



workshop

**Mapping of national law,
collective agreements and
jurisprudence concerning
work-related psychosocial
risks in the European
Union**

27-28 January 2022

etui.



Ana B. Muñoz
(anabelen.munoz@uc3m.es)

Associate Professor of Labour Law at
Carlos III University

Legal framework

Spain has no specific legislation on psychosocial risks in the workplace.

However, certain administrative criteria do exist with regard to psychosocial risks in the workplace.

- *Technical Criteria 69/2009 in matters of harassment and violence at work;
- *Technical Criteria 87/2011 in matters related to the occupation risk of robbery,
- ***Technical Criteria 104/2021 on psychosocial risks.**

Legal framework

Since 2018, **the right to disconnect** has been recognized in Spain (Organic Law 3/2018 of 5 December on Personal Data Protection and the Guarantee of Digital Rights).

The right to disconnect offers special protection for remote employees in Article 18 of Law 10/2021 of 9 July



The risk assessment and the planning of the preventive activity of remote work must take into account the risks characteristic of this type of work, paying special attention to the psychosocial, ergonomic, and organizational factors and the accessibility of the effective work environment. In particular, the distribution of the day, the availability times, and the guarantee of breaks and disconnections during the day must be taken into account.

Does it apply to employees and workers? Any exclusion of the scope of application?

- In Spain, there is no difference between employees and workers.
- However, certain employees are not protected by health and safety regulations, as is the case with domestic workers.

The different treatment of domestic workers.

Personal household services may be procured from an organization that provides this type of services or from a worker directly employed by the natural person in the household.

This division is important because in the second case domestic workers are excluded from the scope of the Law on the Prevention of Occupational Risks.

Does it apply to employees and workers? Any exclusion of the scope of application?

- There are a significant number of domestic workers who work as interns.
- This implies a situation of maximum dependence on the employer, since it is not only their main (and usually only) source of income, but also provides food and the place where the worker lives.

Collective agreements

- In fact, very few of these collective agreements, in fact, regulate psychosocial risks.
- Of these, the great majority of collective agreements include measures on moral harassment.
- Clauses on stress or psychosocial are minority ones.
- Unlike workplace violence and the different types of harassment, there are few protocols against work stress in the collective agreements

Collective agreements: a good practice

Article 91: a “**Team of psychosocial risks**” whose objective is “to analyze each of the evaluated positions, to establish the preventive measures to be applied to correct factors with high risks, and to make proposals for improvement for those factors that have been established as improvable.”

Support will be provided to the team from the Department of Occupational Health since “a personalized follow-up of each of the individual profiles defined in the psychosocial risk assessment carried out, establishes preventive measures at the individual or group level as considered necessary.” [*Convenio Colectivo de la Sociedad Pública Eusko Trenbideak / Ferrocarriles Vascos SACC* (BO País Vasco November 28, 2018)]

Collective agreements

- Article 61 sets specialties for working with automatic machines including the welding robot: *“The purpose of this agreement is to keep the automatic machines in operation for 8 hours of each shift, uninterruptedly and at optimum performance, as a result of the investment necessary for its acquisition, the substantive importance that it has for the production process and volume, and the autonomy that they develop (...).*
- ***In order to achieve the aforementioned object, that is, that those machines operate uninterruptedly and at optimum performance, the operators that work daily on these jobs, and while spending their working time on these machines, must adapt their morning breaks and those other breaks that the worker may have (bathroom breaks, coffee breaks) to the production processes of the machines, according to when the machines allow for them; therefore, the morning break as announced on the PA system will not apply to those workers. Likewise, said break should be done near the machine so that at no time is visual control of it lost (...).*** ([Collective Agreement of the Liebherr Industrias Mecánicas de Navarra company](#) BO. Navarra 7.4.2020 nº 74)



Case Law

In Spain, there have been several court cases related to **workplace stress** [STSJ Madrid 5.10.2005 (Rº 2236/2005), SAN 14.5.2014 (number 0091/2014), STSJ Cantabria 20.3.2019 (Rº 0000061/2019) and STSJ Madrid 19.11.2019 (Rº 445/2019)]

They were based on the framework agreement on work-related stress negotiated in 2003 by the European social partners.

Case Law

- If a risk of stress is identified, the employer should adopt preventive measures (to avoid, eliminate, or reduce the risk). The company has the duty to act to ensure the workers' safety and health, and a failure to act may result in its liability.
- The company is responsible for determining the appropriate measures.
- These measures will be adopted with the participation and collaboration of workers and/or worker representatives.

Conclusions

- The right to disconnect should be included in Law on Prevention of Occupational Risks.
- Specific legislation on psychosocial risks in the workplace?



uc3m | Universidad
Carlos III
de Madrid

anabelen.munoz@uc3m.es