for one year of work.

To cover a specific service or skill:

When a company needs a specific service or skill. In this case the duration of the contract will be determined for the time needed to complete the job or service. At the end of the contract the worker has the right to receive compensation for 12 days of salary for one year of work.

With the last labour reform, the employer can ask the worker to be temporarily employed by the company without a time limit, as long as the employer needs them. That is, the worker can sign a contract for 3 months, then they can sign another for 6 months, then another and so on, indefinitely.

Before the labour reform, the law (Worker' Statute) established a limit on the number of months a worker could be working on a temporary contract: 24 months as the maximum.

Collective Bargaining.

Collective Bargaining Agreements have been traditionally negotiated by and between the most representative Unions and Corporation representatives in every specific industry or sector. In that sense, employers and employees could only adhere to the terms set out in the resulting Collective Agreement or chose to improve the standard terms and conditions referred therein (either at a collective or individual level).

However, the well-known and well-regarded Spanish Labour Reform passed in 2012 allowed more flexibility to execute Collective Bargaining Agreements at a company level, which are now set to prevail over the industry Collective Bargaining Agreements in issues as important as salary, compensation of overtime, working time schedule, annual holiday plan and specific mechanisms for an appropriate balance between working and family life.

The Constitution ensures every individual the right to join (and to refrain from joining) a Union, to serve as a representative of that Union at a company level, and to be elected as an employees' representative within the workplace.

Likewise, from a collective standpoint it guarantees the right to generalised unionisation, and even confers extensive representation powers to the so-called "most representative Unions" at a legislative level as a valid interlocutor with the Government in key decisions related to the labour market.

Both the Workers' Statute and the Union Freedom Act regulate the specific rights and duties of the elected members of the employees' representation bodies. Their prerogatives include consultation and the delivery of corporate information whenever prospect decisions from management may affect the level of employment within their scope of representation.

Regardless of the right to stipulate their own internal functioning procedures (as any other legal organisation), they have specific rights which may affect the employer-employee relationship on a daily basis. In this regard, they may participate as employees' representatives in collective bargaining procedures such as collective dismissals or collective material alterations of working terms and conditions; file individual/collective complaints and represent the interests of the affected employees in Court; and they may call for workplace elections to choose employees representatives.

Employees are entitled to elect workers' delegates or a works council (the former only in workplaces employing between 11 and 49 workers; the latter where 50 or more individuals are employed), although they are not compelled to do so if they prefer to remain without formal representation before the employer. The election process is carefully regulated in the Workers Statute and Royal Decree 1844/1994 on Union Elections and is formally supervised by the Labour Authority. Representatives are chosen from amongst the employees themselves and the company may only facilitate the election process by providing relevant information on headcount and by making the company's premises available for the polls on the election day.

Workers' delegates and works councils are entitled to receive, amongst other, relevant and updated information from the employer on company performance and business prospects, levels of absenteeism, information on the hiring of new employees and consultation when corporate decisions may affect the level of employment within their scope of representation. Apart from the main purpose of controlling the management in whatever issue which may affect the workforce in the short term, they also embody the ideal of cooperation with the employer when implementing measures to enhance productivity and competitiveness. On the other side, they are subject to a general duty of confidentiality and non-disclosure.

Current framework of labor law in Spain

One of the primary changes introduced by the labor reform regarding collective bargaining has been the priority application of own companies agreements with certain determined work conditions which, until February 12, 2012, could be limited by the provisions of agreements, regional or local law. Therefore, beyond the competition rules for agreements and sector agreements in force, companies now can always negotiate their own agreement to regulate the above areas as they see fit. Furthermore, these rules also apply to group agreements, among others.