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**BASIC NOTIONS OF SPANISH EMPLOYMENT LAW****Inés Molero Navarro**

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It should be previously pointed out that the regulations of the employment conditions in Spain are mainly contained in the following sources (these are established respecting the normative hierarchy principle):

- (i) Workers' Statute (passed by Royal Legislative Decree 1/1995, 24th March): This Law contains the basic and minimum employment regulations that must always be respected.
- (ii) Collective Bargaining Agreement (CBA): Each sector of activity usually has its own CBA, which should be applied to the companies that belong to said sector of activity. Depending on their legal scope, the CBA could be national or regional. The CBA must respect the minimum rights established by the Workers' Statute (and other Laws, such as the Social Security Law) and this is why the CBA generally improves the employment conditions (never establishes worse employment conditions than those foreseen in the Workers' Statute). It is also possible for companies to negotiate their own CBA with the employees' legal representatives internally elected. This CBA should respect the terms established by the corresponding national or regional CBA, if appropriate.
- (iii) Employment contract: The terms and conditions established in the contract must fulfil the minimum requirements established by Law (Workers' Statute, amongst others) and the CBA.

Bearing the above in mind please be aware that the textile commerce sector has its own CBAs in all the different Spanish regions. Therefore, we could assert that the employment conditions that would affect the Company in Spain, if the company has work centres distributed in different Spanish regions, will be regulated (i) firstly, by the Workers' Statute, (ii) secondly, by the mentioned applicable CBAs and (iii) in third place, by the terms agreed in the corresponding employment contracts).

**1) Ordinary employment contracts**

Under our legal system the ordinary employment contracts, those submitted to the Spanish Workers' Statute, could be of two different natures depending on their duration: indefinite or temporary.

- a) Indefinite contracts do not have a specific termination date, although they could be terminated due to certain legal circumstances or situations (i.e. death, retirement or permanent disability of the employer and/or the employee, dismissal, force majeure.....).
- b) Temporary contracts are those which have a specific duration, depending on the purpose for which the temporary employee has been contracted.

The most common temporary employment contracts used in the textile commerce sector are the following:

(i) Contract due to production circumstances ("*Contrato eventual por circunstancias de la producción*"). This contract is intended to cover circumstantial market requirements, accumulation of work or excessive orders, even though the circumstance arises in the course of normal business. The maximum duration of this contract is six months within a twelve-month period. The duration of the contract and the period within which the contract can last, may be modified by the relevant CBA.

(ii) Contracts to develop a certain job or service ("*Contrato de obra o servicio*"). These contracts are used for the performance of work or services, autonomous and with their own entity within the company's activity, and their execution, although they have a time limit, it is initially for an uncertain duration. These contracts will be in force for the time required to perform the work or service.

Please, also be informed that in accordance with the Spanish Workers' Statute, the employer is obliged to pay a compensation of 8 days of salary per year of service<sup>1</sup> when these temporary contracts come to a natural end, that is, due to the expiry of its term (please note that these temporary contracts could also be terminated due to the legal situations described above for indefinite employment contracts).

## 2) Working hours

The Workers' Statute provides the following minimum rights:

- The maximum working hours (of effective work) per week is 40, computed on an annual basis, which is equivalent to

a maximum annual working schedule of 1,826 hours (it excludes vacation periods, weekly rest time and Bank holidays).

- Between one working day and the next, employees should enjoy 12 hours of rest.
- The maximum daily working hours are 9.
- The employees are entitled to enjoy a full weekly day of rest on Sunday and a half weekly day that could be enjoyed either on Saturday afternoons or Monday afternoons, as agreed between the parties.

Provided that the mentioned rights are respected (and also those foreseen in the CBAs), the Company would be free to set the working schedule.

Pursuant to the above, it is common that the applicable CBAs reduce the annual maximum working schedule established by Law (the daily and weekly maximum working hours are the same as the one mentioned above), which usually ranges between 1720 and 1790 hours per annum, approximately.

## 3) Annual Holidays

According to the Workers' Statute, employees are entitled to a minimum holiday period of 30 calendar days per year (equivalent to 22 working days approximately). In this respect, this Law establishes that it is compulsory that the holidays are in any case taken by the employee within the calendar year, as holidays cannot be compensated with any payment.

Please note that the Workers' Statute establishes that the holiday period should be agreed between the Company and the em-

<sup>1</sup> This compensation is established for the year 2011 and will be progressively increased until 2015, up to 12 days of salary per year of service.

ployee two months in advance of the commencement date .

According to our legal system, please be aware that 14 Bank holidays per year should be added to the abovementioned annual holiday regulations.

#### 4) Fixed Salary

The general rule is that the salary is mutually agreed by the employee and the company respecting the following limits:

- (i) The so-called Minimum Salary applicable to all professional categories ("*Salario Mínimo Interprofesional*" also called "SMI"). The amount of the SMI is set by the Government annually. For the year 2011, the monthly SMI amounts to 748.51 Euros
- (ii) The minimum salary for each professional category is foreseen by the relevant Collective Bargaining Agreement. Please bear in mind that the salary's review rates foreseen in the CBA usually use the Consumer Price Index as a reference, establishing a salary increase a little bit higher than said Index.

Currently, the most common practice has been to apply the salary's review consisting of the application of the Consumer Price Index (called "*IPC*") foreseen for the corresponding year. However, it seems that the increases are going to be linked to companies' results in the near future.

Spanish Law establishes that the employee, in addition to the 12 ordinary payments, is entitled to receive two extraordinary payments, one at Christmas and the other in the month agreed by the employer and the employees (usually June or July ); therefore, it is advisable to specify in the employment contracts whether the gross annual salary of the employees will be paid in 12 monthly payments, including the

prorated extraordinary payments, or in 12 monthly payments plus two extraordinary payments (summer and Christmas).

Please be aware that it is frequent that the CBAs also establish the payment of an additional extra payment, the fifteenth, which is usually paid in the month of March and is called "profits payment".

#### 5) Social Security

The companies would be obliged to register the ordinary employees with the General Social Security Regime before or at the moment the employee starts rendering his/her services and to pay part of the employees' Social Security contributions.

The Spanish Social Security covers them in cases of necessity, such as illness, disability, retirement, unemployment, and maternity, amongst others. The financing of the system is carried out by means of obligatory contributions made by the employer and the employees. The employer is responsible for transferring monthly the employer's and the employees' contributions deducing this amount from the salary reflected in the employee's monthly payslips.

The contributions that the employer and the employees have to pay on a monthly basis consist of a percentage applicable to the Social Security contribution base: the employer contributes 30.6 percent, approximately and the employee contributes approximately 6.35 percent of the Social Security contribution base.

Please note that the Social Security's monthly contribution base is calculated depending on the monthly salary received by the employee. In addition to the above, please be informed that each year the Spanish Government establishes some maximum and minimum limits applicable to the Social Security contribution bases; for the year 2011 the maximum is 3,230.10€

and the minimum is 748.51€, which cannot be surpassed irrespective of the fact that the salary received by the employee is higher or lower than the set maximum and minimum limits.

## 6) Sickness temporary disability

In general terms, the Spanish Social Security foresees the payment of a subsidy for each employee's temporary disability due to sickness, duration of which differs depending on the nature of the illness (professional or non-professional –common-nature).

The sickness situation must be certified by the employee to the Company, delivering the corresponding official medical certificate issued by the Social Security or related organisms. In this respect, the first certificate must be sent by the employee to the Company after the third day of leave due to sickness, and every 7 days thereafter all other medical certificates should be given to the Company in this regard, if appropriate.

In general terms, the Social Security subsidy is lower when the sickness is of a non-professional nature than when it is due to a professional one.

Please note that the CBAs, and, specifically the regional CBA's for the textile commerce sector, establish certain sickness entitlements in favour of the employees, in order to complement the Social Security temporary sickness subsidy.

## 7) Health and Safety

The most important regulations about health and safety at work are included in Law 31/1995 and the Regulations implementing said Law, mainly Royal Decree 39/1997. As a first approach, the main duties of the company with respect to health and safety at work are the following: the

preparation of an Initial Risks Evaluation Report and its subsequent updates, the preventive planning, the preparation of a prevention plan, the emergency plan, to provide the employees with training and information on health and safety matters as well as with the necessary security equipment and the regular medical checkups.

## 8) Dismissal

The employment relationships could be terminated due to a dismissal carried out by the Company. The dismissals in Spain could be of two different kinds, depending on the reasons or causes to carry them out:

- (i) Individual or collective objective dismissal: based on the company's solid and serious economical, technical, organizational or productive reasons.
- (ii) Individual disciplinary dismissal, based on certain serious regulated fault/s committed by the employee.

Please note that the unfair dismissal or "*despido improcedente*" (that is, a disciplinary or objective dismissal, which is declared unfair by an Employment Court if it finds that the reasons invoked by the company do not exist or they are not duly proved by the company during the judicial hearing), would imply the payment of a compensation of 45 days of salary per year of service, up to an amount of 42 monthly installments.

Those dismissals which are declared void and null by our Courts, due to a violation of any of the fundamental employees' rights (intimacy, honour, discrimination -race, beliefs...-) or if a dismissal is carried out due to pregnancy or maternity situations or its related rights, would imply the readmission of the affected employee and the payment of all the salaries accrued from the dismissal date until the readmission is effective.