BAKER & McKENZIE

Breaking New Ground in Spain

A General Description of the Spanish Employment System

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I. INTRODUCTION

This introductory summary of employment law in Spain focuses primarily on labor law, but also addresses basic aspects of social security law and immigration law, all of which are closely related. This summary is not intended to be comprehensive of the myriad of rules and regulations applicable to employment relationships in Spain, but it is intended to provide a general overview of the basic obligations employers have to employees and the fundamental legal issues that can arise in employment relationships in Spain.

II. SOURCES OF SPANISH LABOR LAW

Labor law in Spain can be considered the group of rules that are intended to protect an employee in his or her employment relationship and that determine the conditions applicable to life in the workplace. In the employment relationship, the employee is considered to have a subordinated, and thus unequal, position with respect to the employer. To remedy some of the consequences of this unequal situation, according to the Spanish Constitutional Court, labor law establishes corrective measures that favor employees.

The basic sources of Spanish labor law include the following:

- Spanish Constitution: The Constitution of 1978, which recognizes the main labor, social and union rights, as they are understood throughout Western European countries;

- Treaties: Certain treaties and conventions, including the many EU regulations. Spain is a signatory country to ILO 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).

- Laws and government regulations that implement them: The 1995 Labor Act, is the main piece of labor legislation applicable nationwide, the 1994 General Law on Social Security is the main social security legislation, and the 2003 Law on Foreigners is the main piece of immigration legislation;

- Caselaw: Technically, caselaw in Spain is only created when two consistent Supreme Court cases decide the same issue in the same way. Single Supreme Court cases and appellate level court decisions are extremely persuasive to lower courts, but they are not in principle binding and, thus, tend to be more inconsistent than may be expected in common law countries.

- Collective bargaining agreements: Collective bargaining agreements or "CBA's" are detailed, binding agreements negotiated between unions (and/or other employee representatives) and employers associations (and/or employers). Many collective bargaining

agreements have been negotiated for a specific industry in the entire country, such that all companies in Spain that belong to that specific industry will automatically be bound by the rules established in the nationwide collective bargaining agreement. Other agreements apply only to a specific province or limited geographical area, or, if the agreement is negotiated at a company level, to a specific company or part thereof, as may be agreed by the negotiating parties. Almost all companies in Spain are subject to a collective bargaining agreement, and they should be aware of and comply with the applicable agreement's rules.

- Employment contracts: Individual employment agreements (whether oral or written) between employers and their employees. The law regulates whether contracts can be entered into for a definite period of time or whether they must be indefinite in term, as is the general rule. In addition, the law regulates a number of special types of employment relationships (e.g., top executives, commercial agents, performance artists, household workers, and others), which are not subject to certain rules established under the Labor Act for the so-called "ordinary" employment relationship. In practice, employment agreements in Spain tend to be relatively simple by common law countries' standards, although companies are increasingly including more complex clauses.

III. THE EMPLOYMENT RELATIONSHIP

Under the Labor Act, an employment relationship is defined as the willing rendering of services by an individual (employee) for consideration and for the benefit, within the organization, and under the direction of another entity or individual (employer). Caselaw has clarified that significant factors in determining the existence of an employment relationship are the dependence of an individual on another in carrying out the contracted services and the individual's insertion in the company's organization. Consequently, providing the individual with the necessary work tools, specific instructions (e.g., work schedules, policies, work standards, etc.), position within a reporting line, workplace, etc. are basic characteristics of the employment relationship, regardless of whether the employer is located in Spain or abroad.

1. Employment Relationships vs. Commercial or Independent Contractor Relationships

Significant caselaw exists on how employment relationships are distinguished from the commercial or independent contractor relationship. Although the distinction is not always clear, whether an employment relationship or a commercial/independent contractor relationship exists will determine whether the protective labor law or the more flexible commercial law applies, whether the labor or civil courts will have jurisdiction, what social security regime applies and the company obligations thereof, etc.

In this respect, special care should be taken in determining the nature of the relationship in cases where a general manager or other top level employee

simultaneously sits on the Board, since significant caselaw exists on whether managers with such dual roles should be considered employees or independent contractors. Also, in cases where employees are promoted to serve on the Board of Directors, special consideration should be given to the effects of the promotion on the prior employment relationship, since the promotion can inadvertently convert the employment relationship into a commercial relationship.

2. Ordinary Employment Relationships vs. Special Employment Relationships

At the same time, ordinary employment relationships, subject to the general rules under the Labor Act, need to be distinguished from special types of labor relationships, which are governed by special laws enacted to address the specific issues that arise in special cases. For example, special legislation exists for the special relationship of top executives, which usually only applies to general or country managers, and which is characterized by the significant degree of trust between the company and the top executive ,and the increased negotiating power of the executive vis a vis an ordinary employee. The types of special employment relationships that exist are discussed below in section IX.

IV. BASIC HIRING CONSIDERATIONS

The general right and freedom to work in Spain means that employees are entitled to work wherever they choose, but in hiring, it is advisable for companies to bear in mind the following rules:

1. Minimum Age Requirements

Full capacity to enter into a binding employment relationship is reached at the age of 18. Individuals between the ages of 16 and 18 are entitled to work but require a parent's or guardian's consent in order to have complete contractual capacity. Individuals under the age of 16 cannot as a general rule enter into employment relationships, although the labor authorities may exceptionally authorize such minor to work as performance artists.

2. Available Incentives

The Spanish government, on an annual basis, establishes discounts on Social Security taxes ("contributions") and subsidies for companies that hire certain types of individuals, such as, for example, long term unemployed individuals, employees who have recently been on maternity leave, disabled individuals, etc. (see Section XIII on Social Security). Employee candidates can be sought from the National Institute of Employment, which has a database of unemployed individuals.

3. Temporary Employment Agencies

Duly authorized temporary employment agencies may offer employees to companies who do not wish to assume the costs of selecting and training

individuals. Nonetheless, employees may only be hired through such temporary employment agencies on a temporary basis and only for the following reasons:

- To perform a job or service that by its nature is limited in time;
- For circumstantial needs of production, excess orders or accumulation of work, even if it is the ordinary work of the company;
- To substitute employees on leave who have the right to have their job position reserved; and
- To temporarily cover a job position during an employee selection process or promotion process.

Temporary employees cannot be hired to substitute employees on strike to perform certain especially dangerous activities, or to fill job positions that are vacant due to the fact that the employer dismissed another employee unfairly (or through a constructive dismissal) in the previous twelve months. Temporary employees cannot be hired either to work for another temporary employment agency.

Employees from temporary agencies enjoy special protection in terms of health and safety in the workplace and the applicable, specific rules should be complied with. The company at which services are provided is jointly liable for salary and Social Security obligations of the employee, such that if the temporary agency does not pay, the company hiring the temporary agency will be liable. If, however, the employment contract does not comply with the specified legal requirements, the company receiving the services will be jointly and severally liable for any salary and Social Security obligations. Temporary employees are entitled to be represented by the employee representatives at the company where the work is performed, to use transportation and collective installations, and to a number of other rights that other non temp-agency employees are entitled to. Should a temp employee continue working after the agreed term of his or her contract with the third party company has expires, the employee will be considered to be an employee of the third party company for an indefinite term. Temp agencies are closely regulated , and only duly authorized agencies should be used to hire employees; unauthorized agencies can incur in the illegal transfer of employees which in principle can even result in criminal liability.

4. Foreign Employees

With respect to foreign employees, EU nationals can be hired to work in Spain without need for any work permit, with the significant exception of those nationals from the majority of the Member States that joined the European Union on May 1, 2004, who will at least until May 1, 2006, most often require a work and residence permit. Work permits are, as a general rule, subject to the national employment situation in Spain; nonetheless, significant exceptions exist, and the rules are generally applied flexibly for highly qualified employees, such that, normally, multinationals can obtain work permits for qualified foreign employees they wish to employ in Spain. In any case, however, work permits for foreigners should be applied for well in advance of the employee's entering Spain to work, since the work permit

application process can take an average of three to six months. The rules on immigration are discussed below in Section XIV.

5. Social Security Registration Requirements and Other Formalities

Prior to commencing work, companies are obligated to register employees with the Social Security System. Failure to do so is a common form of liability for companies starting up in Spain. Social Security requirements are discussed below in Section XIII. All labor contracts drawn up by a company must be reported to the National Institute of Labor, and certain types of labor agreements contracts must be registered. As a general rule, these and other hiring formalities in Spain are handled either by internal HR departments in large companies or by external payroll companies.

In any case, for companies starting up in Spain, tax liabilities and corporate obligations should always be considered.

6. Trial Period

The Labor Act, subject to the limits that the applicable collective bargaining agreement may establish, permits employers and employees to agree to a trial period. During the trial period both the employer and the employee are bound to the terms of the agreement which is at trial, but the parties may each unilaterally terminate the agreement, without having to provide notice of termination, cause for the termination, or any type of severance compensation.

To be valid, the trial period clause must meet the following requirements:

(a) It must be agreed in writing.

(b) It must not exceed certain time limits. The trial period's maximum duration is often established in the applicable collective bargaining agreement. In the absence of such regulation in the applicable collective agreement, the maximum duration permitted for ordinary indefinite term employment agreements is as follows:

- 2 months for unqualified employees, unless the company has less than 25 employees, in which case the maximum is 3 months;
- 6 months for highly qualified employees.

Definite term contracts may have shorter trial periods which should be confirmed depending on the circumstances. Note also that if the time limits are surpassed, the clause as a whole may be deemed null and void, and offer no protection at all, even if the employee is dismissed within a period of time that would otherwise be within the period of a validly established clause.

(c) It must serve as a real "trial" between parties who do not know if the employment relationship will be satisfactory; thus, if the employee has already carried out the same job with the company, independent

of the type of employment contract under which similar services were provided, the clause may be deemed null and void.

(d) It cannot in principle be used to disguise discrimination prohibited by the Constitution and Labor Act. That is, any termination within the trial period that is in fact based on discrimination or other limitation of the employee's public freedoms may be deemed null and void.

7. Form of the Employment Contract

Apart from the rights to information mentioned below, the employment agreement as a general rule (subject to a number of exceptions), may be either written or oral. Employees are entitled to have their employment conditions established in a contract if they so request, even if employment has commenced.

Notwithstanding the foregoing, companies hiring employees under certain types of employment relationships are obligated to formalize in writing an employment contract with the employee. The government has established model form contracts that should be used, although additional clauses may, of course, be added. The contracts that must be formalized in writing include the following:

- Definite term employment contracts: Training contracts (on the job training agreements and work-study agreements); contracts for the performance of a specific, limited job or service; substitute contracts; or contracts due to the unusual, increased circumstances of production.
- Contracts with temporary employment agencies.
- Commercial agents contracts under the special legislation for commercial agents subject to their own special legislation.
- Subsidized contracts/contracts that entitle employers to discounts on social security.
- Contracts for part-time employment, including "relief"/partial retirement contracts.
- Permanent seasonal work contracts (also called, "fixed intermittent contracts").
- Contracts for employment "at home".

The failure to establish the contract in writing does not invalidate the contract, but it does create a presumption that the contract has been entered into for an indefinite term and on a full time basis.

A number of contract clauses must also be in writing to be effective, such as non-competition clauses and trial period clauses.

In any case, employers should inform the employment authorities and the employee representatives of the basic terms of the contract.

8. Written Information Requirements

Regardless of whether an employment agreement is formalized in writing or not, if the duration of the employment relationship exceeds four weeks, companies must inform the employee of certain employment conditions in writing. The information required is the following: identity of the parties; company domicile and work place location; date of commencement of employment, (and, in the case of a temporary contract, its estimated duration); job category or summary of job position; amount of salary and salary items and complements as well as number of payments; work hours and schedule; vacation; prior notice applicable upon termination; and applicable collective bargaining agreement. If the employee is hired to work abroad, additional information must be provided. If any of the above conditions are modified, the company must inform the employee in writing as well.

9. Duration of Employment

The employment contract is presumed to be entered into for an indefinite period of time, and all contracts should be for an indefinite term unless sufficient cause exists for the contract to be entered into on a temporary basis. The causes that justify a definite term contract are specified by law and must be real, otherwise an allegedly definite term contract will be considered fraudulent. If the contract is fraudulent, the company may be subject to fines, and the employee will be entitled to continue working indefinitely.

Examples of permitted causes for definite term contracts are set out below:

- When an employee is hired to carry out a specific, limited job or service which by nature of limited in time.
- When the circumstances of the market, accumulation of work or excess orders so require, even if the work constitutes the normal activity of the company.
- When an employee temporarily substitutes an absent employee who is entitled to have his or her job reserved. In these cases the employment contract must specify the name of the substituted person and the reason for the substitution (e.g., leave for military service).
- Work study or training type agreements, subject to the specific rules thereof.
- Contracts through temporary employment agencies.

The maximum duration of such contracts are limited by law and may, depending on the type of definite term contract, be modified within limits by the collective bargaining agreement. Thus, the collective bargaining agreement applicable to the company should always be checked before entering into definite term contracts. These types of contracts are discussed below in section VIII on Special Types of Employment Agreements.

10. Company Policies and Employee Benefits

Given the variety of company policies and employee benefits that exist, especially in multinationals, we do not provide an in depth analysis of the related issues thereof, but it is advisable to bear in mind the following:

- Many such policies and benefits are currently being implemented by multinationals in Spain, despite the fact that such policies and benefits have not traditionally been used in Spain. Consequently, in many cases, no legislation exists to respond to issues that may arise, and instead matters are governed by caselaw. Caselaw is developing substantially in these areas and the possible consequences of implementing benefits and polices should be carefully considered in advance.

- With respect to policies, despite express terms that provide for dismissals or other disciplinary measures for their breach, the policy will be subject to the requirements under Spanish law, and, consequently, they may not always be enforceable. Before taking disciplinary or other action based on a company policy, the legal requirements should be taken into account.

- With respect to benefits, even though they are often granted unilaterally and sometimes independently by the parent company, they may come to be considered acquired rights. As such, their modification or termination can require specific procedures and justifications, and, in some cases, they can even increase severance rights. Moreover, as has happened recently, for example, to some companies in Spain with stock option plans, Spanish caselaw can consider certain provisions of the benefits plans null and void, and employees may end up with rights the company never intended to grant. In this respect, courts have held that income from stock options and share grants computes for severance purposes and, in some specific cases, courts have held that employees are entitled to exercise stock options years after termination despite plan provisions to the contrary.

V. MINIMUM EMPLOYMENT CONDITIONS

The Labor Act establishes basic minimum rights and conditions, which in some cases may be modified by collective bargaining agreements, and which may always be improved in favor of the employee by collective bargaining agreements and/or individual contracts. Some of the minimum conditions with regard to work in general, subject to legal exceptions and modifications from time to time under the applicable collective bargaining agreements, are discussed in this section.

1. Salary

The parties to an employment contract are free to agree to the salary they wish, within the limits prescribed by law and the applicable collective

bargaining agreement as discussed below. Please note that typically, salary in Spain is paid on a monthly basis, with two additional salary payments being made in December and July of every year (extraordinary payments), unless otherwise provided by the applicable collective bargaining agreement (e.g., it may require payments in more installments, permit the employer to prorate the extraordinary payments, etc.).

The general restrictions regarding salary are the following:

- Minimum Wage under Law: The minimum salary by law for the year 2006 is 540.90 Euros per month, which on an annual basis, including the two extraordinary salary payments, equals a minimum annual amount of 7,572.60 Euros.

- Minimum Wage under Collective Bargaining Agreement: Collective agreements define a number of job categories and the corresponding minimum salary for each category, as well as the annual minimum raises.

With respect to discrimination, the Labor Act reinforces the principle of equal pay by declaring void all clauses in collective agreements or employment contracts that contravene the requirement of equal pay on grounds of sex or marital status. In addition, it requires employers to provide" equal pay for equal work" with no possible grounds for sex discrimination. Pay is widely defined as including not only base salary, but also all bonuses and supplements. In this respect, note that discrimination based on other unauthorized distinctions can also be contested as illegitimate (see Section VI).

2. Work Time Rules

1. Working hours: The general maximum is 40 hours per week on an average annual basis, up to a maximum number of hours annually (deducting vacation, rest periods, etc.). According to caselaw, the annual maximum based on the 40 hours per week, is 1,826 hours and 27 minutes. Most collective bargaining agreements have decreased the maximum work hours permitted on an annual basis, and oftentimes the annual maximum is established at 1780 hours. Any time in excess of the ordinary work hours is considered overtime.

2. Maximum work hours per work shift: As a general rule, subject to significant exceptions increasing or decreasing maximum hours for specific types of work (work involving environmental risks, work with refrigeration, underground construction work, where hours are decreased work at a distance), employees are entitled under the Labor Act (unless otherwise agreed under a collective bargaining agreement) to a maximum consecutive work hours of 9 hours. Minors (under the age of 18) cannot work over eight hours in a row.

3. Minimum Rest Periods During the Work Day: If the work shift lasts over six hours, employees are entitled to a minimum fifteen minute break; if the employee is a minor, the break should be a minimum 30 minutes. The fifteen minutes can be considered actual work time depending on the applicable collective bargaining agreement and the specific circumstances.

4. Minimum Rest Periods Between Work Shifts: The Law, as a general rule, requires that between work shifts employees enjoy a minimum of 12 hours of time off, with at least one rest period per week of 1.5 days. These rules, however, can differ substantially with regards to certain types of employees who may be subject to special work time rules (e.g., employees who work at a distance, employees who work in and for a home, employees on call, etc.)

5. Overtime: As a general rule, overtime per employee under the Labor Act is subject to a maximum of 80 hours per year, although overtime spent to prevent or repair damages caused by natural disasters or other extraordinary events will not be taken into consideration when calculating the maximum overtime permitted. Overtime must be compensated by pay, which in no case be less than the value of the ordinary hourly rate, or by time off, which can in no case be less than the time worked as overtime. Collective bargaining agreements can and often do establish additional rules on overtime and provide how it should be compensated. Contracts between the parties may also do so, but always subject to the law and applicable collective bargaining agreement's provisions. In the absence of an agreement in this respect, any overtime will be understood to require compensation with time off to be enjoyed in the subsequent four months.

3. Holidays

1. Vacation: No less than 30 calendar days per year, which is oftentimes considered the equivalent of 22 workdays. Collective bargaining agreements tend to establish rules on when vacation should be enjoyed.

2. Public/bank holidays: Public holidays in Spain are generally limited to a maximum of fourteen per year, which is the norm. Christmas (December 25), New Year's (January 1), Labor Day (May 1), and National Day (October 12) are standard holidays, All Saint's Day (November 1), Constitution Day (December 6) Immaculate Conception (December 8), and Good Friday are typically national holidays as well, although they may vary from year to year. The remaining holidays tend to be established annually by the local authorities (autonomous communities or municipalities). Holidays that fall on a Sunday will be passed on to a Monday, and holidays that fall in between the week can be passed by the government to a Monday, although note that it is somewhat uncommon to do so. In fact, in non production line companies, holidays that fall on a Tuesday through Thursday often lead employees to enjoy what is known as a "bridge" or "puente", whereby the holiday is joined with the weekend to form a four-day or five-day weekend. (This is so much true that traffic jams on the beginning and end of such bridges are notorious.)

4. Leaves of Absence

Leaves of absence under Spanish law include short term paid leaves of absence, which an employee is entitled to above and beyond their vacation

and public holidays. Such paid leaves are commonly regulated by collective bargaining agreements and include the following:

1. Marriage: If an employee gets married, he or she is entitled to a minimum of 15 days of paid leave. Couples (whether hetero or homosexual) who are not married but who are registered with a local government registry as "de facto couples" may be entitled to the same right, although the issue is still pending further clarification by courts. Legislation on unmarried de facto couples is expected to be forthcoming in the next year or two.

2. Paternity: In the event of paternity, the employee is entitled to two days of paid leave; if the father must travel, he is entitled to four days. Fathers are also entitled to enjoy part of the mother's maternity leave if she agrees as discussed below separately.

3. Serious Illness, Hospitalization, or Death of Relative: Employees are entitled to two days of paid leave in the event of a serious illness, hospitalization, or the death of a close relative and four days if visiting the ill relative or the funeral requires travel.

4. Change of Residence: If an employee moves, he or she is entitled to one day off.

5. Public Duties: Employees are entitled to paid leave to appear in court, serve as a jury member, witness to vote, etc. for the time necessary to fulfill such obligations.

In addition, by law, employees are entitled to enjoy certain longer term leaves of absence which are not paid, but which may nonetheless require the employer to maintain the employee's job position reserved until the employee returns. The company may hire someone to temporarily replace the employee, but in such cases of the so called "enforced leave", when the employee on leave returns, the employee is entitled to return to his or her previous job position. Unpaid leaves of absences are also regulated by collective agreements and include the following under the Labor Act:

1. Voluntary Leave of Absence without Cause: Employees with over one year of seniority at a company are entitled to take a voluntary unpaid leave of absence if they choose to do so. The leave must last a minimum of two years and may not exceed five years. The employee at the end of the leave is not entitled to the same job position, but is entitled to any job position of the equivalent or similar job category that may become available at the end of the leave. The company's failure to comply with the legal requirement to rehire the employee at the end of the leave when an equivalent job position becomes vacant can entitle the employee to claim for dismissal and damages thereof.

2. Voluntary Leave to Care for Disabled Family Member: Employees can also take a leave of absence of up to one year to care for a close family member who due to age, accident, illness or disability cannot care for himself or herself and who does not work. The employee is entitled to have his or her job position reserved during the length of the leave (up to one year). The time spent on this leave computes for

purposes of seniority, and the employee during the leave can attend company training courses, which he or she should be notified of.

3. Enforced leave: Election to either public office or public service requiring more than 20 percent of working time in a three-month period. Employees in such cases are entitled to leave as required by the public office or service.

4. Maternity or Adoption: Sixteen weeks of leave of absence, eighteen weeks in case of multiple birth or adoption. Other maternity related rights are discussed below in Section VI.

5. Victims of Domestic Violence: Victims of domestic violence are entitled to take an unpaid leave of absence for an initial period of six (6) months, which can be extended by additional three (3) month periods, up to a maximum of eighteen (18) months, if there is a court order reflecting a need for further protection of the victim. Other rights established specifically for victims of domestic violence are discussed below in Section VI.

VI. DISCRIMINATION, MATERNITY, AND SPECIAL PROVISIONS FOR EMPLOYEES VICTIMS OF DOMESTIC VIOLENCE

1. Equal Treatment and Non Discrimination

Article 17 of the Labor Act provides as follows:

> *"Any statutory orders, clauses in collective bargaining agreements, individual agreements and unilateral decisions taken by an employer that constitutes an unfavorable direct or indirect discrimination on account of age or disability, or that constitutes favorable or unfavorable discrimination in employment, with respect to pay, hours and other work conditions, on account of sex, origin, including racial or ethnic origin, marital status, social status, religion or convictions, political beliefs, trade union membership and support (or lack thereof), family relations with other employees within the company and language within Spain shall be considered null and void."*

> *"Any decisions of the employer that constitute an unfavorable treatment of employees in reaction to a claim made within the company or in reaction to a court claim that aims to require compliance with the principle of equal treatment and no discrimination shall likewise be null and void."*

Where the equal treatment principle is infringed, the affected employee can file a claim with the labor courts claiming compensation for damages. There is no statutory maximum on the amount of damages that may be awarded, but damages are relatively minor by U.S. standards.

With regard to dismissals, any dismissal of an employee in retaliation of the legitimate exercise of his/her rights under the equal treatment legislation is deemed as "void and radically null." In such cases, the employer will be compelled to reinstate the employee immediately with back pay. The employer does not have the option, as in ordinary unjustified dismissals, to request the Labor Court to declare the employment relationship terminated and simply pay the employee a severance compensation. .

2. Maternity Related Rights

Following, we summarize basic maternity related rights, most of which can be enjoyed by guardians and adoptive parents as well. Fathers are also entitled to certain rights in specific cases, but normally not an equal basis; note, however, that the government is currently negotiating proposed amendments to broaden father's rights. All such rights are not addressed below and should be considered on a case-by-case basis.

2.1 Maternity and Adoption Leave

Maternity leave is sixteen weeks for a single child, and two additional weeks for each additional child born. Maternity leave should be enjoyed consecutively and is independent of any leave for medical examinations and in cases where there is a health risk during pregnancy. The mother may choose to begin enjoying maternity leave before the child is born, although at least six of the weeks must be enjoyed immediately after the child is born. If both the mother and father work, the mother may grant part of her maternity leave to the father, so long as she enjoys the minimum six weeks post partum and so long as her returning to works does not constitute a risk to her health. Employees on maternity leave may receive the maternity pension from the public social security system, but they are not paid their salary by their employer unless otherwise agreed individually or collectively.

In the event of an adoption or guardianship of minors under six years of age, the employee is entitled to sixteen weeks of leave, and two additional weeks for each additional child adopted or cared for under guardianship. If the child cared for is over six years of age, but is disabled, comes from a foreign country, or for other personal reasons has a verified special difficulty in adapting socially or with the family, the parent or guardian is entitled to sixteen weeks of leave as well. If both the adoptive mother and father or guardians work, they may distribute the leave between themselves.

In these cases of maternity and adoption leave, the employer is required to reserve the parent's or guardian's job position, such that when leave ends, she or he is entitled to return to work under her or his previous employment conditions.

2.1 Limited Reduction in Works Hours for Nursing

After the mother returns to work, she is entitled to be absent from work for one hour each day for purposes of nursing until the child is nine months old. The one hour may be divided into two portions or, at the mother's choice, her work hours can be reduced by one half hour instead. The employer is required to pay the regular salary despite the reduction in work hours.

2.2 Unpaid Substantial Reduction of Work Hours

Parents or guardians of minors under six years of age may request the company to reduce their work hours by a minimum of one third to a maximum of one half of the previous working hours. An employee who opts for such a reduction in work hours will have his or her salary reduced proportionally, and the reduction may be enjoyed until the child turns six years old.

Likewise, employees who take care of a child or adult with a disability or a family member who is elderly or ill may also enjoy this reduction in work hours so long as the person cared for does not work. In these cases, the reduction is not limited to six years and can be enjoyed indefinitely.

2.3 Post Maternity Unpaid Leave of Absence

Employees are entitled to take up to a three year (full time) leave of absence to care for a son or daughter (including adopted children or children under guardianship) as from the date of birth or court resolution. The employee is entitled to have his or her job position reserved for the first year of the leave (or exceptionally up to 18 months), and thereafter has the right to return to a position within the same professional group or equivalent category. The time spent on this leave computes for purposes of seniority, and the employee during the leave can attend company training courses, which he or she should be notified of.

2.4 General Protection Against Sex Discrimination

Both the Spanish Constitution and the Labor Act prohibit discrimination based on an individual's sex, which includes discrimination based on an employee's maternity. Consequently, any act by the employer that is based on sex discrimination (change of employment terms, dismissal, etc.) is considered null and void and will be ineffective. In this respect, an employee who considers that the employer has taken a decision against him or her based on discrimination can contest the measure and request the court to declare that it is null and void and ineffective. In such a case, the employee would need to present some evidence or indicia of discrimination, and then the burden of proof would shift to the employer to demonstrate that the measure was not based on discriminatory motives but rather on legitimate reasons.

If the court finds that the dismissal was based on discrimination, or that the Company has not adequately proven that it was unrelated to discriminatory motives, it will find that the dismissal is null and void, and will order that the employee be immediately reinstated with back pay; the court in certain cases can also award damages. If the court finds that the dismissal was not based on discriminatory motives, it may consider the dismissal fair or unfair, in which case the employment contract can be terminated, with the corresponding severance compensation as the case may be.

2.5 Specific Additional Protection Against Dismissal

In addition to the generic prohibition against discrimination, the Labor Act provides additional protection for cases of dismissal when an individual is pregnant, or has requested or is enjoying certain maternity rights. Whereas ordinarily dismissals can be considered unfair and an employee can be

dismissed without good cause by paying a severance compensation, in certain cases where an employee has requested or is enjoying maternity rights, the Labor Act specifically provides that the dismissal can only be considered either fair or null and void. That is, if the dismissal is not proven fair, it will automatically and mandatorily be considered null and void and the employee will have to be reinstated with back pay.

This special protection that requires that dismissals either be fair or alternatively automatically null and void applies above and beyond the ordinary protection against sex discrimination.

3. Special Rules for Victims of Domestic Violence

In an effort to assist women who are victims of domestic violence, the government in late 2004 passed the Gender-Based Violence Act, which includes a number of special labor law rules that aim to assist women who are victims of domestic violence as follows:

1. Working Time Privileges: Victims are entitled to reduce their working hours with a proportional salary reduction and are entitled to change their work schedules.

2. Work Location Privileges: Victims of domestic violence are entitled to be transferred to another job opening within the same professional category or group that the company may have in any other work center. The employer is not obligate to create a new job position for the employee, but the employer is obligated to inform the employee of job openings available. The initial duration of the transfer by law is six (6) months, at the end of which, the employee has a right to return to her prior job position or to continue in the new one.

3. Unpaid Leave of Absence: Victims of domestic violence are entitled to take an unpaid leave of absence for an initial period of six (6) months, which can be extended by additional three (3) month periods, up to a maximum of eighteen (18) months, if there is a court orders reflecting a need for further protection of the victim. At the end of the suspension, the employee is entitled to return to her prior job position under the same previously existing conditions.

4. Privilege Regarding Lack of Punctuality or Absenteeism. If the pertinent social or health services establish that the lack of punctuality or absenteeism is due to the psychological or physical state of the victim as a result of the domestic violence, the lack of punctuality or absenteeism will be considered justified and will specifically not be considered a cause for a fair objective dismissal.

5. Reinforced Protection Against Retaliatory Dismissals: Employers are as a general rule prohibited from retaliating against employees for the legitimate exercise of their rights, such that any retaliatory dismissal would be null and void. The Gender Based Violence Act, however, specifically provides that if a victim of domestic violence is dismissed as a result of exercising any of her rights under the Act, the dismissal will be deemed null and void.

6. Special Access to Unemployment Benefits. Whereas employees who voluntarily suspend their employment or who resign from their jobs are not entitled to social security unemployment benefits, an employee who is a victim of domestic violence has the right to receive unemployment benefits if the termination or suspension is due to the domestic violence and so long as she would otherwise qualify for such benefits.

7. Social Security Discounts for Employers: In addition, note that the Law provides employers with social security discounts on the social security contributions that will need to paid for an employee if the employees is a victim of domestic violence or if the employee has been hired to substitute a victim of domestic violence which is on leave or who has been temporarily transferred to another work center. For further information, see section XIII below on Social Security.

VII. EMPLOYEE DUTIES OF LOYALTY

1. Confidentiality

The only specific provision in Spanish labor legislation on an employee's obligation of confidentiality is found in the 1944 Employment Act. Article 72 states "employees are required to keep confidential all secrets related to the business of their employer acquired during the term of employment and thereafter." Although the 1944 Employment Act has been mostly repealed by the subsequent 1980 Labor Act, it is probable (but not settled by courts) that the specific provision on confidentiality of the 1944 Act is still considered effective and enforceable.

Independent of the specific provision from the 1944 Employment Act, employees are subject to a basic requirement of acting in good faith towards their employer, such that a breach of confidentiality could be considered a breach of the employment contract and justify disciplinary measures.

In any case, regardless of the restrictions, note that once the employment is terminated, the employee is entitled to reasonably use information he or she has learned in the course of the employment for his or her own benefit, to the extent that the information is reasonably required for the exercise of his or her usual occupation or profession.

Given the difficulties in determining what is confidential and what is information that can legitimately be used within the scope of the employee's profession or occupation, we normally consider it advisable to establish clear and complete confidentiality agreements in employment contracts.

With regard to the information provided by the employer to employee representatives, Article 67.2 of the Labor Act expressly requires that the employee representatives keep confidential all information related to third parties which they receive from the employer.

2. Non-Competition

The duty to not compete with one's employer during employment is considered a basic employment obligation under Spanish law. After termination, however, employees are in principle free to compete or to work for a competing company, unless the individual is bound by a valid post contractual no compete agreement. In order to be valid, a post contractual no compete agreement must comply with the following requirements:

- It must be agreed between the parties and must be formalized in writing.
- The duration of the duty is limited to a maximum of two years for highly qualified employees and six months for other employees.
- The employer must have a genuine proprietary industrial or commercial interest which requires protection.
- The employer must pay the employee appropriate compensation. In practice, for an obligation not to compete, appropriate compensation may vary from 40% to 100% of the employee's previous salary.

In case of breach of the non-competition obligation, the employer is entitled to claim damages before the Labor Court.

The common problem faced by companies in deciding whether to agree to a no compete clause, is that at the beginning of an employment relationship, employers do not always know whether it will be in the company's interest to bear the cost of the no compete once the employment ends. To avoid committing to the payment of the compensation, employers have in the past drafted post contractual no compete clauses including a provision that allows the company the option of releasing the employee from his or her no compete obligations and releasing the company from having to pay the agreed compensation. If at termination, the company has no interest in enforcing the no compete clause, under the provision agreed with the employee no compensation would need to be paid.

Note, however, that the Supreme Court has ruled in two cases,- which under Spanish law officially constitutes caselaw - that the unilateral option by the company to decide whether or not to require no compete is null and void. The consequence is that, despite any agreement to the contrary, the company can be required to pay the compensation established for the no compete, whether it wants to or not and, apparently, regardless of whether a reasonable notice period has been provided to the employee.

If an employer is not certain whether or not it will want to assume the obligation of paying the compensation for the no compete at termination, a number of alternatives may be considered (e.g., providing specific compensation for the option, designating a third party to decide whether the no compete will be required, defining specific terms and conditions for the no compete to be required). Although there is no caselaw on the enforceability of such alternatives, they may provide a viable alternative for companies who do not want to commit to payment for a no compete clause they may later on find they do not need.

3. Non-Solicitation of Employees, Suppliers or Customers

The obligation not to solicit employees, suppliers or customers of one's former employer is not specifically regulated under Spanish law, but can be agreed between the parties and is enforceable in theory. Some authors consider that the restriction on solicitation after termination of employment is a form of no compete, such that it arguably should comply with the requirements for post contractual no compete mentioned above, including compensation.

VIII. SPECIAL TYPES OF EMPLOYMENT AGREEMENTS

Aside from the ordinary employment contract that has an indefinite duration, as mentioned above, Spanish law regulates a number of specific types of employment contracts individually, establishing specific requirements for each type. These special types of contracts can be grouped into the standard definite term contracts, training type contracts, and part-time contracts. Each is discussed below separately.

1. Standard Definite or Fixed Term Contracts

There are three categories of standard definite term employment agreements as discussed below.

1. Agreements for a specific, limited service or job. The purpose of this type of agreement is to hire employees to perform a specific service or task, the duration of which is limited by nature, even if the specific duration cannot be determined in advance. The agreement terminates when the service or task is completed.

2. Agreements for extraordinary production requirements. These contracts are provided for situations where market circumstances, workload or an accumulation of orders in the ordinary course of business of a company require a temporary increase in the workforce. The maximum duration of these agreements is six months within any twelve-month period, unless otherwise established in the collective bargaining agreement within legal limits.

3. Interim agreements. These agreements can be used either (i) to temporarily replace employees who have the right to have their job reserved while they are on leave, or (ii) to temporarily fill an open job position while the recruitment process is being carried out, up to a maximum of 3 months in this latter case. The contract ends when the employee on leave is reinstated or when the vacancy is filled.

2. Training Contracts

Two types of training contracts are regulated as follows below. Both of these contracts also have a definite or fixed duration, but are solely permitted in cases where the employee is to receive training.

1. On-the-job Training Employment Agreement: The purpose of this type of training contract is to allow employees with a degree (university or medium to high level training or any equivalent recognized degree, qualifying under government regulations) to develop their theoretical skills and acquire certain practical experience in their fields within the four years following the completion of their studies, or six years in the case of disabled employees.

The employee should provide the employer with a photocopy of the degree held, and the contract should be made in writing, specifying the degree, which the employee has, the duration of the contract, and the job or jobs that the employee will be carrying out in training. The contract may include a trial period of up to one month for employees with a medium level degree and two months for those with a higher level degree, unless otherwise established by the applicable collective bargaining agreement.

The permitted duration ranges from six months to two years. Salary will be determined according to the collective agreement, but in no case can be (i) less than 60% (the first year) nor 75% (the second year) of the salary established in a collective agreement for an employee who carries out the same or similar job, or (ii) less than the general legal minimum wage.

If the contract lasts over one year, the employer must notify the employee fifteen days prior to the contract's termination; if notice is not provided, the employee will be entitled to salary for the days of notice he or she should have had but did not have as notice. Upon termination, the employer should provide the employee with a certificate of the tasks carried out, positions held, and duration of the contract.

2. Work-study agreements: The purpose of this type of contract is for employees to acquire the theoretical and practical training necessary to carry out a career or job position that requires a certain level of qualification. The employee must lack the required degree for an "on-the-job" training contract and must be between the ages of 16 and 21, although work-study employment agreements are permitted with the following applicants without applying this age limit:

   - Foreigners in the two first years of their work permit if they certify that they lack the required degree and experience required for the job position,
   - Individuals who have been unemployed for over three years
   - Unemployed individuals in circumstances of social exclusion,
   - Unemployed individuals involved in social programs such as employment workshops.

Employment time is divided into theory based training and task performance. The time spent on theory based training depends on the work hours and type of work under the contract, but in no case may be less than 15% of the maximum hours of work per week allowed under the collective bargaining agreement, or in the absence of such a provision in the collective agreement, 15% of the maximum legal workday.

The training, which should not be performed at the job station, should aim at achieving the required basic educational degree if the employee does not have it already, or the necessary training for the job. For these purposes, the employer should supervise the development of the training, either personally or by designating a qualified or professionally experienced tutor for the employee. Unless otherwise established in the collective bargaining agreement, the tutor may only supervise a maximum of three such employees.

The tasks to be carried out by the employee should be related to the work, career or job that is the object of the contract. If the employer does not comply with the obligation to train the employee, the contract will be presumed to be a common or ordinary contract.

The contract must be in writing and must specify the occupational level, the distribution of time dedicated to theory and practice, the contract's duration, and the name and professional qualifications of the designated tutor. The contract may last from six months to two years, though its maximum duration can be extended by collective bargaining agreements to three years depending on the field of work. Once the maximum time has expired, any other employer can rehire the employee under the same type of contract. Upon the contract's termination, the employer must provide the employee with a certificate stating the training's duration and nature.

The required salary can be the amount set forth by the collective bargaining agreement, but cannot be less than the minimum salary proportional to the time spent performing tasks.

The maximum number of such contracts an employer may enter into will be established as a function of the size of the workforce by collective bargaining agreement or, in lack thereof, by regulations.

3. Part-time Employment Agreements

1. Standard Part Time Employment Agreement: Part-time employment contracts are defined as contracts with an employee who works less hours (a day, a week, a month, or a year) than a regular and equivalent full-time employee who works in the same company and work site, with the same contract and similar job position.

   Part-time contracts can be for indefinite terms or for fixed terms where the fixed term is permitted under law, except work-study contracts.

2. Special "Relief" Part-time Employment Agreement: A "relief" employment agreement is a part-time agreement entered into with an unemployed individual for the purpose of substituting part of another employee's work hours; this other employee enters what is known as

"partial retirement" and receives a proportional part of his retirement pension. That is, an employee working full time can reduce his work hours by 25 to 85% and partially retire if he or she qualifies to do so; simultaneously, the Company can hire another employee on a part-time basis to work during the hours the original employee no longer works. This "relief" agreement can have an indefinite duration or can be entered into for the time remaining until the partially retired employee reaches official retirement age.

IX. SPECIAL EMPLOYMENT RELATIONSHIPS

The Labor Act establishes a number of special employment relationships which are partially excluded from the general rules of the ordinary employment relationship and which are subject to specific regulations aimed at responding to the special nature of the services provided. Thus, for top executives, given that there is a greater negotiating power assumed between the parties, the special rules for top executives establish a lower minimum required severance compensation. Given, for example, the extraordinary trust that must exist in an employment relationship for employees who work at another's home, such as a housekeeper, no cause is required for termination, without prejudice to severance compensation that may be due.

Such special labor relationships include employment relationships with the following types of employees:

- Executive staff ("top executives") in limited cases;
- Family domestic service;
- Prisoners in penal institutions;
- Professional athletes;
- Performance artists;
- Commercial agents, in certain cases.

Due to the significant features of the rules that apply to the employment relationship of executive staff, commercial agents, and performance artists, they are examined below more closely.

1. Executive Staff

The special employment relationship of top executives is regulated in Royal Decree 1382 of August 1, 1985 on Top Executives.

1.1 Scope of Applicability

Royal Decree 1382/1985 on Top Executives applies to all personnel who exercise the employer's authority for the employer's general objectives with full autonomy and responsibility and who are limited only by the direct

instructions of the Board of Directors. If an employee exercises such authority, he or she may be deemed to have the special labor relationship called top executive relationship, and the employment contract will be subject to the provisions of the Royal Decree as opposed to the Labor Act. Who qualifies as a top executive and falls under the Decree on Top Executive has been interpreted by Spanish labor courts very restrictively, such that normally only the country manager or general manager will be considered to qualify as a "top manager" or "top executive" subject to this special employment relationship.

1.2 Governing Rules

The predominant characteristic of this top executive employment relationship is the parties' trust. The applicable sources of law for this special employment relationship are the terms agreed between the parties, the Decree, which provides the minimum mandatory employment conditions, and the principles of civil and business law.

1.3 Trial Period

The parties may establish a trial period of up to nine months if the contract has an indefinite duration. During the trial period either party may terminate the labor relationship without giving rise to any severance compensation.

1.4 Duration of the Agreement

The duration of the employment agreement is not subject to a maximum or minimum period, such that the agreement may be established for a limited period of time. In the absence of a written term, the agreement is deemed to be for an indefinite period of time.

1.5 Termination

The top executive may terminate the agreement so long as a minimum three months' notice is given, although the required notice may be extended to six months if provided in writing in an indefinite employment contract or in a contract with a term that exceeds five years. In cases of resignation without cause, the top manager is not entitled to any severance compensation.

The top manager may also terminate his or her agreement in the following cases:

- Where the employer unilaterally introduces unreasonable changes in the job position.
- Where the employer fails to pay salary or repeatedly delays payment.
- Substantial breach of contract terms by the employer.
- Change in the ownership of the employing company, generally when there is a change in the management bodies or company management policy, provided that the top executive terminates the contract within three months of the transfer in title.

In the above cases, the executive will be entitled to the agreed severance compensation, and in its absence, to a severance compensation of seven

(7) days of his cash salary per each year of service up to a maximum of six (6) months' salary.

The employer may terminate the employment relationship in the following cases:

1. Without cause, providing notice a minimum of three months notice, and, in addition, paying the severance compensation contractually agreed, or, in the lack thereof, a severance compensation of seven (7) days of cash salary per each year of service up to a maximum of six (6) months' salary. The notice, if agreed, may be extended up to six months in indefinite term contracts or long term definite contracts that exceed five years in duration.

2. With cause: The employer may also terminate the employment agreement through a dismissal (disciplinary or redundancy), as set forth in the general Labor Act regulation for contract termination (see Section X below on "Contract Termination"). In this case, the employee may contest the termination following the same procedure as for ordinary employment contracts (that is, mandatory conciliation, court proceeding, etc.). The main difference from the General Labor Law system lies in the amount of the compensation to be paid in case the dismissal is declared unjustified. The severance compensation will be computed on the basis of twenty (20) days of salary for each year of employment up to a maximum of twelve (12) months, unless otherwise agreed contractually. In addition, unlike ordinary employees, top executives are not entitled to interim salary.

2. Commercial Agents

The special employment relationship of commercial agents is regulated in Royal Decree 1438/1985 of August 1.

2.1 Scope Of Applicability

The Royal Decree applies to employees who partake in business transactions on behalf of one or more principals without assuming the risk or benefit of the operations.

2.2 Form and Duration of the Agreement

The contract must be in writing and must specify the following information:

- Type of business transactions which the agent is to promote and services/products affected thereof;
- The agent's limits of autonomy;
- Geographic area and type of clients to be served;
- Remuneration and duration of the agreement.

The agreement is deemed to be made for an indefinite period if no provision limits the duration, but any established limitation cannot exceed three years.

A trial period may be established in accordance with the Labor Act's general provisions.

2.3 Remuneration

Remuneration may consist of a fixed salary or of a fixed salary plus sales commissions. Commissions are accrued upon acceptance of the order by the employer, even if thereafter the sale is not made.

2.4 Termination

The Labor Act's general provisions on termination, procedure and severance compensation are applicable. However, in case of unjustified termination, the severance compensation will be established taking into consideration not only the years of employment but also the increase of the clientele attributed to the employee's efforts.

Although this special type of relationship has the advantage for the employer that it can be entered into for a definite term, please note that if often raises serious issues of how it should be distinguished from (i) ordinary employees who act as commercial agents under the Labor Act, and (ii) commercial agents who are contracted under the commercial law on Agency Contracts and who not considered employees.

3. Performance Artists

3.1 Scope of Applicability

The Royal Decree on Performance Artists applies to individual performance artists who voluntarily engage in a public performance, for a third party, and within the organization and direction of an organizer of public performances or manager and receives a certain compensation for his/her services.

Thus, predominant characteristics of this type of employment relationship are (i) voluntary performance of services, (ii) compensation, (iii) services rendered for a third party, and (iv) within the organization and direction of an organizer of public performances or manager.

Technical and auxiliary staff who are engaged in the public performance are expressly excluded and instead regulated exclusively by the general rules for employees under the Labor Act.

3.2 Governing Rules

The applicable sources of law for this type of special employment relationship are (i) the Royal Decree which provides the special regulations for this special labor relationship, (ii) subsidiarily, the basic labor regulations such as the Labor Act to the extent that its rules are compatible with the Decree, (iii) the applicable Collective Bargaining Agreement and (iv) the terms and conditions agreed between the parties within the employment contract.

3.3 Trial Period

The parties may establish a trial period which duration depends on the length of the services to be performed by the Artist. The trial period must not exceed certain time limits as indicated below:

Duration of services to be rendered	**Maximum duration of the trial period**
Up to two (2) months	Five (5) days.
Up to six (6) months	Ten (10) days.
Six (6) months or over	Fifteen (15) days.

3.4 Duration of the Agreement

The employment contract should be entered into in writing, and its duration is not subject to a maximum or minimum period, such that, contrary to the general rule for employees under the Labor Act, the agreement may be established either for a limited period of time (e.g., a season, as long as the performance lasts, for a certain period of time) or for an indefinite period.

3.5 Termination

The Labor Act's general provisions on termination, procedure and severance compensation are applicable to the termination of indefinite term contracts and definite terms contract. However, in cases of definite term contracts that have lasted over one (1) year, unless otherwise provided by the applicable collective bargaining agreement, the performance artist is entitled to the following upon termination of the contract:

(a) Severance compensation of seven (7) days of salary per each year of service, (any period under a year of service to be prorated by months) unless otherwise agreed between the parties, and

(b) Prior notice ranging from ten (10) days to one (1) month, depending on the length of the contract. Notice can in whole or in part be substituted by pay in lieu of notice.

3.6 Significance of Collective Bargaining Agreements for Performance Artists.

In any case, please note that performance artists tend to be subject to detailed and exacting collective bargaining agreements, which should always be checked and complied with. In this respect, for example, the National Collective Bargaining Agreement for Audiovisual Works and Actors who Perform in Such Works, which applies broadly in Spain to the movie and television industry, provides, for example, significant rules regarding termination. In this respect, this CBA provides that unless otherwise agreed in more favorable terms for the artist, in the event of termination of the employment contract for any reason not attributable to the artist, the artist will be entitled to the following:

- If the filming has not yet begun, the artist will be entitled to 75% of total salary agreed.

- If services have begun, then the artist will be entitled to 100% of the total salary agreed.

Other significant collective bargaining agreements that may apply to performance artists and may establish other significant rules include the following;

- The Catalonian CBA for Actors and Actresses;

- The Cinematographic Actors and Producers CBA of Catalonia; and

- The Theatre Performers CBA for Madrid.

X. CONTRACT TERMINATION

The Labor Act lists the various reasons for which an employment relationship can be terminated. Such reasons include, but are not limited to, mutual agreement of the parties; reasons validly established in the contract to the extent permitted by the law; resignation, retirement, death or disability of the employee or employer, force majeur, dismissal, constructive dismissals, etc. The various types of terminations have different applicable rules and consequences that exceed the scope of this summary, and below we limit our discussion to (i) a brief reference to the termination of definite term contracts due to the expiration of their term, and (ii) a more thorough introduction to the rules on dismissals of employees under ordinary, indefinite term contracts.

1. Termination of Contracts for a Definite or Fixed Period

Unless otherwise terminated earlier, definite or fixed term employment contracts automatically come to an end at the conclusion of their fixed term. If the employment relationship continues de facto for any reason, however, the agreement may be deemed to have been tacitly extended for an indefinite period of time.

When the duration of a fixed term contract exceeds one year, the party who wishes to terminate the contract must give a minimum 15 days' notice. In some cases, depending on the type of definite term contract, an employee may be entitled to a severance compensation of eight days of salary per year of service.

2. Termination of Ordinary, Indefinite Term Contracts

Once a trial period, as the case may be, has expired, ordinary employees under the Labor Act may only be dismissed with cause. The basic causes for termination can be grouped into disciplinary causes and what are known as "objective" causes, which most commonly are economic, technical,

productive or organizational causes. Each of the two basic types of dismissals has its own required procedure, which we discuss briefly below.

2.1 Disciplinary Dismissals

Disciplinary dismissals may be based on the following grounds:

- Repeated and unjustified lack of punctuality or attendance at work;
- Lack of discipline or disobedience at work;
- Verbal or physical aggression to the employer, other staff or their families;
- Breach of good faith and abuse of confidence in performing the job;
- Intentional and continuous reduction of regular or agreed work performance;
- Drunkenness or drug addiction, if it adversely affects the employee's work; and
- Harassment of the employer or of any person who works at the company by reason of racial or ethnic origin, religion or convictions, disability, age, or sexual orientation.

Collective bargaining agreements normally establish further details on the specific grounds that can be used for dismissals, as well as other disciplinary measures. Disciplinary dismissals must be notified to the employee in writing stating the facts giving rise to the dismissal and specifying the effective date of termination. The employee then has 20 days as from the effective date of termination to contest the dismissal. Before the employee can file a complaint for dismissal with the Labor Courts, however, the parties are required to attempt to settle the matter at the Mediation, Arbitration and Conciliation Office, an Agency of the Labor Department. If no settlement is reached, the employee may then file the claim. After trial, the Labor Court may declare the dismissal justified, unjustified, or null and void.

If a Labor Court finds that legal cause for the dismissal exists and the correct procedure has been followed, the dismissal is normally declared justified and no severance compensation needs to be paid to the employee.

If the alleged cause for dismissal is not satisfactorily proven or, if it is proven, but is insufficient to justify a dismissal, then the dismissal may be declared unjustified. In this event, the employer has five days as of the Court decision notification date to choose between reinstating the employee with back pay or paying severance compensation. If the dismissed employee is a labor representative, the labor representative chooses, not the employer.

Severance compensation for unjustified dismissals is computed on the basis of 45 days' gross salary per year of employment with a maximum of 42 months' salary. The employee's salary for these purposes includes fixed and variable salary, as well as salary in kind, but does not include certain benefits that are considered "social" in nature. In addition to the severance compensation, the court, in cases of unjustified dismissals will order the

payment of interim salary, which is the salary from the date of dismissal through the date the court's judgment is notified, which is normally in the range of three to four months of salary.

The need to pay interim salary may be eliminated or limited, however, if the company ab initio acknowledges that the dismissal is unjustified and deposits the amount of the severance compensation required with the labor court so that the employee can directly receive the payment from the court. In practice, given the costs of litigation and the potential costs of interim salary, companies often simply decide to acknowledge that the dismissal is unjustified and pay the severance compensation up front.

In addition to the possible finding of justified or unjustified dismissal, the labor court can alternatively find that the dismissal was null and void. The labor court will declare the dismissal null and void in a number of specific cases, which primarily include the following:

- The dismissal is based on discrimination prohibited by the Constitution or by Law, or if the dismissal violates the employee's fundamental rights or public freedoms. These cases can include cases of retaliation against the employee for legitimately exercising his or her rights.

- Automatically in cases where the employee has requested or is enjoying maternity rights unless the court finds that the dismissal was justified.

- When the collective dismissal should have been used but was not used.

Should the Labor Court declare the dismissal null and void, the company is required to immediately reinstate the employee with back pay. Given the costs of having to reinstate and the increased difficulties of dismissing the employee afterwards, prior to any dismissal, the company should carefully consider surrounding circumstances to ensure that no causes for a finding of a null and void dismissal exist.

2.2 Objective Dismissals

"Objective" dismissals are dismissals unrelated to the employee's ("subjective") misconduct, and that are instead based on one or more of the following objective reasons:

- An employee's incompetence that has come to light or arisen after the trial period has elapsed;

- An employee's failure to adapt to reasonable technological developments affecting his or her position, so long as two months have passed from the date the new conditions were implemented;

- An employee's absence from work, even if justified, which exceeds 20 percent of the workdays in two consecutive months, or which exceeds 25 percent of the workdays in any four months in a twelve-month period, where the workforce suffers from chronic absenteeism.

- When the company needs to phase out job positions based on organizational, productive, economic or technical grounds. If the grounds are economic, the measure should contribute to overcoming the company's negative economic situation. If the grounds are productive, organizational, or technical, the measures should have the purpose of overcoming the difficulties that prevent the company from functioning efficiently due to its competitive position in the market or the market demand, through a better organization of its resources.

  This type of objective dismissal may only be carried out when the number of employees to be dismissed does not exceed a particular number established by the Labor Act; if the employees to be dismissed for these reasons exceed the maximum number, the procedure for collective dismissals will need to be followed (see below, section 2.3 on collective dismissals).

With regard to the objective dismissal's procedure, the employee must be given a letter of dismissal and provided a 30-day prior notice or salary in lieu thereof. The company, at the time the letter is provided, must simultaneously pay the severance compensation of twenty days of salary per year of service, any period of less than one year of service being prorated by months, up to a maximum of twelve months of salary.

Note that if the procedural requirements for objective dismissals are not strictly followed, the dismissal will be null and void and the company may be required to reinstate the employee with back pay. In addition, if the dismissal is based on discrimination, if it interferes with maternity related rights, or if it infringes the rules on collective dismissals, it will also be null and void as in cases of disciplinary dismissal.

If an objective dismissal is declared by a court to be unjustified, as in disciplinary dismissals, the employer is given the option to either immediately reinstate the employee with back pay or to terminate the relationship, paying a severance compensation of 45 days per year of service up to a maximum 42 months' salary.[1] As in disciplinary dismissals, if the person dismissed is an employee representative, the employee exercises the option instead of the employer.

Also like in disciplinary dismissals, the court will in cases of unjustified dismissal also award interim salary, which is the salary from the date of dismissal through the date the court's judgment is notified (normally three to four months' salary). As explained above, the need to pay interim salary may be eliminated or limited if the company up front acknowledges that the dismissal is unfair and deposits the severance compensation for the employee with the labor courts.

If the court finds the dismissal to have been justified, the contract will be declared to have terminated, and no compensation will need to be paid other than the 20 days' salary per year of service (up to 12 months' salary) which

[1] If the employment contract at issue was a special indefinite contract pursuant to Royal Decree 8/1997, Additional Disposition One, the amount of indemnity for an unjustified objective dismissal will be 33 days of salary per year employed, up to a maximum of 24 months of salary, instead of the 45 days' salary per year, up to 42 months of salary.

was originally provided to the employee along with the notification letter of dismissal.

2.3 Collective Dismissals

The collective dismissal procedure must be used when in any ninety-day period the number of employees to be dismissed for economic, technical, productive or organization reasons equals or exceeds the following:

(a) Ten employees in companies with less than one hundred employees;

(b) Ten percent of the workforce in companies with one hundred to three hundred employees;

(c) Thirty employees in companies with three hundred employees or more; or

(d) All employees in companies with over five employees.

If the number of dismissals does not meet these thresholds, the dismissals are subject to the objective (individual) dismissal procedure described above.

Please note that spreading out the dismissals over consecutive ninety-day periods to avoid the collective procedure and instead qualify for the above more simple objective procedure could lead a court to declare the dismissals fraudulent and consequently null and void. Also, note that significant caselaw exists on (i) which types of dismissals compute for purposes of the threshold and (ii) how the 90-day periods and/or consecutive 90-day periods should be counted. These rules are extremely important and should be considered carefully prior to any dismissal to avoid the dismissal(s) being declared null and void and having to reinstate employee(s) with back pay. Finally, please note as well that special rules can apply on which employees the company must dismiss first and which have last to go rights (e.g., employee representatives have "last to go" rights).

The collective dismissal procedure can be divided into the following stages:

1. Notice of the Commencement of the Procedure

The collective dismissal procedure requires that the employer file a petition for authorization with the labor authorities and simultaneously initiate a consultation period with employee representatives. The petition must be accompanied by a number of supporting documents explaining the grounds for the dismissals, and justifying the measures to be adopted. The documents should include economic and legal documentation of the causes of the dismissals and, in companies with over fifty (50) employees, a social plan to adequately prove and support the proposed measures

In addition, the employee representatives must be given written notice of the proceedings and must be provided with a copy of the economic and legal documentation and a copy of the social plan. If the termination affects more than fifty percent (50%) of the work force, the employer must also notify the employees and the labor authorities of any sale of company assets.

2. Consultation Period

Under the Labor Act the consultation period must last at least fifteen (15) days in companies with less than fifty (50) employees and at least thirty (30) days in companies with fifty (50) employees or more. The applicable collective bargaining agreement, however, may require a longer consultation period.

During the consultation period, the company and employees discuss the reasons for the dismissals and the possibility of avoiding or reducing their negative effects on the employees in an attempt to negotiate a possible agreement.

3. Administrative Authorization

Once the consultation period ends, the employer must notify the labor authorities whether or not an agreement has been reached with the employee representatives.

If an agreement has been reached during the consultation, the labor authorities will issue a resolution within fifteen (15) days authorizing the termination of the labor relationships.

If no agreement is reached during the consultation period, within fifteen (15) days the labor authorities will, depending on whether the documents submitted reasonably evidence the need for the proposed measures according to the legal causes, issue a resolution approving or rejecting, wholly or partially, the employer's petition.

If the dismissals reauthorized, the employee will be entitled to twenty (20) days of salary per year of service, up to a maximum of twelve (12) months of salary, unless the company has agreed to provide a greater severance compensation. If the dismissals are not authorized, then the employer will not be allowed to dismiss the employees. In any case, the labor authorities' decision can be appealed before the courts of the contentious-administrative jurisdiction.

The advantages of reaching an agreement with employee representatives during the consultation period are substantial, since the labor authorities will normally not authorize collective dismissals unless the legal requirements have been strictly met or unless an agreement has been reached with the employees. Note that if the authorization is not granted, unlike objective dismissals, the employer will not be able to dismiss the employees by simply paying them the severance compensation of forty-five (45) days of salary per year of service. Thus, oftentimes agreements reached during the consultation period entail costs for such dismissals well in excess of forty-five (45) days of salary per year of service.

XI. BUSINESS TRANSFERS

Article 44 of the Labor Act, which regulates the transfer of undertakings, provides that the change in ownership of a company, work center or an independent unit of production within a work center, does not terminate the

labor relationship. Instead, the new owner acquires the employment rights and obligations of the previous owner/employer, and the new owner thus becomes the new employer. After the transfer, the prior employer ceases having an employment relationship with the employees transferred, although the prior employer can be jointly or jointly and severally liable with respect to certain employment and Social Security obligations that may exist with respect the transferred employees.

Whether a transfer of undertakings occurs and the employees transfer will generally depend on whether the following conditions are satisfied:

- A group of productive or property elements should be transferred. The business must involve the transfer of a minimum property or "patrimonial" support, such that the transfer of the mere activity and/or related service contracts in Spain is normally in sufficient to trigger the rules on transfer of undertakings[2]. Note also that the property need not to be transferred pursuant to a sale and purchase agreement, since the transfer may occur pursuant to another form of commercial transaction, such as a lease agreement.

- The property elements transferred need to have "sufficient functional autonomy", such that what is transferred is sufficient to carry out an essential or subsidiary economic activity.

- The transfer should involve continuity both in the business's activity and in the rendering of services.

As the new employer, the transferee, as a general rule, assumes all of the obligations of the previous employer with respect to the employees, regardless of the source of those obligations, that is, regardless of whether the previous employer assumed them voluntarily or involuntarily, by collective bargaining agreement, by contract, or by his previous actions, express or implied. Caselaw, however, has established some exceptions, which should be considered in light of the specific circumstances of each case.

1. Effect on Employment Relationships

In the event of a transfer of employment, the labor relationship is not terminated; rather, the employment contracts remain in force with the new employer. The employee receives a new employer automatically, whether or not he or she approves of such new employer. The employee cannot oppose himself or herself to the transmission of the company simply because the employee does not want an employment relationship with the new employer. This is so even if the transfer of the company weakens the economic position of the company and thus, could potentially harm the employee's position.

The employee(s) nonetheless may attempt to contest the transaction or the application of Article 44 on other grounds. Employees could claim, for example, that the transaction involves fraud, or that the requirements of

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2 The Spanish Supreme Court, however, has recently acknowledged the European Court of Justice's caselaw in cases of labor intensive service contracts when a significant number and quality of employees are hired by the successor contractor. The Spanish Supreme Court has been openly critical of the ECJ's application of the transfer of undertakings rules in these cases and is expected to apply this exception very restrictively.

Article 44 have not been met and, thus, that the transaction does not result in their automatic transfer to the new owner but, rather, in an illegal transfer of employees. Such employee allegations would need to be proven in court to prevent the transferee from becoming their new employer.

With respect to certain general managers and top level executives who are subject to the special labor legislation for top executives, please note that they transfer as other ordinary employees would. Such top executives are, however, entitled to terminate their employment relationship if the transfer of undertakings results (i) in a new Board of Directors or other governing body, or (ii) in a change in the principal activity or in the approach the company has to that activity. The termination can be requested within the three months after the respective change, and entitles the top executive to a severance compensation of seven days of his cash salary for every year of employment, up to a maximum of six months of salary, unless a greater compensation has been agreed by the parties.

2. Information Requirements

With regard to the procedural requirements involved in the transfer of undertakings, please note that companies are obligated to inform employees or their representatives and, depending on the circumstances, may need to consult employee representatives. The Labor Act establishes that the transferor and transferee should provide the following information to the employee representatives (i.e., employee delegates or works council) of the employees that are affected by the change of ownership:

- Scheduled date of the transfer;
- Reasons for the transfer;
- Legal, economic and social implications of the transfer for the employees, and
- Measures planned with respect to the employees.

If no employee representatives exist in the Company or work center, then the information should be provided to the employees directly.

With regard to the timing, the Labor Act provides that it should be provided "sufficiently in advance" of the transfer. What is sufficient may depend on the particular circumstances, but is in general in practice considered to be no less than 15 days in advance of the transfer.

3. Consultation Requirements

With respect to consultation requirements, the Labor Act provides that when the transferor or transferee by reason of the transfer intends to implement "labor measures" in connection with the employees, a consultation period with employee representatives should be held regarding the intended measures and their consequences for the employees. What is considered a "labor measure" is not clear from the Labor Act, but we consider that dismissal, relocations, and other relatively significant changes in employment

conditions would constitute a labor measure and, as such, would require the consultation period.

Again, no specific length of consultation period is established, such that it will depend on the circumstances and is often considered to be no less than fifteen days in advance of the implementation of the labor measure. If, however, the specific measure requires a longer consultation period under the regulations applicable to that measure (as could be the case, for example, in a collective dismissal procedure), the applicable longer period should be complied with.

XII. LABOR RELATIONS

1. Trade Unions and Employer Organizations

Spanish trade union regulations are comparable to those of other Western democracies. The Spanish Constitution recognizes various trade union rights, including the right to organization, formation, membership and action, as well as the right to join into national or international union organizations. These general rights apply to both trade unions and employers' associations, and the Principle of Democratic Rules of Government in their structure and operation applies to both as well. Members of the armed forces, magistrates and public prosecutors, however, are excluded from the right to form or join trade unions.

The most important employers' organization is the Spanish Confederation of Employers' Organizations ("Confederación Española de Organizaciones Empresariales", or "CEOE"), which was founded in 1977. The two most relevant trade union organizations are "Comisiones Obreras" ("CCOO"), which is communist organized, and the "Unión General de Trabajadores" ("UGT"), which is socialist in nature and presently the predominant of the two.

2. Employee Representatives and Works Councils

Employees at companies or work centers with a minimum of six employees can hold elections to elect employee representatives, who represent the employees before the company's management. Employee representatives are normally, but not always, union members. The number of representatives depends upon the number of employees at the work center or company:

No. of Employees	No. of Representatives
6 to 30	1
31 to 49	3
50 to 100	5
101 to 250	9
251 to 500	13
501 to 750	17

751 to 1,000	21
over 1,000	an additional 2 per 1,000 (maximum of 75)

In companies or work centers with a minimum of 50 employees, given the greater number of employee representatives that can be elected, the representatives form what is called a "Works Councils" or "*Comité de Empresa*", although, as a general rule, the Works Councils have the same rights and duties as the individual employee representatives or "*Delegados de Personal.*"

Employee representatives enjoy certain special rights with regard to sanctions and dismissals, rights that aim to impede interference with their representative role and retaliation. In addition, representatives are each entitled to be relieved of their employment obligations for a certain number of paid work hours per month in order for them to perform their duties as employee representatives.

The number of allowed hours ranges from,

- 15 hours per month in companies with up to and including 100 employees;
- 20 hours per month in companies with 101 to 250 employees;
- 30 hours per month in companies with 251 to 500 employees;
- 35 hours per month in companies with 501 to 750 employees; and
- 40 hours per month in companies with more than 750 employees.

Employee representatives have full authority to represent employees in collective bargaining and individual matters regarding labor relationships. They may also intervene in problems arising as a result of working conditions and may bring matters on health and safety requirements, social security, or any other work related issues before the company and the labor and social security authorities.

Employers are required to disclose certain information to employee representatives, including information on sales, production and employment status, and financial statements. With regard to employee representatives' rights to information, the Law states that labor representatives are entitled to be informed of all employment contracts that must be executed in writing by the employer. The documents must include all pertinent information on the agreement, with the exception of the employee's personal details that may affect the employee's privacy. Top executive agreements are, however, expressly excluded from this obligation of disclosure.

Finally, employee representatives are entitled to issue reports and sometimes to be consulted with in certain matters, such as matters affecting employment, collective reorganizations, on-the-job training, relocation, and corporate reorganization.

3. Labor Disputes

3.1 Individual Disputes

An individual dispute is a disagreement that arises between the employee and the employer over the individual's subjective rights. Even if the disagreement affects the rights of several employees, the dispute continues to be an individual dispute so long as the basis of the disagreement lies in individual interests.

3.2 Collective Disputes

Collective disputes arise only when collective interests are involved, but not where the interest is exclusive to an individual or a number of individuals considered separately. The collective dispute is attributed to a group or to the entire work force specifically because of its collective nature. The special nature of the collective dispute is based on the fact that the party with the collective interest is the trade union organization, or any group or association of employees. The right to initiate proceedings to resolve the dispute is held by the trade union or employee representatives.

3.3 Mediation, Arbitration And Conciliation

Conciliation, mediation and arbitration are specific means for the resolution of labor disputes. In 1979, the Ministry of Labor created the Mediation, Arbitration and Conciliation Institute (SMAC), which is under the Ministry of Labor's authority and has the following functions:

- to establish Labor Arbitration Courts;
- to provide conciliation and mediation (as the mandatory pre-trial step to filing claims in Labor Courts);
- to serve as a central source of reference concerning statutes of labor organizations and collective agreements

Conciliation is a transaction between the parties with the ultimate goal of avoiding judicial proceedings. Agreements reached through labor related conciliations cannot affect irrevocable rights. In both individual and collective disputes, Spanish law imposes the obligation to attempt conciliation before filing any claim in Labor Courts.

Mediation proceedings may be initiated at the request of the parties in dispute for the appointment of an impartial mediator. In certain cases, the Ministry of Labor and Social Security may also request that a mediator be appointed. The mediator must, in as little time as possible, submit a proposal for settlement to the parties in dispute. If the proposed settlement is accepted, it has the same binding effect as a collective agreement.

Arbitration is a procedure for settlement of labor disputes characterized by the intervention of a third party, the arbitrator. The arbitrator's duty is not to bring the parties together so as to secure their agreement (as a conciliator should do) nor to propose a solution (as in the case of the mediator). Rather, the arbitrator himself must settle the dispute with a ruling or judgment. The arbitration provided for under Spanish law is private and voluntary.

3.4 The Collective Dispute Procedure

Spanish labor legislation establishes the so-called collective dispute procedure, which aims to settle collective disputes. This administrative procedure may be initiated either by the employee representatives involved in the dispute or by the employers or their representatives. When a petition is filed, the Labor Ministry will summon the parties and then attempt to have the parties to resolve the dispute either by mutual accord or by arbitration. If the dispute is not resolved, it may continue to court depending on the nature of the dispute. If the dispute concerns the proper interpretation of a norm of any sort, the Ministry will forward the proceedings to the Labor Court so that the collective conflict proceedings provided for under labor proceeding legislation may be initiated. If the dispute does not relate to such a norm, the parties must resort to other means for resolution.

3.5 Strike And Lock-Out

The Spanish Constitution recognizes the right to strike, incorporating this right among those that are granted maximum or privileged Constitutional protection. The right to strike, however, is exclusively a labor right that must involve labor objectives. Thus, political strikes and non-labor related strikes are generally not lawful. Employees have the right to strike whether or not they belong to a trade union. The exercise of the right is subject to a fixed procedure set by law, which requires a formal declaration of the state of strike, notification thereof, and the establishment of a strike committee.

The lock-out is a way the employer has to impose labor pressure on the employees by terminating their activity and closing the establishments, consequently interrupting the payment of salaries. The lock-out is designed to impose certain labor conditions on employees or to respond to a strike or some other employee act of pressure.

Lock-outs are generally only allowed when they are defensive and in response to strikes or anomalous collective actions in the workplace which imply either:

- Danger of violence to people or serious damage to property;
- Illegal occupation of the work site or its premises, or a certain risk that this will occur; or
- A degree of absenteeism or irregularity in the workforce, which seriously disturbs normal processes of production.

The lock-out must be limited to the time necessary for the termination of the disturbance that provoked it. If the Government requires the employer to re-open the work site, the employer must comply. Failure to do so will make the employer liable as if the lock-out had initially taken place illegally.

XIII. SOCIAL SECURITY

Royal Decree 1/1994 of June 20, approved the Amended Text of the General Law on Social Security, which is the fundamental law in this area. The General Social Security scheme covers:

- Spanish employees who usually perform their activity in national territory.
- Non-resident Spanish employees in certain cases (civil servants or employees of international entities, employees employed by the Spanish administration abroad but who are not civil servants), etc.
- Foreign employees in Spain with residence and work permits.

Notwithstanding the foregoing, the General Social Security Scheme is subject to a number of exceptions, where certain types of employees may be excluded:

- In cases of employees transferred to Spain from abroad an exemption may exist under certain treaties, such that transferring employees may continue registered with the social security system of their country of origin. Such exemptions, when applicable, are subject to reporting requirements, time limits, and any other requirements that may exist under the applicable treaty.
- Employees who perform an occupational activity covered by one of the Special Social Security Schemes subject to special rules (performance artists, household employees, agricultural employees, seamen, self-employed people, coal miners, etc.).
- Except in special cases, the spouse, descendants, ascendants, and other blood relations or kin (and, where applicable, adopted children) of the employer up to the second generation inclusive, if they are occupied in the employer's offices or plant and if they live in the employer's home under his or her charge.
- Persons who occasionally perform activities for friendship or charity.
- Persons whose work can be considered marginal and which does not constitute their livelihood, in view of their working time or earnings, when the Government has so provided at the request of the interested parties.

1. Structure and Administration of the System

The Social Security System is based on a number of special regimes governed by specific norms. Levels of contributions and benefits vary according to the tariffs subscribed to by the beneficiary (as in the case of self-employed workers) or by fixed quantities based on salary levels.

Affiliation to the system is mandatory for both parties to a labor relationship and for self-employed persons.

1.1 Registration of the Employer and Employee under the Social Security Scheme

Any employer with the intention of starting a business or company and hiring employees to that end must be registered with Social Security and must affiliate and register such employees under the corresponding scheme through the General Social Security Treasury in the province in which the company's registered offices are located.

The employer's registration with the Social Security system is valid throughout Spanish territory and as well as for the duration of its existence. For identification purposes, a registration number is issued and an identification number assigned to each work center.

Registrations, withdrawals and changes in the employees' status should be notified to the Treasury by the employer or, failing this, by the employee himself. New employees' registrations must be notified before the employee begins work and all withdrawals or changes in the status of an employee must be notified within six days from the last day of work or the date the change took place.

1.2 Social Security Contributions

Employers are obligated to pay a certain amount of social security contribution or taxes for each employee on a monthly basis. In addition, employers should withhold from the employee's salary an additional amount that the employee is required to pay to Social Security. Thus, on a monthly basis the employer is responsible for withholding the amounts to be contributed by each employee from their payroll, for filing the necessary documentation, and for depositing both the employer's portion and the employees' portion of the Social Security contributions. Should the employer fail to withhold the employee's portion of required Social Security contributions, the employer will be liable for the employee's contribution and subject to possible surcharges and fines.

The obligation to contribute arises as of the date work starts, continues even in situations of temporary incapacity during trial periods, and is only terminated when the employee ceases to render services and the Provincial Office of the General Social Security Treasury is notified thereof within the statutory time limit.

The monthly contributions to be paid to the Social Security are determined by applying the "rate" or percentage established every year for each contingency covered (general contingencies, industrial accidents and occupational disease, unemployment, Wage Guarantee Fund and vocational training) to the "basis of contribution" for each employee. The basis of contribution is generally the employee's salary, within the maximum and minimum bases of contribution established on an annual basis. Salary not paid on a monthly basis should be prorated and included in the monthly calculation of the basis of contribution to ensure proper social security payments.

The maximum amount or basis of contribution for the year 2006 is 2,897.70 Euros per month. The minimum monthly basis of contribution varies from 881,10 Euros to 631,20 Euros depending on the type of job position the employee holds.

The rates of contribution that need to be applied to the monthly basis of contributions under the general Social Security scheme for 2006 are as follows:

- 28.3 percent for common contingencies, of which 23.6 percent is charged to the employer and 4.7 percent to the employee.
- The premium tariff passed by Royal Decree 2930/79 for industrial accidents, with a linear deduction of ten percent, charged exclusively to the employer.
- 7.55 percent for unemployment, of which 6.0 percent is charged to the employer and 1.55 percent to the employee.
- Wage Guarantee Fund: 0.4 per cent charged exclusively to the employer.
- 0.7 percent for vocational training, of which 0.6 percent must be paid by the employer and 0.1 percent by the employee.

Thus, the percentage of the basis of contribution that the employer must pay and must withhold from the employee's salary is as follows:

Contingency	% Company	% Employee	% Total
Common Risks	23.6	4.7	28.3
Unemployment	6.0	1.55	7.55
Wage Guarantee Fund	0.4	---	0.4
Vocational Training	0.6	0.1	0.7
TOTAL (excl. indus. accid. variable tariff)	**30.6**	**6.35**	**36.95**

For example, if an employee earns 4,000 Euros per month, his or her basis of contribution will be 2,897.70 Euros per month, which is the maximum basis of contribution. The employer would then have to pay 30.6% of this 2,897.70 Euros (or 886.70 Euros) to social security every month, and the employer would be required to withhold from the employee's wages 6.35% of the 2,897.70 Euros (184 Euros). In addition, the employer would have to pay a certain percentage of the basis of contribution to cover industrial accidents; this percentage varies significantly depending on the specific job the employee performs.

1.3 Sick Pay

In cases of sick leave due to illnesses unrelated to the job, the Spanish social security system does not provide any coverage for the first three days of illness. The employer during those first three days will typically bear the cost of the employee's full salary. As from the fourth day of sick leave, however, the employee is only entitled to receive a temporary disability pension, unless the employer and employee have contractually agreed that the employer will complement the employee's temporary disability pension, or unless specifically required under the applicable collective bargaining agreement.

The amount of the Social Security temporary disability pension for employees is 60% of the employee's social security basis of contribution from the fourth to the twentieth day of sick leave, and 75% of the employee's basis of contribution from the twenty-first day to the date of recovery or through the date the temporary disability becomes permanent disability.

From the fourth to the fifteenth day of illness, despite the fact that the 60% payment is considered a social security benefit, the employer is required to bear the costs of the 60% temporary disability pension. Subsequently, that is, from the sixteenth day of illness onwards, social security bears the cost of the respective 60% and 75% temporary disability payments (i.e., 60% from the sixteenth day through the twentieth day and 75% from the twenty-first day onwards). Payments continue during the temporary disability or sick leave, which under social security rules can last up to twelve months, and which exceptionally may be extended under certain circumstances to eighteen months.

Payment of the difference between the social security sick pay and an employee's normal remuneration is at the employer's discretion unless required by the collective bargaining agreement or otherwise agreed.

2. Incentives to Employing Certain Types of Individuals: Social Security Discounts and Subsidies

Spanish law provides a series of social security benefits to encourage employers to enter into contracts of an indefinite duration, particularly with certain types of individuals. With regard to the social security benefits, the law provides for a substantial reduction of the social security contributions for common contingencies when the employer either hires certain people under an indefinite term contract or converts a certain employee's definite term contract into an indefinite term contract.

To qualify for the reductions, an employer must be current on tax and social security payments, must not have been precluded from receiving such benefits as a result of a sanction, and must not have unfairly dismissed employees or used a collective dismissal procedure in the previous 12 months with respect to employee contracts that had been enjoying similar social security discounts.

The employees, to give rise to the reduction, may not be any of the following:

- People who have managing positions within the company or are members of the board of directors or other governing body of the company,
- Family members to the second degree of the employer or of any of the above,
- Employees hired under a special type of employment relationship,
- People employed by the same company or group of companies, or companies sold to one another, in the previous 24 months, or

- Employees who had an indefinite contract within the last three months.

Various types of discounts are available and are modified periodically, such that before hiring individuals, it is advisable to check for available discounts. Savings can be substantial.

Discounts available for the year 2006 include the following:

Discounts for Hiring an Employee on an Indefinite Term Basis		
Types of Individuals	**Discount**	**Duration of Discount**
Women 16-45 years of age	25%	24 months
Women underrepresented in certain fields	35%	24 months
Women underrepresented in certain fields and who are either (i) unemployed for at least six months or (ii) over 45 years of age	70% for first year and 60% for second year	2 years
Individuals unemployed for at least 6 months	20%	24 months
Individuals unemployed who are 45 to 55 years of age	50% for the first year and 45% thereafter	1 year, and possibly entire contract under certain circumstances
Unemployed and 55-65 years of age	55-50%	1 year, and possibly entire contract under certain circumstances
Unemployed persons entitled to unemployment benefits expiring one year or later, at the moment of being hired.	50-45%	1 to 2 years
Unemployed and hired within 24 months as from giving birth to child	100%	12 months
Disabled individuals under 45 years of age	70% (90% if female) Additional 3,907 Euro grant if contract is a full time indefinite term contract.	Entire duration of contract

Disabled individuals 45 years of age or over	90% (100% if female). Additional 3,907 Euro grant if contract is a full time indefinite term contract.	Entire duration of contract
Victims of domestic violence	65%	24 months

There are also reductions in Social Security contributions for employers that convert definite term contracts entered into before January 1st 2006, into indefinite term contracts. Such discounts are normally 25 % for the first 24 months. Also, the government has established discounts to offer incentives for employers to continue having employees over 60 years of age employed. Thus, a 50% discount applies for the contributions of employees over 60 years of age that have been working at the company for a minimum of five years. This discount can reach a maximum of 100% under certain circumstances. The reduction applies throughout 2006 so long as employment continues.

Individual reductions may not be accumulated if an employee falls into more than one group. In such cases, the employer should choose one of the benefits.

Finally, please note that such subsidies and other benefits are modified periodically to apply to different classes of people and types of contracts and may be subject to a number of conditions, which should be considered in each case.

XIV. IMMIGRATION

1. Work and Residence Permits for EU and Related Nationals

1.1 Absence of Requirement of Work and Residence Permit for Citizens of Certain EU and Other Countries

Citizens of many EU member states[3], citizens of the European Economic Space, and Swiss citizens (jointly referred to as "EU Citizens") are entitled to work and reside in Spain, and employers may hire them as if they were Spanish. Specifically, these countries as of May 1, 2004, are the following:

[3] Prior to May 1, 2004, citizens of all EU countries were entitled to work and reside freely in Spain. With the incorporation on May 1, 2004 of Cyprus, Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, and the Czech Republic, the right to reside and work has, however, only been extended to Cyprus and Malta. The citizens of the remaining new member states are subject to special transitional rules discussed below.

Countries whose Citizens are Entitled to Reside and Work Without a Work Permit *(After May 1, 2006, May Include Remaining EU States)			
EU Member States		**European Economic Space**	**Other**
Austria Belgium Denmark Cyprus Finland France Germany Greece	Ireland Italy Luxembourg Malta Portugal Sweden The Netherlands United Kingdom	Iceland Norway	Switzerland

EU Citizens' spouses may also be hired to work in Spain, even if the spouse does not qualify as an EU Citizen. Other family members who do not qualify as EU Citizens may be entitled to reside and work in Spain only in certain cases. Independent of the right to work and reside in Spain, EU Citizens and their spouses who intend to reside in Spain for over three months are required to comply with certain registration formalities at police headquarters for identification purposes.

1.2 EU Countries Subject to Transition Rules Through at least May 1, 2006

The general right to work and reside that EU Citizens enjoy does not for the time being apply (and at least through May 1, 2006) to citizens of most of the countries that joined the EU on May 1, 2004. Despite their official membership, the citizens of the newly incorporated Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Poland, and the Czech Republic still require a work and residence permit to work in Spain.

For the nationals of these eight countries, Spain has established a transition period of two years, which for the time being is scheduled to finalize on May 1, 2006, unless the period is extended. The government has announced that it does not intend to extend the transition period, such that it is currently expected (though by no means certain) that on May 1, 2006, the transition period will end, and the nationals of these eight countries are scheduled to enjoy the same immigration rights as the nationals of the remaining Member States currently enjoy (see section 1.2 above). In the meantime, during the transition period, the nationals of these eight countries in transition (hereinafter referred to as "ECT nationals") are subject to numerous special rules.

In this respect, the new regulations distinguish between (i) those ECT nationals who already had a long term work permit on May 1, 2004, who are offered preferential treatment, and (ii) those ECT nationals who did not, who are only slightly benefited for immigration purposes by their country's EU membership.

Those ECT nationals who on May 1, 2004, had a valid work permit effective for at least one year, can enjoy the right to continue working in Spain in the same way EU Citizens do. Thus, although the administrative process the ECT nationals need to follow to enjoy this privileged status is yet to be fully determined, the law establishes their right to freely work and reside in Spain without the need to apply for a work and residence permit as other foreigners.

With respect to ECT nationals who on May 1, 2004, did not have a minimum one year work permit, the law provides that they will be subject to the general immigration rules for work and residence permits that apply to non EU Citizens. If, however, the ECT national on May 1, 2004, was a resident of Spain, the immigration authorities in deciding whether to grant a work and residence permit or not will not take into consideration Spain's employment situation. By eliminating the need to consider the employment situation for those ECT nationals who were already residing in Spain, the Spanish government provides a substantial advantage to such residents, since it greatly increases their chances of having their work permit applications approved.

Those ECT nationals who on May 1, 2004, were not Spanish residents, are fully subject to the immigration rules for non EU Citizens with respect to work and residence permits. The law for these non residents simply provides the negligible benefit of providing that their visa applications will be free of charge.

Although the current immigration situation of ECT nationals is still far from the freedom of residence and working that other EU nationals currently enjoy, the applicable rules in the transition period established for the ECT nationals strongly favor those nationals that on May 1, 2004, already had minimum one year work permits and their families, particularly if the family at that time resided in Spain. How these general rules are yet to be developed and implemented by the administration remains to be seen, but the general rules are expected to help ease the transitional process of integration through the tentative date of May 1, 2006, when these ECT nationals and their families are scheduled to obtain full immigration rights enjoyed by other EU nationals and their families.

2. Work and Residence Permits for Other Foreigners

Following we summarize some of the basic aspects of immigration law in Spain for non EU Citizens[4], but please bear in mind that immigration rules are subject to numerous detailed regulations and treaties that require a particularly detailed analysis of the employee's personal and professional circumstances in each case to determine how best to proceed in obtaining the required work and residence authorization.

The main body of immigration rules are established in (i) the Law on Foreigners, Law 4/2000 as amended that same year and in 2003, and (ii) the immigration regulation Royal Decree 2293/2004, that develops the Law on Foreigners, and which entered into effect in February of 2005.

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4 The term "EU Citizens" is used here as defined above, referring to citizens of those countries listed in the previous chart. If the transition period is not extended on May 1, 2006, it will also include citizens of those EU countries that joined the Union on May 1, 2004 (see footnote 3 above).

When an employer wants to hire an individual who does not enjoy the status of an EU Citizen or related right to work in Spain (hereinafter "Foreigner"), the employer must as a general rule apply for a work and resident permit. Numerous exceptions exist[5], but employees subject to an exception still require the immigration authorities' verification of the circumstances that justify the exception, and it will be the employer's obligation to obtain that verification or authorization.

The employee will not be entitled to work until the work and resident permit has been granted (or the exception authorized) and the employee has validly entered Spain under a valid residence visa. Additionally, the employee must be duly registered with the Spanish social security system before he or she begins working in Spain (unless the employee can continue registered with a foreign social security system pursuant to an applicable social security treaty)[6].

2.1 Types of Employee Work Permits

The options regarding the type of work permit to be obtained are the following:

- **Transnational work and residence permits (formerly type "G" permits):** Applicable to intracompany transfers, when a multinational decides to assign an employee temporarily from one of its work centers located outside of the European Union (EU) to Spain (excluding transfers for training purposes). This type of permit has a maximum one-year duration and may be extended for an additional year.

  Certain conditions must be met as follows: (i) the employee's length of services in the company must be of at least nine (9) months, and of at least one (1) year within the same field of activity, (ii) during the employee's temporary transfer, his or her employment relationship (payroll and social security payments) must be maintained in the transferring entity, (iii) the employee who is being transferred should hold legal residence in the country from which he or she is transferred for the duration of his or her Spanish assignment.

- **Temporary work and residence permit (formerly type B-initial permit)**:

  Such permit has initial one (1) year duration and may be extended annually until the employee obtains a permanent residence permit in Spain (after five years of legal residence). At present, the alternatives

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5 Such exceptions can include professors invited or contracted by a Spanish university; administrative personnel and foreign teaching staff of both private and public cultural and educational institutions of accredited prestige, officially recognized by Spain; foreign media correspondents; members of international scientific missions; artists who travel to Spain for specific limited performances; ministers, members or representatives of all Churches and Confessions duly registered in the Registry of Entities; and Spanish nationals of origin who have lost their citizenship.

6 EU regulations permit employees of member states transferring to other member states to continue registered with the transferring member state under certain circumstances. In addition, Spain currently has Social Security treaties with the following countries: Andorra, Argentina, Australia, Brasil, Bulgaria, Canada, Chile, Ecuador, United States of America, the Philippines, Morocco, Mexico, Paraguay, Peru, Russia, Tunisia, Ucraine, Uruguay, and Venezuela.

for obtaining this type of permit are quite restrictive as the employee must meet either comply with:

(i) Personal conditions: The individual must be an ascendant or descendant of a Spanish national, the spouse of a foreigner that holds a renewed residence permit in Spain, a national of Peru or Chile, or meet other specific personal requirements.

(ii) Special conditions related to his or her position in the Spanish company: The employee must be, for instance, a top management employee with power of attorney granted in his or her favor to represent the Spanish company (ample powers should have been granted), or he or she must be a highly qualified employee whose position is directly related to the Spanish company's management or administration, or he or she must be a highly skilled specialist necessary to install or repair imported productive equipment, etc.

If none of these conditions are met, the approval of the work permit will depend on the unemployment rate in Spain, in which case the approval would only be issued if (i) the position offered in Spain is included in the "Difficult Coverage Job Position Catalog" (*"Cátalogo de Ocupaciones de Difícil Cobertura"),* or (ii) the Spanish company obtains a certificate from the relevant Employment Office indicating that there are no unemployed people registered that meet the conditions required for the position.

- **Fixed term work and residence permits:**

  These permits authorize the performance of activities that by their nature are limited in time. Certain situations may fit into such type of permits: (i) seasonal activities, with a maximum duration of nine months within a period of twelve months, (ii) installation of industrial or electric plants, maintenance of productive equipments, start up procedures, etc. (iii) fixed term activities performed by the top managers, professional athletes, performance artists, etc., and (iv) occupational training and professional practice.

  With the exception of the permit for seasonal activities, which is limited to nine months as mentioned above, the general maximum initial duration of this permit is one year, although it may be extended for as long as the employee's fixed term employment contract is also extended.

2.2 Procedure for Obtaining Work and Residence Permits

Please note that all of the above listed work permits are based on the fact that the foreign employee will be locally hired by a Spanish entity. If no Spanish entity or presence exists (e.g., branch, representative office), the procedure can be complicated.

Independent of the type of permit processed, **the process and documentation** required to prepare the work and residence permit application is fairly similar. The procedure requires that the employer in Spain file the application requesting the work and resident permit for the

selected foreigner. Depending on the type of permit applied for, the authorities can request any number of additional documents to verify whether the requirements are in fact satisfied. The work and residence permit may be granted approximately within the following sixty (60) to ninety (90) days.

Once the Work and Residence Permit has been granted, the employee must personally apply for her/his residence visa at the Spanish Consulate of her/his country of origin or country of legal residence. The application must be filed within thirty (30) days after the company's legal representative receives the notice from the immigration authorities approving the work and residence permit.

The visa application must be accompanied by a number of documents, such as a clean criminal record certificate from the countries where the foreigner resided in the last five years, a medical certificate, passport, etc. Since obtaining the certificates can sometimes be time consuming, in order to expedite the procedure, it is often advisable to plan well in advance so that, once the work permit application is approved, the visa application can be filed immediately. Note that under the current rules, the Consulate is entitled to require a personal interview with the applicant to verify the authenticity of the application and of the documents submitted.

Once the visa application is granted, the foreigner must appear at the Consulate to retrieve it and must enter Spain during the period specified in the visa, which in no case may exceed three (3) months.

Note that the visa issued at the Consulate will include the initial work and residence permit, and such permit will be effective when the foreigner enters Spain, not when it is approved, as it was the case according to the prior applicable legislation.

In addition, as mentioned above, the employer must register the foreign employee with the Social Security system within one month after entry and prior to begin rendering services, or, alternatively, the employee must have evidence that his or her social security registration has been maintained abroad (as may be the case under certain treaties, as discussed in section XIII above on Social Security.) The regulations provide that if the foreign employee is not registered with the Social Security system, the work and residence permit may be revoked, although prior to revocation, employers will be provided an opportunity to explain why they failed to register the employee in a timely fashion.

Lastly, once the foreign employee is in Spain, as a general rule, the employee will need to obtain his or her foreigner's residence card at the pertinent Spanish Police Headquarters to formalize his/her legal status. To do so, the foreigner will be required to show evidence of registration with the social security system along with the application for his or her foreigners card.

2.3 Self-employee Work Permits

Individuals who wish to perform services in Spain as independent professionals or "self-employees" must obtain a self-employee work permit, previously known as "D permits". These permits may be granted considering the following circumstances:

- The activity in Spain should have positive effects on employment, capital investments, new technologies and/or productive conditions in Spain.

- The investment should be adequate for the business activity or project intended in Spain.

- The applicant will be required to submit a business plan/project forecasting that the activity will render financial benefits that will at least be sufficient to support the self-employed individual after deducting the necessary expenses to perform the activity.

- The applicant must have the capacity and professional qualities required for the activity or project, and must also certify that he or she complies with the existing Spanish regulations on the activity.

2.4 Family Members of Foreigners

Technically, the general rule is that family members cannot reside with the authorized foreigner in Spain until the foreigner has obtained the renewed work permit (i.e., normally not until one year has passed).

Please note that past regulations established a specific process for family members of top management employees or transferred employees (residence visas for "other causes") that enabled the family members to apply for and obtain their visas at the same time as the top management or transferring employee. The new immigration regulations have not foreseen these situations and have instead only provided for residence visas for family members based on family reunion ("reagrupación familiar").

Technically, such residence visas for family members of foreign employees currently can only be applied for once the employee has obtained a renewed work and residence permit in Spain, which unfortunately is normally well over on (1) year after the employees begins working in Spain. Notwithstanding the foregoing, please note that in practice the Spanish immigration authorities are exercising a significant degree of discretion in the process of accepting residence visa applications of family members. So much so, that in practice many Consulates are still accepting residence permit applications (and subsequently granting them) at the same time that the visa application for the working employee is filed, in essence following the previous regulations on residence permit applications.

Regarding the processing of residence permits, please note that the Royal Decree 2394/2004 establishes that the residence visas and permits must be applied for at the relevant Spanish Consulate abroad and that the visa will not be issued until the residence permit is approved by the Government Delegation in Spain located in the Spanish province where the applicants intend to live in Spain.

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