

Spain

Without reaching agreement with the social partners, on 11 June 2010 the government presented its proposal on labour reform, which was adopted by the government on 16 June, following a debate in Parliament. The proposals include the following:

Measures regarding temporary employment contracts and dismissal protection

- **Limit temporary contracts:** temporary contracts (*'de obra o servicio'*) would last for three years at maximum. Via collective agreements an additional year could be added. During the parliamentary debate a derogation was introduced for the construction sector, together with the possibility of further derogations from these limits via collective agreement.
- **Limit successive contracts:** persons employed for at least 24 months over two years and a half were to be considered as having a permanent contract.
- **Increase in the minimum severance payment that employers must provide employees at the end of their fixed-term contracts.** Previously, it was eight days' wages per year worked. The idea was to keep it at that level until the end of 2011, but then from 2012 to 2015 to increase it gradually to 12 days (9 days for 2012, 10 days for 2013, 11 for 2014 and 12 days for 2015).
- **Redefine fair dismissals, with 20 days' compensation per year:** the Workers Act was to be amended to include the possibility of invoking 'economic losses, not only cyclical ones', which would have to be documented, to allow for appeals under the fair dismissal procedure, compensated on the basis of 20 days per year instead of 45 days for unfair dismissal.
- **More flexible use of the recruitment incentive contract:** the contract, which comes with a right to 33 days' compensation per year of service in the case of unfair dismissal (instead of 45 days for ordinary contracts) used to be reserved for a few groups. The idea was to apply it to all precarious contracts turned into permanent contracts by 31 December 2011. The Social Guarantee Fund (Fogasa) would pay for 8 days' compensation in addition to the 33 days the company pays to employees laid off to compensate the latter's loss of income.

- Creation of a new ‘redundancy fund: within one year, a new capitalisation fund, based on the Austrian system, would be established to pay for redundancies. If employees do not use it in the course of their working lives, they can receive payment when they retire. The fund is supposed to start working in 2012 in relation to contracts signed from that date onwards.

Measures to encourage collectively-agreed internal flexibility and working time cuts

- Improving internal flexibility and using ‘unhooking’ clauses: businesses will be freer to amend employees’ working conditions in terms of hours, working time and functional and geographical mobility. In the case of a disagreement, there will be an arbitration system without resort to legal proceedings.
- Short-time working schemes: previously, unemployment benefit coverage only applied if working hours were reduced by at least one-third. Now, employers may cut working hours by 10–70 per cent. Employees will receive proportional unemployment compensation. Businesses will receive bonuses of 50–80 per cent if they undertake to provide training to the employees affected. Short-time working benefits will be based on hours off and not days off work.

Measures to encourage the employment of young people and jobseekers

- New measures to support training were established with new training contracts for people under 25 years of age and incentives to reintegrate jobseekers include lower social contributions for employers.

Measures to improve the intermediation and functioning of temporary work agencies

- The legal framework for the operation of placement and temporary work agencies was to be reviewed. Private employment agencies are also able to become recruitment agencies and permitted to intervene in sectors formerly closed to them, such as construction and public administration. Following the parliamentary debate, the use of temporary work in the public sector was to be disallowed from 1 April 2011.

On 15 September 2011, Parliament confirmed a new labour market reform measure. Act 35/2010 (published in the Official Journal on 18 September 2010) had already been passed by the Council of Ministers in August 2011 and contains a series of measures, including some to encourage youth employment. It also suspends the provision of the Workers Act which restricts the use of consecutive temporary contracts.

The decree also creates *a new training and apprenticeship contract for unskilled young people aged 25–30*, with the possibility of increasing the age limit to 34, depending on the duration of training

undertaken. The aim of this new contract is to help people get back into the labour market, while giving them access to training. It will last for a minimum of one year and a maximum of two, and may be extended another 12 months depending on the type of training. Working time as determined in the contract represents 75 per cent of habitual working time in the company. The remaining 25 per cent will be dedicated to training activities at a specialised centre. Employers may be completely exempt from social security contributions for the whole period of the contract; companies with 250+ employees are only exempted up to 75 per cent. Furthermore and in order to stimulate the conversion of this contract into an open-ended contract, employers may benefit from a reduction in social security contributions up to a total of 1,500 euros per year for a maximum of three years (1,800 euros in case of women). The workers are to be covered by social protection, including unemployment benefits and a wage guarantee fund. Second, the decree provides for a *suspension of the limit on successive temporary contracts* until 2014. The limit is aimed at combating the use of successive temporary contracts by turning the employment of all precarious workers (fixed-term, temporary and so on) working in the same job for 24 months (over a 30-month period) via two or more contracts into a permanent contract.

The decree also:

- *makes fixed-term contracts less attractive* by setting a maximum length of three years but with the possibility of exceeding it by an additional 12 months by industry collective agreement and by increasing the minimum severance payment that employers must give employees – but not apprentices, trainees and substitutes – at the end of their fixed-term contracts from a minimum of eight days' wages per year worked in 2010 up to 12 days by 2015;
- extends the use of so-called 'development contracts', a new type of employment contract with fewer rights;
- extends the period during which an employer may transform a temporary contract into an 'open-ended contract to promote employment', a contract form that is more advantageous for the employer who, on the termination of employment, only has to pay compensation of 33 days per year of service instead of the 45 days applying in the case of 'normal' open-ended contracts.

Another innovation in the decree is a *new definition of reasons for dismissal*. For both collective and individual procedures, the employer need only show the *reasonableness* of the connection between an organisational, productive or technological change and improving the company's situation. This notion of reasonableness did not previously exist and should encourage employers to resort to justified dismissals (20 days compensation per year worked) instead of automatically choosing unjustified dismissal, which gives rise to compensation of 45 days' salary per year worked. However, the precise interpretation of the new legal text rests with the judiciary (for individual redundancies) and with the labour administrations, which must authorise or reject collective dismissals if there is no collective agreement. Furthermore, this new law introduces 15 days' notice (instead of 30 days) in the case of

individual dismissals. Also from now on, non-compliance with the redundancy procedure will not render the employer's decision void and therefore the employee will not be entitled to reinstatement but only to a severance payment in the amount established for unfair dismissals.

As for changes to the industrial relations system, on 10 June 2011 the Council of Ministers approved a *royal decree reforming the framework of collective bargaining (Royal Decree Law 7/2011)*. It was published on 11 June in the Official Gazette and entered into force on 12 June. The text facilitates internal flexibility for businesses and introduces mediation to solve conflicts, but the main change is that it *gives precedence to company collective agreements over provincial collective agreements*. Company agreements may provide for less advantageous terms on, for example, pay, working time, organisation of leave, job categories, recruitment and work–life reconciliation. Such precedence shall apply unless a national, sectoral or regional agreement states otherwise. This is a substantial change in the hierarchy of collective bargaining, as currently provincial agreements cover about 70 per cent of businesses.

Following the election of 20 November 2011, Mariano Rajoy, the new Spanish President, presented the social partners with a roadmap for the coming labour market reform. Key issues he wants to work on are the role of collective bargaining, recruitment modalities, absenteeism, out-of-court dispute resolution and training. The social partners were asked to deliver a negotiated text on these issues by 6 January 2012. On that day, the social partners informed the government that agreement had been reached on only a few some issues. The deadline was then extended to 13 January.

On 25 January 2012, the social partners – CCOO and UGT for the trade union side and the CEOE and CEPYME for the employers' side – signed a series of agreements on wage moderation and internal flexibility in businesses, but also on collective bargaining structures and the conditions under which ailing businesses can derogate from the conditions laid down in sectoral or regional agreements. The agreement distinguishes between ordinary internal flexibility and temporary extraordinary flexibility.

As for ordinary internal flexibility measures, and in particular regarding working time, the agreement foresees, for example, that collective agreements should make it easier for employers to do as they see fit with 10 per cent (as opposed to 5 per cent under current regulations) of annual working time and divide it irregularly in accordance with production or organisational needs. Collective agreements should allow for the introduction of a pool of 5 days or 40 hours a year for this purpose, depending on employers' needs, over the annual schedule. As for extraordinary temporary flexibility, the text foresees that, should it be justified by economic, technical or organisational reasons, employees may be asked to perform different tasks or roles than those listed for their occupational group, provided that these measures do not exceed six months over one year or eight months over two years. To extend this period, employers need to sign a preliminary agreement with employee representatives.

The agreement also contains 'temporary maladjustment clauses' – or 'opt-out clauses – in particular in relation to pay or the division of working time, team shifts, remuneration, work and profit

systems. Sectoral agreements have to determine the conditions and situations in which businesses may opt out from what was agreed. The basis will have to be 'objective parameters', such as a fall in results, sales or productivity over the past financial year or the past 12 months. The conditions for such an opt-out must be negotiated with employee representatives. In case of disagreement, the parties involved may turn to an arbitration committee.

Finally, the agreement reasserts that sectoral and regional agreements take precedence while pointing out that they should encourage the decentralisation of negotiations and that sectoral agreements must facilitate company bargaining in terms of working time, functional mobility and pay.

Following this agreement, the same Spanish social partner organisations signed another agreement on 7 February 2012 reviewing the public mediation and arbitration system (SIMA) for collective disputes. This agreement also allows appeals to alternative dispute settlement in cases of disagreement arising within the framework of consultation with employee representatives with regard to the application, in the company, of the opt-out clause (that is, when employers, for economic reasons, wish to opt out of wage increases provided for in a collective agreement at a higher level), or when negotiating a company agreement derogating from provisions agreed at a higher level. Secondly, to help boost sectoral bargaining, the agreement also provides that the parties to a sectoral agreement can, in turn, provide for mandatory appeal to arbitration when negotiations on the renewal of an agreement are deadlocked. The agreement also provides recommendations for so-called bipartite committees on collective agreements (or *comisiones paritarias*) which now also have to determine, in addition to the modalities for settling disputes that may arise from their application or interpretation, the modalities for settling disagreements during consultations on substantial changes to working conditions or opt-out clauses.

Only three days later, on 10 February 2012, the government adopted Law 3/2012, profoundly reforming the labour market, for the third times in three years. The reform was published in the Official Journal on 11 February and came into force on 13 February, although Parliament has to pass it for it to become permanent. Key points of the reform are as follows:

- *Compensation for unfair dismissal* is reduced from 45 days' wages for every year worked (up to a ceiling of 42 monthly wages) to 33 days per year of service (with a ceiling of 24 months' wages).
- *Simpler modalities for economic redundancies*, compensated at 20 days per year. Businesses may resort to economic redundancies when they experience economic deterioration, such as actual or foreseen losses, or when invoicing or sales levels fall constantly for three quarters in a row. The objective is to make redundancies safer, in legal terms, in order to reverse the trend of employers directly applying unfair dismissals (*despido improcedente*), which are more costly – they are compensated at 45 days per year spent at the company – but faster, and thus spare them lengthy legal proceedings which may not turn out in their favour.

- *Opening up the possibility of mass redundancies in public organisations.* Businesses and organisations in the public sector may instigate staff cuts for economic, technical, organisational or production reasons. This was not previously provided for by law. This measure is supposed to make it easier to resize administrations to adjust them to budget reviews.
- *Removal of authorisation for administrative layoffs.* Permission from national, regional or local public authorities – depending on the size of businesses – is no longer necessary to launch an *expediente de regulación de empleo* (ERE), a collective redundancy programme. It should be noted that in Spain collective redundancies are defined as dismissals for economic, technical, organisational and production reasons affecting 10 employees in undertakings of up to 100 employees, or 10 per cent of the employees in undertakings with between 100 and 300 employees, or at least 30 employees in undertakings employing more than 300 employees. In practice, this means that unions will have less room for manoeuvre to negotiate proper leaving conditions.
- As regards *working time flexibility*, three new measures have been introduced:
 - (i) The new reform removes a rule that has been in force for about 15 years prohibiting standard overtime in part-time employment. In addition to what Spanish law calls *horas complementarias* (specific overtime for part-timers, subject to some formal requirements and numerical limitations: this specific form of overtime continues to be lawful), part-timers can now work standard overtime (*horas extraordinarias*) like any other employee. The annual limit of 80 hours must be applied for part-time employment on a pro rata basis (the limit does not apply if overtime is compensated with time-off within the subsequent four months).
 - (ii) Flexible allocation of working hours over the year: after the 2010 labour reform employers could freely allocate up to 5 per cent of annual working hours over the year unless otherwise agreed in the applicable collective agreement. This rule has now been clarified: it can also be applied prior to negotiations on a new collective agreement.
 - (iii) The law no longer requires that employers obtain permission from the labour authority to temporarily reduce working hours or to institute temporary layoffs. Firms may implement temporary layoffs and temporarily reduce between 10 and 70 per cent of employees' working hours after following the legal procedure of collective consultation with employee representatives.
- *Unlimited successive temporary contracts are prohibited.* The reform restores the ban on successive layoffs for 24 months, which the previous government temporarily suspended on 26 August 2012. The ban will come into force on 31 December 2012.
- Companies with fewer than 50 employees (99 per cent of all companies) may introduce a *new employment contract* (so-called '*employment contracts in support of entrepreneurs*'). It is open-

ended with a trial period of one year but with unrestricted dismissal possibilities and compensation during the first year.

- *Apprenticeship contracts.* Furthermore the reform provides that the apprenticeship contract, reserved for people below 25 years of age, will be extended to people under 30 until the unemployment rate falls below 15 per cent. The new contract encourages businesses with fewer than 50 employees and self-employed workers to recruit, as well as granting a deduction from social security contributions of 3,000 euros for the recruitment of a first employee under 30. Deductions can go up to 3,600 euros if a company recruits someone who has been without a job for at least three months, up to 4,200 euros for long-term jobseekers over 45 and even 4,500 euros for women. There will be a one-year trial period for this contract, during which the employee may keep 25 per cent of his unemployment benefits and employers only have to pay 50 per cent of their social security contributions.
- *Training account throughout working life.* All employees with at least one year of service must receive 20 hours' annual paid leave for work-related training. This leave can be accumulated over three years. The employer must also provide employees with training to enable them to adapt if their jobs are altered, for example due to technological change.
- *The extension of expired collective agreements is limited to two years.* The reform puts an end to indefinite '*ultraactividad*', the automatic extension of collective agreements until the next collective agreement is signed, as used to be the case. This will force the social partners to speed up negotiations and sign agreements.
- *Company agreements take precedence over higher level collective agreements.* The reform gives precedence to agreements signed directly in the workplace to facilitate internal flexibility in businesses with regard to working time organisation, working hours, pay, internal mobility or productivity systems, among other things. The 2011 reform allowed sectoral agreements to reverse this by simply stating that company-level agreements would not prevail; the 2012 reform eliminates this option and company-level agreements will now prevail over sectoral ones. The Decree also provides that businesses reporting losses for more than two quarters may resort to the opt-out clause to derogate from the conditions laid down in territorial or sectoral collective agreements.
- In disputes on the application or modification of collective agreements, when the parties are unable to resolve matters themselves or by voluntary bilateral submission to *binding arbitration*, the law now imposes binding arbitration on the parties by a tripartite body within the Ministry of Employment (*Comision Consultativa Nacional de Convenios Colectivos*).

The trade unions immediately rejected these labour reform measures and called for protest demonstrations across the country. The employers' side, by contrast, welcomed them as a 'step forward'

in the modernisation of labour law. The trade unions have sought legal advice on lodging an appeal against the Decree as unconstitutional and perhaps lodging a complaint with the ILO for violating ILO Convention No. 98 on the right of association and collective bargaining. Despite two general strikes on 29 March and 29 May 2012, the labour law reform named “Emergency Act for the Reform of the Labour Market,” was adopted on 28 May 2012 without any major changes to the initial text presented by the government (while the reform was already in force via a royal decree, published on 12 February 2012 before the parliamentary process has begun).

Compared with the initial draft, the few changes deal with:

- In the case of mass redundancies in the public administration, employees who are not civil servants recruited after an entrance exam will get better protection than civil servants with a contract. Regional nationalist elected officials pushed for this, to defend employees recruited after an exam by the regions, yet without having civil servant status.
- The automatic extension of expired collective agreement is limited to one year, instead of two in the initial text.
- The new employment contract adopted in support of SMEs and self-employed workers and specifying a one-year trial period is limited. It was criticized because it paved the way for discretionary dismissals without pay. These contracts will only be valid as long as the country’s unemployment rate is higher than 15 %.
- SMEs hiring people over 45 with a permanent contract will receive bonuses.
- Access conditions to economic redundancies have been clarified: businesses will have to prove that sales have been declining for three quarters compared with the same three quarters of the previous fiscal year. This amendment was added so that seasonal factors could not be used against employees.
- Family members of a self-employed worker may register with social security with a 50% cut in contributions for 18 months while sorting out the situation of small family businesses, notably in trade and catering.

In order to fight early school leaving (1 in 3 Spanish young people aged 14-25 leave secondary school without a finishing certificate, in comparison to the European average of 1 in 5) and youth unemployment (51.1% in 2012), Royal Decree No. 1529/2012 was passed on 9 November 2012 to introduce an apprenticeship system in Spain.

References/sources

Electronic newsletters/websites

Planet Labor: <http://www.planetlabor.com> (reference period 2010-2013)

EIROOnline: <http://www.eurofound.europa.eu/eiro/> (reference period 2010-2013)

Epsucob@NEWS – Collective Bargaining in the Public Services: <http://www.epsu.org/> (reference period 2011 - 2013)

ETUI-AIAS Collective Bargaining newsletter:

<http://www.etui.org/E-Newsletters/Collective-bargaining-newsletter> (reference period 2010–2013)

ETUC website section on economic and social crisis: <http://www.etuc.org/r/1378>

ETUI website section on crisis: <http://www.etui.org/Topics/Crisis>

Periodicals

Social International (editions 2010 - 2013)

Other

Abelleira, F. (2012) Comments on the latest labour reform in Spain, Planet Labour focus, February 2012.

Available at: <http://www.planetlabor.com/Articles/plonearticle.2012-02-21.9178889219/>)

CCOO (2012) A labour reform designed only to satisfy employers and financial markets, CCOO Info Boletín electrónico, N° 30, Madrid, 16 February 2012.

Foundation 1° de Mayo (2012) Fifty two labour market reforms since the adoption of the Statute of Workers in 1980, Foundation 1° de Mayo publications: Labour market reforms in Spain and its impact on recruitment and employment, February 2012. Available at: www.1mayo.ccoo.es.

Laulom, S., Mazuyer, E. Teissier, C., Triomphe, C.E. and Vielle, P. (2012) How has the crisis affected social legislation in Europe? ETUI Policy Brief 2, 2012, Brussels: ETUI.

Available in English and French at: <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/How-has-the-crisis-affected-social-legislation-in-Europe>

Martin Puela, E. (2011) Les réactions du droit du travail à la crise économique. Espagne: radiographie d'une réforme, *Revue de Droit du Travail*, 9 (September): 521–530.

Muller, A. (2011) Employment protection legislation tested by the economic crisis: A global review of collective dismissals for economic reasons. Dialogue in Brief, No. 3, September 2011, ILO, Geneva. Available in French, English and Spanish at: http://www.ilo.org/ifpdial/information-resources/publications/WCMS_166754/lang--en/index.htm

Tajgman, D., Saget, C., Elkin, N. and Gravel, E. (2011) Rights at work in times of crisis: Trends at the country level in terms of compliance with international labour standards, Employment Sector, Employment Working Paper N° 101, ILO Geneva. Available at: http://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS_167804/lang-en/index.htm

Valdés Dal Rés, F. (2011) La ley de reforma del Mercado de trabajo: las singularidades de su objeto y los equívocos de sus objetivos, *Relaciones laborales*, 6: 1–7.

Valdés Dal Rés, F. (2012) Flexibilité interne et réforme du marché du travail: le cas espagnol in *Revue du droit compare du travail et de la sécurité sociale*, Comptrasec, Bordeaux IV, 2 :18-29.

Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)