Spanish Employment contracts

The Spanish labour system is known as rigid and with “left-overs” from a large period of Franco regime.

General basic conditions

In Spain exist two different types of employment contract. The general employment contract and the executive employment contract.

The following points are of particular relevance for each one of them

Language: Any Spanish employment contract has to be written in Spanish. It is possible to draft in two languages, however the Spanish language shall prevail.

Law and Jurisdiction: The employee will be working in Spain so the contract must be in accordance with Spanish Legislation. Any dispute would be submitted to Spanish Labour Court.

Expenses for the company: The company shall pay social security for the employees (approximately 32,50% of the gross salary). It is important to take this into account when negotiating the salary with the employee.

The company shall pay partial salary and social security during illness period of the employee, and full social security during maternity leave.

Salary: The payment of salary must be done timely. Normally salaries are paid the last day of the month or the first day of the following month.

The company must withhold the employee’s part of social security (approx. 6,4%) and personal taxes of the employee.

“The employer never gives a notice period and can terminate the agreement at any time, but it is compulsory to pay compensation to the employee”

Holidays: Generally holidays are 30 days or 23 working days per year. Salary must be paid during holidays and the employee will have his holidays during the working year (including the first working year).

Renouncement of holidays is not permitted by the Spanish Law.

There are national and local holidays (14 days). Some holidays can be transferred to Monday or Friday by the authorities.

Social security coverage: The payment by the employer and employee to the Spanish Social Security covers:

- Maternity (16 weeks): The Spanish Administration is paying during this period but the employer must still pay the social security contributions.

- Illness/Incapacity: The employer pays the salary but has a compensation in the social security contribution depending on the duration of the illness (60% or 75%)

- Unemployment: If the employee has been working during 6 years the right of unemployment payment by the administration is 2 years. For 3 years of working the right of unemployment payment is 1 year.

- Retirement pension: The administration shall pay the retirement pension according to the years worked (after 30 years of working you can obtain 100% of your salary) and to the amount paid to the social security.
General employment contract
Regulated by the Spanish Labour Act (Estatuto de Trabajadores) and the collective agreements.

- **Form:** A standard form is used. It is possible to enclose annexes with special clauses (confidentiality, non-competition...). The contract has to be registered within the Labour authorities.

- **Working hours (full-time):** Working hours are determined by the collective agreements. Usually: 40 hours/week excl. lunch.

- **Evaluation period:** “Entrepreneur companies” can make use of an evaluation period of 12 months. Otherwise, the evaluation period shall be ruled by the collective agreement. It is not possible to extend the evaluation period due to absence.

During the evaluation period both parties have the right to terminate the employment agreement without notice and no compensation.

- **Holidays:** According to collective agreement.

- **Termination:** The employee must give a notice period for the termination of the agreement according to the collective agreement. Normally 1 month for managers/directors and 15 days for technical employees.

The employer never gives a notice period and can terminate the agreement at any time, but it is compulsory to give compensation to the employee.

If there is not a demonstrable cause, the compensation is from the 12th of February of 2012, 33 days of salary per worked year (before the 12th of February of 2012 the compensation is 45 days of salary per worked year).

If the reasons of the termination are based on demonstrable causes (as economic causes - for instance, loses during 9 months- organizational causes, etc...) the compensation shall be reduced to 20 days of salary per worked year.

To change the position, duties, working place, etc. of an employee, it has to be done in writing and with valid arguments.

The employee can choose between accepting the new modifications or terminate the agreement with compensation from the employer. The court will decide if the compensation shall be 20 or 33 days of salary per worked year.

Executive employment contract
Regulated by the special labour legislation for directors and other high positions by Royal Decree 1382/1985, of the 1st of August of 1985.

The agreement between the employer and the director (executive) is based on mutual trust and the parties agree on the content.

There are some differences regarding general agreements such as:

- **Working hours:** Extraordinary hours are included into the salary.

- **Notice period:** The parties can agree on notice period in case of termination.

- **Compensation from the employer if he/she terminates the agreement:** The parties can agree on the compensation but it cannot be less than 7 days of salary per worked year.

- **Holidays:** The parties can stipulate additional holidays than the compulsory 30 days per year.

- **Penalties:** It is possible to agree on a penalty if the employee breaches the non-competition clause, secrecy, etc...

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