



# Spain's Employment Law and 2012 Labor Reform

Insights

6.06.12

In the face of a growing economic crisis, a 23% unemployment rate and an unemployment rate of 50% affecting the youth, the Spanish Parliament recently passed drastic reforms relevant to Spanish labor law known as Royal Decree Law 3/2012 ("Spanish Labor Reforms"). The enactment of these reforms will make it easier and cheaper for employers to lay off workers, will provide incentives for employers to hire younger workers, and is expected to increase employer confidence. This article will provide some basic information relevant to labor law in Spain and introduce some of the more critical provisions of the reform law.

## Sources of Spanish Labor Law

The basic sources of labor law in Spain are the Constitution of 1978, treaties such as the International Labour Organization Agreements No. 87 (Agreement on Trade Union Freedom and Protection of the Right to Form Trade Unions of 1948) and No. 98 (Agreement on the Right to Form Trade Unions and Right to Collective Bargaining of 1949), the 1995 Labor Act, Parliament Acts, Royal Decrees, the government regulations that implement the 1995 Labor Acts, collective bargaining agreements, individual labor contracts and case law.

## General Requirements of Employment Contracts

Although not required in all situations, it is recommended that employers utilize written employment contracts with their employees. The Spanish government has created model form contracts; however, additional clauses may be added. At a minimum, all employment contracts should include the name of the employer and employee, the domicile and work location of the employer, the date of commencement of employment, a summary of the job position, amount of base salary and any additional compensation, work hours and schedule, the amount of vacation time permitted, and if applicable, prior notice relevant to termination.

The duration of an employment contract is presumed to be entered into for an indefinite period of time unless the contract sets forth a specific term of employment. Employers should review current collective bargaining agreements prior to executing definite term contracts in order to ensure that the definite term contracts are in compliance with such agreements.

Employers should note that pursuant to the Spanish Labor Reforms, employers may now deviate from the provisions of a collective bargaining agreement for certain economic, technical, organizational or production reasons.

## **Contract Termination and New Rules Applicable to Severance Payments**

The Labor Act provides a list of various reasons that an employment relationship can be terminated, including but not limited to: mutual agreement of the employer and employee; reasons set forth in the contract to the extent permitted by law; disciplinary reasons; constructive dismissals (for economic reasons, technical reasons, organizational reasons, and production reasons); resignations and death; or disability of the employee. Collective bargaining agreements typically set forth in detail the various permissible grounds for terminating employment and required procedures to be followed by the employer.

Prior to the Spanish Labor Reforms, the Labor Act required, under certain circumstances such as unjustified dismissals, that employers make severance payments to the terminated employee computed on the basis of 45 days' gross salary per year of employment with a maximum of 42 months' salary. The reform law reduces the required severance payments to 33 days per year of employment and caps payments at a maximum of 24 months. Additionally, if an employer can demonstrate three consecutive quarters of losses, the employer will now only be required to pay 20 days of severance per year of employment.

Additionally the Spanish Labor Reforms have eliminated the need to obtain official authorization prior to proceeding with collective dismissals and, as a result, the reasons for and procedures applicable to the dismissals are monitored exclusively by the labor courts.

## **Leave Entitlement and New Rules Applicable to Paternity Leave**

Leaves of absences pursuant to Spanish law include short-term paid leaves of absences to which employees are exceeding their vacation and holiday time. Paid leaves of absences are typically governed by the employment contracts or collective bargaining agreements. Types of paid leave include, but are not limited to: leave for marriage (a minimum of fifteen days); maternity or adoptions (sixteen weeks for a single child); paternity (two days); leave for serious illness of a relative (two-to-four days depending upon the circumstances); and leave to perform public duties. The time permitted depends on the purpose of the leave. Pursuant to the recent reforms, an employee seeking to take paternity leave must give fifteen days notice prior to commencing leave and specify a start and end date for the leave.

## **New Incentives Created by the Spanish Labor Reforms for Employers to Hire More Employees**

The Spanish Labor Reforms create various incentives for employers to employ more staff, including providing tax incentives to employers with fewer than 50 employees and providing a reduction to employer's social security payments for hiring employees 45 years and over, women in sectors which traditionally employ few women and individuals under the age of 30.