

UNIT 1

LABOUR RELATIONSHIP

1 LAW

Law is the body of rules and principles established in a community by an authority that regulates behaviour and relationships in society. These rules are imposed by force, which carries punishments if they are violated.

Law is a set of rights and duties.

"All citizens are equal before the Law".

"No person is above the law".

1.1 CLASSIFICATION OF LAW: PUBLIC LAW AND PRIVATE LAW

In Spain there are different types of law:

PRIVATE LAW

A set of legal standards governing relationships between individuals, such as Civil Law, Commercial Law and Private International Law.

PUBLIC LAW

A set of rules governing the relationships between individuals and the State or between public institutions; for example: Administrative Law, Criminal Law, Tax Law, etc.

Labour Law belongs to both, Private Law (i.e. employer and employee contract agreement) and **Public Law** (i.e. the State establishes minimums entitlements to be fulfilled).

2 LABOUR LAW SOURCES: MATERIAL AND FORMAL HIERARCHY OF LABOUR REGULATIONS

In the field of Law, we can distinguish "material sources" and "formal sources".

MATERIAL SOURCES

In Law we can also say that the rules emanate from a specific institution or a group of people.

In this case we are talking about the material sources of Law (those who can draw up laws):

- THE PARLIAMENT
- THE GOVERNMENT
- SOCIAL PARTNERS (TRADE UNIONS AND EMPLOYERS ASSOCIATIONS)
- EMPLOYER AND EMPLOYEE
- PROFESSIONAL GROUPS

HIERARCHY OF NORMS

"Standard of lower rank cannot contradict or violate the provisions of a standard higher rank".

FORMAL SOURCES

These are the rules (legal standards)

Listed in order of hierarchy are the following:

- ① European Community Legislation
- ② Spanish Constitution
- ③ International Treaties and International Labour Organisation Conventions.
- ④ Organic Act
- ⑤ Ordinary Act
- ⑥ Decree Act
- ⑦ Legislative Decree (Articulated Texts and Consolidated Texts)
- ⑧ Decrees and Ministerial Orders
- ⑨ Collective Agreement
- ⑩ Labour Contract
- ⑪ Custom
- ⑫ General Principles of Law

Rules that are created outside the Spanish State are classified as **external sources** (i.e. European Community legislation, International Treaties).

Those created by the Spanish institutions are **internal sources**.

① European Community Legislation:

1.1 Community Regulations

These are a legislative acts of the European Union (EU) that become immediately enforceable as law in all member states simultaneously.

1.2 European Directives

The member states of the EU are obliged to reach the results that are stipulated in the directives. The member states are free to choose the way and the means used

to reach these results. The directives are obligatory norms for all the members of the EU. (E.g. Working Time Directive 2003/88/EC).

2 The Spanish Constitution of 1978

The Spanish Constitution (SC) was approved by the Spanish Legislative Chambers: the Congress and the Senate (In Spanish, Cortes Generales: Congreso y Senado) on 31st October, 1978. It was ratified by national referendum on 6th December, 1978.

The Constitution contains fundamental rights, rights and freedoms of citizens and the basic principles of the economic and social policy. It is the supreme rule of law within the legal system.

3 International Treaties and International Labour Organisation conventions

An international treaty is an agreement between the Spanish Government and other foreign governments. These international agreements take effect at the moment of their publication in the Official Newspaper (Boletín Oficial del Estado - B.O.E.).

4 Organic Act

Organic act is a specific type of law. They are debated and passed in the Congress and the Senate. They are different from ordinary legislation in two ways:

- The organic act regulates important subjects: the implementation of fundamental rights and public freedoms, the statutes of Autonomy and the general election system.
- Organic acts require an absolute majority (more than 50% of all members of the Parliament). This means the law must be passed by the majority of the members of the Chambers.

5 Ordinary Act

Ordinary acts regulate other matters that organic laws do not regulate. They require a simple majority (more than 50% of all members of the Parliament that are present at the time) of both the Congress and Senate.

6 Decree Act

This is a rule of law issued by the Government in exceptional and urgent situations. It has the force of law. This cannot affect basic institutions of the State: rights and liberties of the citizens, the system of the Autonomous Communities or the general election act.

7 Legislative Decree

Legislative decrees are Government regulations. They are also treated as law. There are two different kinds of Legislative Decrees:

- Articulated Texts (Textos Articulados): the General Courts provide a basis to be developed by the Government.
- Consolidated Texts (Textos Refundidos): these bring together different acts related to the same matter, to be organised.

8 Decrees and Ministerial orders

These are rules of a lower status. The Government draws up decrees and ministerial orders.

9 Collective Agreement

Employers and the legal representatives of the workers negotiate the terms and conditions of employment that leads to a collective agreement.

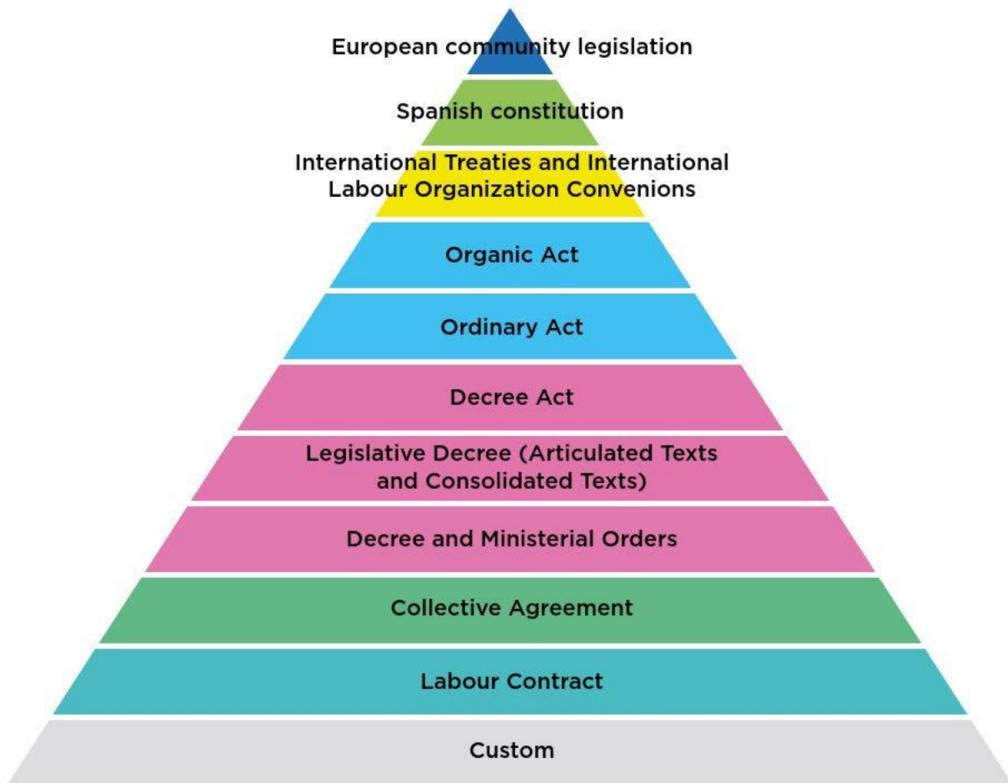
10 Labour Contracts

This is a bilateral agreement between a company and a worker. The worker must do their job and the company will have to pay for that job.

11 Uses and Customs

They are usually unwritten rules. They do not come from the State, but from society. These are not local general customs. Uses and customs are related to a specific place (i.e. a village, a town...) and also to a specific trade, and they have to be proved in court.

For instance: Bakers in the village of Villanueva give their employees a cake every year on the feast-day of the village. This happens only in this place and in this trade.



Pyramid scheme of the hierarchy of law regulations

Videos:

Hierarchy principle: https://www.youtube.com/watch?v=b_o0KZBYiZc

ILO: https://www.youtube.com/watch?v=VXkMsTMuUnU&feature=emb_logo

3

SPANISH LABOUR LAW

This involves those areas of law which appertain to the relationship between:

- Employers and employees
- Employers and trade unions
- All of previous ones, with the State

3.1 ORIGIN AND EVOLUTION

Labour Law started in the middle of the 19th century with the Industrial Revolution.

Ordinary working people found increased opportunities for employment in the new mills and factories, but these were often under strict working conditions with long hours of labour (machines set the pace for the workers), child labour, dirty working conditions... Employers had total power.

The organisation of workers or Trade Unions helped in the advancement of the interests of working people. Politicians and the government tried to limit bad working conditions, setting up regulations to protect the working class against the power of the employer.

The basic rule for the Spanish workers is the **Workers' Statute** passed in 1980.

The adapted **Workers' Statute Law Consolidated Text** (Legislative Decree), which includes all the regulations related to labour relationships, was passed in 1995.

Labour Law develops as the economic and social situation changes.

3.2 JURISDICTION

Work is defined as a physical or mental effort or activity directed towards the production or accomplishment of something.

But not all work is regulated by Labour Law.

The activity regulated by Labour Law (LABOUR RELATION) must have the following characteristics:

PERSONAL: The worker is the only one who can do the work. They cannot be replaced.

VOLUNTARY: Everyone is free to accept a job or to leave one's job. No one can force anyone to do any work activity.

WORK FOR OTHERS: Not self-employed. The company hires someone's services under certain conditions and owns the result of the employee's performance, taking business venture.

DEPENDENT: The employer runs the company and the employee receives orders, and acts under the employer's management.

PAID: The employee performs work under certain conditions in return for remuneration.

Most of the work activities, almost all with an employment contract, are labour relations.

Videos:

Introduction to Labour History: <https://www.youtube.com/watch?v=4pC56qMSDMs>

Employee and labour relationship: <https://www.youtube.com/watch?v=pp39CU3hXIM>

3.3 SPECIAL LABOUR RELATIONS AND NON - LABOUR RELATIONS

There are certain labor activities that, while they fulfill all the characteristics of labour relations, are special in some way and have their own rules.

In matters that are not regulated by these rules it is necessary to address The Workers' Statute Law Consolidated Text

SPECIAL LABOUR RELATIONS include:

- ✓ Top management personnel.
- ✓ Domestic service.
- ✓ Convicted offenders in jail.
- ✓ Professional athletes.
- ✓ Artists who work in public shows.
- ✓ Sales representatives.
- ✓ Longshoremen working for State Companies.
- ✓ Disabled people working in special work-centres.

NON LABOUR RELATIONS do not fulfill the characteristics of labour relations. These include:

- ✓ Civil servants
- ✓ Commission agents
- ✓ Compulsory activities, such as being a member of a jury or of a polling station, helping the council in an emergency...
- ✓ Members of Board of Directors in limited companies, as long as they don't carry out other tasks in these companies.
- ✓ Volunteer work
- ✓ Jobs in family business, being a close relative (until 2nd degree).
(To know the degree of two relatives it is necessary, firstly to go up the family tree from one relative to the joint branch and secondly to go down to the other relative).

4

GENERAL PRINCIPLES OF LAW LABOUR

MINIMUM NORM

Higher level regulations lay down basics to be observed by lower level regulations.

Example: A contract of employment cannot set up less favourable work conditions than a collective agreement does.

MOST ADVANTAGEOUS NORM

In the case of more than one norm could be applied in a work issue, the most beneficial norm for the worker will be applied.

Example: If a worker has 40 days of holidays according to the collective agreement, this norm will be implemented, as it is more advantageous than the one that is in the Workers' Statute Consolidated Text.

INHERIT OR INALIENABLE RIGHT

Workers cannot renounce the rights and entitlements recognized by legal regulations.

Example: A worker cannot decline holidays.

THE MOST BENEFICIAL CONDITION

If labour regulation attributes less favourable conditions than those held in the contract of employment, the most beneficial condition for the employee will prevail over the others.

Example: If the worker receives a seniority bonus from the beginning of his contract of employment, he will continue to receive it.

IN DUBIO PRO OPERARIO

When in doubt of how to apply a norm, it will be applied to benefit the worker.

Example: Even when it cannot be proved the relation between work and a heart attack, during the working time and in the workplace, the social court will rule it as an work-related accident.

5

LABOUR COURTS



Here we refer to all judges and magistrates. They deal with labour issues and matters related to Social Security for workers, redundancy, workers benefits, labour penalties, etc.

1 The Social Courts - Juzgados de lo Social

Its jurisdiction extends throughout the province and is located in its capital (county town).

Social Courts judge **individual disputes** about labour statutory rights or contracts of employment, as well as **collective disputes** at a **provincial level**.

2 The Regional High Courts - Tribunales Superiores de Justicia de las Comunidades Autónomas

The Regional High Court is the highest level of justice within each Autonomous Region of Spain.

Appeals can be made through a process called “**suplicación**” against sentences of the Social Courts, and also judges Trade Union’s issues and **collective disputes** that **exceed provincial level**.

3 National High Court - Audiencia Nacional (AN)

The National High Court is located in Madrid, with jurisdiction over the whole Spanish territory and judges **Trade Union’s issues and collective disputes that exceed regional level**.

4 The Supreme Tribunal - Tribunal Supremo (TS)

The Supreme Court is the highest level of justice in the Spanish judiciary. It is based in Madrid and its jurisdiction extends throughout the Spanish territory and over all judicial matters.

Appeals are heard by the TS making a **final decision against sentences of similar cases** that have been sentenced in different ways by Regional High Courts (TSJ) regional level and the National High Court (AN).

Jurisprudence:

From the Latin term juris prudential, which means “the study, knowledge, or science of law”.

A sentence sets jurisprudence when there are at least two or more sentences from the Supreme Tribunal with the same decision.

6

LABOUR ADMINISTRATION

Labour Administration deals with the **development of the Labour Law** (by drafting new laws), its **implementation** and **control**.

It also deals with the **development** of the **labour policy** through the Labour Ministry bodies and the Autonomous Regions’ agencies. It also controls **the performance of labour legislation** through Labour Inspection.

Employment and Social Security Ministry

State intervention in the labour field is carried out by the Ministry of Labour.

The Autonomous Regions Labour Agencies

The Autonomous Regions develop Labour Legislation in their regions. Even though they must observe the basic regulations laid down for all the country as the Spanish Constitution grants the State exclusive powers in labour legislation and social security.

The Labour Inspection

This is a State Administration body whose aim is to guarantee that Labour Law is upheld. Its functions are:

- To inspect and penalize offences against Labour Law and Health and Safety at work.

- To advise both employers and employees about their rights and duties.
- To act as a mediator in collective disputes.
- To issue reports of industrial accidents.
- To adopt health and safety measures to protect workers' health.

**State Public Employment Service (Spanish acronym: SEPE)
Lanbide (Basque Employment Agency)**

These help and give guidance on job-hunting, professional training and setting up business. There also helps employers in recruiting personnel for their companies.

The General Treasury of Social Security

Its main function is to collect and administrate the employers and employees payments that are compulsory.

Social Security Institute

It manages Social Security benefits.

FOGASA (Wage Guaranty Fund)

It takes the responsibility for non-paid salaries and compensations caused by the employers' insolvency.

7

RIGHTS AND DUTIES OF WORKERS AND EMPLOYERS

The rights and duties of workers are listed in the Workers' Statute, in Article 4:

The legislator makes a classification of these rights in two main sections:

Basic workers' rights

"Basic workers' rights"

- The right to work and to choose a profession or occupation.
- The employee has the right to freely join or not to join a Trade Union.
- The right to sign a collective agreement for workers for better working conditions in companies.
- The right to take collective actions to defend the collective interests of the workers.
- The right to strike.
- The right to assemble in the workplace.
- The right to be informed, to consult and to participate in the company.



"Rights arising from the employment contract"

- The right to have an effective occupation.
- The right to be promoted within the company.
- The right to vocational training at work.
- The right not to be discriminated against.
- The right to an adequate health and safety policy.
- The right to respect worker's personal privacy.
- The right to receive wages at the time established in the work contract.
- The right of workers to go to court to defend their rights and interests.



Duties of workers are also included in the Workers' Statute in Article 5.

- The employee must comply with the specific obligations related to their job.
- The employee must comply with health and safety measures.
- The employee must comply with the orders and instructions of the employer.
- The worker should help improve company productivity.
- To choose, where, when and how to carry out the work activity (management authority).
- Ius variandi decision: to change employee's duties in work, workplace and other work conditions.
- To guard and control the employees' work activities. The employer has the authority to penalise the employee in case of non-fulfilment (disciplinary authority).

It is important for the employer to take into account that misconducts can expire:



	TYPE OF MISCONDUCT	DAYS
PENALISING PERIOD (from the moment the employer has been made aware of the misconduct)	Minor misconduct	10
	Serious misconduct	20
	Very serious misconduct	60
DEADLINE	In any case, if the employer has no notice of the misconduct after 6 months there is no possibility of sanctioning the employee.	

Videos: Discrimination at work

https://www.youtube.com/watch?v=lgQ_wBIAbKI

<https://youtu.be/SrX4WvdWJuI>

The employees are not obliged to comply with the employer's orders in the following situations:

- When orders affect to the worker's personal privacy.
- When orders can cause a high risk to the employees' health and safety.
- When orders go against the dignity of the employee.
- When orders are illegal.



- To provide a meeting place for the workers and inform them about the company.
- To give tasks to the employees and the resources to perform them.
- To let employees take part in exams and professional training, and to be promoted.
- To give equal treatment.
- To plan risk prevention in the workplace.
- To guard and protect health from risks at work.
- To give tasks belonging to the professional category.
- To respect worker's personal privacy.
- To pay salary punctually.

8

SPANISH LABOUR LEGISLATION

1 Texto Refundido de la Ley del Estatuto de los Trabajadores - Workers' Statute Act Consolidated Text

This is the basic legislation of the Spanish Labour Law and contains the rights and obligations that appear in the Constitution. It also includes general rules about the contract of employment, the rights and obligations of the workers and employers, the rights of collective representation and meeting, and the regulations about Collective Agreements.

2 Ley Orgánica de Libertad Sindical - Freedom of Association Organic Act

This regulates the constitutional right to belong to a union, the organisation and judicial status of unions, the way in which unions become representatives, the way in which unions can develop their activities, and safeguards the right to belong to a union.

3 Ley de Prevención de Riesgos Laborales - Risk Prevention Act

This regulates the necessary measures and activities to prevent risk at work.

4 Ley de Infracciones y Sanciones en el Orden Social (LISOS) - Act of Infringements and Punishments of a Labour Nature

This regulates the infringements and punishments related to labour issues.

Video: Employer's duties

<https://www.headsup.org.au/healthy-workplaces/legal-rights-and-responsibilities>

5 Texto Refundido de la Ley General de la Seguridad Social - Social Security General Act Consolidated Text

This regulates and establishes the organisation and management of the Spanish Social Security.

6 Texto Refundido de la Ley del Procedimiento Laboral - Labour Proceedings Act Consolidated Text

It consists of norms related to labour disputes and lawsuits that must be solved in Labour and Social Security Courts.



VOCABULARY

ACCOMPLISHMENT	Logro	y magistrados	
AGREEMENT	Acuerdo	TO LAY DOWN	To enforce rules
TO ALLOW	Permitir	LEGAL STANDARD	Norma jurídica
TO APPEAL	Apelar	TO LODGE A COMPLAINT	Interponer una queja
TO APPROVE	Aprobar	TO MAKE AN APPEAL	Interponer un recurso
TO ASSEMBLE	Reunirse	TO MANAGE	Gestionar
CHAMBER	Cámaras	ORDINARY LAW	Ley ordinaria
TO CHOOSE	Elegir	ORGANIC LAW	Ley orgánica
COLLECTIVE AGREEMENT	Convenio colectivo	POLLING STATION	Local de votación
COMPLAINT	Quejas, reclamaciones	TO RATIFY	Ratificar, revalidar
TO COMPLY	Cumplir, acatar, obedecer	TO REACH	Alcanzar
CONSOLIDATED TEXT	Texto Refundido	REGULATION	Reglamento
CUSTOM	Costumbre	RELATIVE	Pariente
TO DEAL	Acuerdo, trato	TO REQUIRE	Requerir
TO DRAW UP	Elaborar, redactar una ley	REDUNDANCY	Despido, cese
DECREE-LAW	Decreto-Legislativo	RIGHT	Derecho
DUTY	Deber	RULE	Norma
EMPLOYER	Empleador/empresario	SALARY	Salario
EMPLOYEE	Empleado	TO RATIFY	Ratificar
ENFORCEABLE	Ejecutable, aplicable	TO SANCTION	Sancionar
ENTITLEMENT	Derecho	TO SELECT	Seleccionar
GENERAL PRINCIPLES OF LAW	Principios Generales del Derecho	SENTENCE	Sentencia
INDUSTRIAL ACCIDENT	Accidente laboral	A SET OF	Un conjunto de
INTERNATIONAL TREATY	Tratado internacional	SOURCE	Fuente, origen
LABOUR	Laboral	STANDARD	Norma
TO LAY DOWN	Poner las reglas	STRIKE	Huelga
LAW	Derecho	SUPREME RULE	Norma suprema
LEGISLATIVE DECREE	Decreto Ley	TRADE	Profesión, gremio
LONGSHOREMAN	Estibador, cargador	TRADE UNION	Sindicato
TO FULFILL	Cumplir	TREATY	Tratado
TO GOVERN	Regular	TO UPHOLD	Cumplir
TO IMPOSE	Imponer	VENTURE	Riesgo
INALIENABLE	Irrenunciable	WAGE	Salario
TO INHERIT	Heredar		
ISSUE	cuestión, asunto, conflicto, problema		
JOB-HUNTING	Búsqueda de empleo		
TO JOIN	Unir		
JUDGES AND MAGISTRATES	Jueces		