

UNIT 7

WORKERS' PARTICIPATION IN THE COMPANY

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FREEDOM OF ASSOCIATION

In the international labour movement, the freedom of association is the right of workers to organise and collectively bargain, and is primarily manifested through the right to join a trade union.

Freedom of association is recognised as a fundamental human right and for the group to take collective action to pursue the interests of members. The Spanish Constitution of 1978 recognises this fundamental right in article 28.

But it is not compulsory for a worker to be a member of any trade union.

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TRADE UNIONS

This is an organisation whose membership consists of workers and union leaders, united to protect and promote their common interests.

Its organisation is democratic and the sources of financing are the affiliated fees and public allowances.

Not all workers can be members of a trade union.

WHO CAN BE A MEMBER OF A TRADE UNION?	WHO CANNOT?
<ul style="list-style-type: none">• Workers who work for others.• Unemployed people.• Retired and disabled people.• Self-employed with no employees.	<p>Judges, magistrates and public prosecutors.</p> <p>Members of the armed forces and civil guardians.</p>

Trade unions are classified depending on the level of representation:

- **The most representative trade unions at a state level:** those with more than 10% of the union representatives in the trade union elections at a state level.
The most representative trade unions in Spain at a state level are CCOO and the UGT.
- **The most representative trade unions at an autonomous or regional level:** those with more than 15% of the union representatives in an autonomous community and with also 1,500 union representatives; for instance, ELA in the Basque Country.
- **The most representative trade unions:** those with at least 10% of the delegates in a functional area (iron and steel industry, hospitality...); for instance the trade union ANPE for teachers, SATSE for nurses.

The most representative trade unions have more rights compared with the rest of trade unions. These take part in bargaining with the government and business associations and they are entitled to use public premises.

Trade unions take part in companies through union representatives or delegates and labour union sections.

TRADE UNION REPRESENTATIVES

- ✓ In companies of at least 250 workers.
- ✓ At least there must be 1 workers' representative in the company's workers' committee.

The union representatives are deemed non-voting members in the meetings of the company's union committee and they are entitled to be informed about serious or very serious misconduct of any of their trade union's memberships.

LABOUR UNION SECTIONS

- ✓ Formed by all the members of the trade union in that company

If the labour union section belongs to a most representative trade union it will be entitled to:

- Have a notice board in the workplace.
- Have a place for their activities, in companies with more than 250 workers.
- Take part in the collective bargaining in the company.

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WORKERS' PARTICIPATION IN THE COMPANY

There are two ways for the workers to be represented in the company:



EMPLOYEES'
REPRESENTA-
TION

They are elected by the employees



UNION
COMMITTEE
MEMBERS

They are elected by the members of the trade union, so they represent the trade union not the personnel of the company

Two types of employees participation

Employees' representation

Union committee members

- Personnel delegates
- Company workers' committee
- Union representatives
- Labour union sections

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EMPLOYEES' REPRESENTATION

These are elected by the employees and they represent all the personnel of the company. The elections are held every 4 years.

For being a candidate the employee must be over 18 years of age and must have 6 months seniority within the company.

Employees with more than 16 years of age and with at least 1 month of seniority in the company can vote.

Elections can be promoted by:

- The most representative trade unions.
- The trade unions with a minimum of 10% of the representatives in the company.
- The majority of the workers in the company.

PERSONNEL
DELEGATES

If the company has fewer than 50 workers, there will be from 1 to 3 personnel delegates elected. The list of candidates is open (each elector can vote any of the candidates on the list).

WORKERS'
COMMITTEE

If the company has 50 or more workers there is a workers' committee. There are two polling stations, one for technicians and administrative assistants, and another one for other workers (operators, and skilled and non-skilled workers). Each section votes for its workers' representation. The list of candidates is a closed one (all the candidates on the list must be voted).

If a candidate has fewer than 5% of the total votes they will not have any representatives and their votes will be void.

Personal
delegates

FEWER
THAN 50
WORKERS

Company workers'
committee

NOTICE



Trade union representatives (delgados o enlaces sindicales) are not workers' representatives because they have not been elected by the workers; these only represent their trade unions. Actually there are not so many companies with more than 250 workers in Spain (0,1% of all companies in 2014, that is 3,822).

The number of personal delegates depends on the number of the workers in the company:

PERSONAL DELEGATES	
From 6 to 10 workers	1 delegate (this is voluntary and whenever the personnel of the company decides it)
From 11 to 30 workers	1 delegate
From 31 to 49 workers	3 delegates

The number of the members of the company workers' committee also depends on the number of the workers:

COMPANY WORKERS' COMMITTEE	
WORKERS	MEMBERS
From 50 to 100	5
From 101 to 250	9
From 251 to 500	13
From 501 to 750	17
From 751 to 1,000	21
From 1,000 onwards	2 more members for each 1,000 or a fraction of it (75 members as a maximum)

EXAMPLE 1



Javier is 35 years old and was hired as a chef in a restaurant 3 months ago. There are elections for workers' representatives in the company where he works. Can Javier vote and can he be a candidate?

Solution:

Javier can vote because he has been working in the company for more than one month. On the contrary, he cannot be a candidate as he has not been working in the company for at least 6 months.

EXAMPLE 2



Workers' representatives' elections are going to be held in 2 different companies. One of them with 50 and the other with 40 workers. What will be elected, personal delegates or a workers' committee? Will there be a closed list or an open one? How many polling stations will there be?

Solution:

In the company with 50 workers there will be a workers' committee with 5 members, so there will be closed lists and 2 polling stations, one for technicians and administrative assistants, and another one for other workers (operators, and skilled and non-skilled workers).

In the company with 40 workers 3 personal delegates will be elected. There will be an open list with the candidates in alphabetical order and one polling station.

EXAMPLE 3



Workers' representatives' assignment: A company has 1,000 workers; 150 of them are technicians and administrative assistants, and 850 are skilled and non-skilled workers. The number of workers' representatives that corresponds to this company is 21. How many workers' representatives will there be for the group of technicians and administrative assistants? And how many workers' representatives will there be for the group of skilled and non-skilled workers?

Solution:

For the group of technicians and administrative assistants:
 $21 \times 150 \div 1,000 = 3.15$, so 3 workers' representatives

For the group of skilled and non-skilled workers:
 $21 \times 850 \div 1,000 = 17.85$, so 18 workers' representatives

JOINT COMMITTEE:

This is created when the company has more than one branch office, with fewer than 50 workers each, in the same province or in adjacent or bordering provinces, but all together reaches at least 50 workers.

EXAMPLE 4

SMARCH, Ltd. has 3 branch offices in Bilbao; the 1st one with 30 workers, the 2nd one with 20 workers and the 3rd one with 8 workers. These 3 branch offices will join together in one polling station with 58 workers and will elect a joint committee.

INTER-BRANCH COMMITTEE:

According to the collective agreement, if there are several union committees, there will be the possibility to set up an inter-branch committee formed by the different workers' committees' representatives with a maximum of 13 members.

EUROPEAN UNION COMMITTEE:

This can be promoted by the company's management or at least 100 workers who appertain to branch offices in different countries. Its purpose is to provide information and counselling.

WORKERS' REPRESENTATIVES' RIGHTS AND RESPONSABILITIES

- To receive information from the company related to the economic and accounting situation, work accidents, work contracts made by the company, absence, change of personnel, penalisations for employees...
- To be consulted on dismissals, personnel reorganisation, transfers, working day cuts, suspensions of work contracts, etc.
- To guard the observance of the labour law in the company, health and safety at work, as well as suing in labour courts or to the Labour Inspection.

EXAMPLE 5

A hardware components manufacture company has set a new productivity control process using video cameras. Have the workers' representatives any rights in this matter?

Solution:

The workers' representatives will be informed about this and they will make a report about it, because this act affects the organisation and the control of work in the company.

PROTECTION FOR THE WORKERS' REPRESENTATIVES

- They cannot be fired or sanctioned for holding their position of workers' representatives. This protection will last one year after the worker finishes in their position. If the dismissal is unfair the workers' representative has the right to decide to continue or leave the company.
- If a workers' representative has been punished for a serious or a very serious misconduct, the worker has the right of a hearing (initiate contradictory proceedings).
- The workers' representatives have the right to express their ideas related to labour matters.
- The representatives of the employees may spend a number of hours during their working time to perform their union duties (free-time). According to the collective agreement the free-time hours can be accumulated so it may happen that the most voted workers' representatives are released from work to carry out their duties as workers' representative.

The number of hours of free-time depends on the number of workers in the company:

NUMBER OF WORKERS	HOURS PER MONTH
Smaller than 100	15
From 101 to 250	20
From 250 to 500	30
From 501 to 750	35
From 751 onwards	40

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COLLECTIVE BARGAINING

Collective bargaining is a process of negotiations between employers and a group of employees aimed at reaching agreements to regulate working conditions.

The collective agreements reached by these negotiations usually set out wage brackets, working hours, training, health and safety, overtime, grievance mechanisms, and rights to participate in the workplace or company affairs.

The interests of the employees are commonly presented by representatives of a trade

union to which the employees belong (workers' representatives). The union may negotiate with a single employer (who is typically representing a company's shareholders) or may negotiate with a group of businesses to reach an industry wide agreement.

The parties often refer to the result of the negotiation as a **collective bargaining agreement (CBA)** or as a **collective employment agreement (CEA)**.

Negotiations between employers and unions (workers' representatives) take place at three levels: national, industry and company/organisation.

SCOPE OF APPLICATION

- **Personal application:** refers to the workers affected by the collective agreement. In general all the workers in the company are included in it but in some cases it refers to a specific professional category (e.g. pilots have their own collective agreement).
- **Territorial application:** refers to the territory where the collective agreement takes effect (state level, province level, autonomous community level, company level).
- **Temporal scope:** refers to the period of time the collective agreement will be in force. From 2012 with the Spanish Labour Reform if the parties do not reach an agreement, the collective agreement due date will be postponed only for 1 year. As a consequence, the collective agreement of a higher level will be in force, or the Workers' Statute as the last resort.

According to
the Labour Reform
of 2012:

- A collective agreement of a company/organisation has priority over higher level collective agreements, so better or worse work conditions can be established.
- Companies with technological, economic (2 quarters of a year or more with a drop in sales), production or organisational problems; (objective causes) can modify or change certain work conditions set out in the collective agreement. If there is no agreement with the workers' representatives, the collective agreement joint committee will decide and, ultimately, there will be a final decision made by an arbitrator (arbitration) in the National Consultative Commission.

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COLLECTIVE LABOUR DISPUTES: STRIKE

During the labour relationship there can be disputes between workers and the company. There are **individual disputes:** one worker and the company (these have already been studied in previous units), and **collective disputes:** between a group of workers and the company.

There are
2 types of
collective
disputes:

LEGAL DISPUTES

A discrepancy between the workers and the company about the interpretation of the law. The labour courts or higher judicial institutions will decide.

CONFLICT OF INTERESTS

The revision of a norm in order to change it or just remove it. Measures taken by the workers can be: strikes, demonstrations, meetings, voluntary confinement of the workers.

STRIKE



This is a fundamental right of the Spanish Constitution. To comply with the law the strike must be a **labour** strike, **direct**, "**no novatoria**" and **non-abusive** strikes.

LABOUR STRIKE

Political strikes are illegal. It is possible to go against the public authorities for economic, social and labour reasons. For example, the strike against the Iraq war was legal because its economic, social and labour consequences.

DIRECT STRIKE

Solidarity strikes are banned. It is legal if the strike is to support other workmates in the company. For instance, on a temporary workers strike, civil servants can decide to go on strike to support them.

"NO NOVATORIA" STRIKE

This means that workers cannot go on strike to change work conditions that have been already reached in the collective agreement. On the other hand, it is possible to introduce new conditions in the collective agreement, whenever agreed work conditions are not modified. It is legal to go on strike if the company does not comply with the collective agreement.

NON-ABUSIVE STRIKE

Some abusive strikes are:

- **Rotating strike:** Workers do shifts in different departments in the company, so other workers cannot perform their tasks.
- **Strategic strike:** workers with strategic positions in the company stop working and there is a blockage in production.
- **Work-to-rule strike:** workers do their work scrupulously, deeply, carefully so the production process collapses. For instance, security officers thoroughly check peoples' belongings, therefore, the entrance collapses.
- **Strike Japanese style:** this is the overproduction by the workforce in the manufacturing industry, which brings a storage and logistics cost increase.

Procedure for going on strike:

1ST CALL FOR THE STRIKE	2ND STRIKE COMMITTEE	3RD NOTIFICATION TO THE COMPANY AND TO THE LABOUR AUTHORITY
Made by the personal delegates, workers' committee, the majority of the workers of the company or the trade unions.	Tries to solve the conflict and guarantee security and surveillance for people and company's premises. Maximum: 12 members.	At least 5 days before the strike; 10 days if it affects social services.

During the strike:

- The employer cannot substitute workers on strike for other workers who do not belong to the company.
- The workers have the right not to go on strike and picket lines are forbidden except those for giving information to the workers.
- The strike committee must do its best to solve the conflict and to safeguard people and the company's premises.
- Provisions of minimum public services are established by the governmental authority.

Consequences of the strike:

Suspension of the work contract	<ul style="list-style-type: none"> • The worker is not paid. • For each day on strike the worker will have a discount on the working day salary, the proportional part of the extra monthly payments, the weekly rest and bank holidays.
Special situation within the Social Security	<ul style="list-style-type: none"> • There is no contribution to the Social Security, so the worker has neither benefit for temporary impairment nor unemployment benefit during the strike.

Annual holidays will not be reduced unless the strike is illegal.



EXAMPLE 6

A company's workers' committee has called for a strike and the procedure for this is as follows:

- The company and the labour authority have been given notice 7 days before the strike (the company does not provide a public service).
- The strike committee has 15 members.

Is this procedure correct? If not, why?

Solution:

It is correct:

- The workers' committee is entitled to call for a strike.
- The workers' committee has given notice of the strike to the company and the labour authority 7 days before (this must be at least 5 days before the strike).

It is incorrect:

- The strike committee has 15 members and the maximum is 12 members.

7) LOCK OUT

A lock out is a temporary work stoppage or denial of employment initiated by the management of a company during a labour dispute. This is different from a strike, in which employees refuse to work.

It is usually implemented by simply refusing to admit employees onto company premises.

The Spanish Labour Law states that only preventative lock out is allowed. This is a defensive lock out to prevent irreparable damages in the company. The company must give notice of the lock out to the labour authorities within 12 hours.

Lock out causes	<ul style="list-style-type: none">• Risk of violence against people or serious damages to company's belongings.• Illegal occupation or risk of illegal occupation of the company's premises.• Work absences whenever these seriously impede on the work activity.
Conse- quence	<p>The work contract is suspended, which means:</p> <ul style="list-style-type: none">• No salary is paid and there is no contribution to the Social Security.• The worker is in a special situation related to the Social Security inscription.

EXAMPLE 7



An employer sees that a group of workers on strike are carrying banners outside the premises. The employer is in fear of suffering serious damages because of the occupation of the workplace, so he makes the decision to lock up the business for 3 days. This situation implies that the workers have to leave the premises and they will receive no salary.

Is the employer's decision correct?

What are the consequences of the employer's decision?

Solution:

This is a workers' demonstration and does not necessarily mean they are going to enter the premises and cause serious damage.

If the employer decides to initiate a lock out, the labour authorities must be notified about it.

The consequences of the lock out are that the workers that have to leave the company premises will be paid because the lock out is illegal.

8

THE RIGHT TO ASSEMBLE

Workers have the right to assemble in the workplace, so the employer must provide a place for it. Workers can assemble out of the working timetable.

Assemble procedure:

- The personnel delegates or the workers' committee can make the call. The workers, if they are at least 33% of the personnel, can also make the call.
- The workers' representatives will lead the assembly. All the items must be on the agenda.
- The employer will be informed 48 hours before the assembly takes place.
- The agreements that affect all the personnel will be approved by at least more than half of the workers.

The employer can deny this right if:

- The period of time between the previous assembly and the new one is less than 2 months; with the exception of assemblies to give information about the collective agreement.
- Damages in previous assemblies are not been repaired.
- There is a lock out and there is a closure of the company.