

25. Spain

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Third-country nationals working in Spain will be included in the Spanish social security system. In fact, the validity of the initial residence and work permit is conditional on a worker's registration in that system. If they comply with the requirements, they will be entitled to social security benefits on the basis of equal treatment with national or local workers as regards health care, illness and temporary disability, as well as unemployment benefits, social assistance and family benefits. Because of the short duration of their employment, however, third-country nationals are often unable to access social security benefits, such as unemployment benefits (contributory), which in Spain requires 12 months of previous work. Intra-EU posted workers sent to Spain are not covered by Spanish social security because they remain in the social security system of the sending country during their posting.

Box 1 Sector-specific variations of social security rules

There is an important specific variation of social security rules applicable to posted workers of companies established in an EU/EEA country: during the period of providing services in Spain they must maintain their employment relationship with the posting company. Thus, regarding social security, the legislation of the state of origin will be applicable. The EU rules apply to third-country nationals with legal residence in an EU Member State, in accordance with the provisions of Regulations (EC) 1231/2010, 883/2004 and 987/2009 on the coordination of social security systems in the EU. In this sense, together with the residence or stay permit, workers must have the Portable Document (PD) A1 form that certifies the continuity of application of the social security legislation in their country of origin.

Employing workers posted from third countries in Spain who do not have legal residence and/or employment in another EU country constitutes a serious infringement by the employer with regard to foreigners (Art. 54 and 55 Law 4/2000)¹ and a serious infringement of labour law and work permit law (Art. 37 and 40 RDL 5/2000).² In any case, they have the right to health protection and health care under the same conditions as Spanish nationals.

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1. At the minimum grade the amount of the fine will be from €7,501 to €30,000.
 2. At the minimum grade the amount of the fine will be from €10,001 to €20,000.

Table 1.25 Overview of the relationship between form of migration and entitlement to a particular social security service

Third-country-national categories	Social security categories					
	Health insurance	Pension contributions	Unemployment insurance	Basic security (social assistance)	Insurance against accidents at work	Child benefits
Posted workers ³	No (covered in the sending country)	No (covered in the sending country)	No (covered in the sending country)	Yes	No (covered in the sending country)	No
Intra-corporate transfers	Yes, except if posted (covered in sending country)	Yes, except if posted (then covered in the sending country)	Yes, except if posted (then covered in the sending country)	Yes	Yes, except if posted (covered in the sending country)	Yes, except if posted
Seasonal workers	Yes	Yes	Yes	Yes	Yes	No (only if permanent or at least temporary resident)
Temporary agency workers	Yes, except if they are posted: covered in the sending country.	Yes, except if posted (then covered in the sending country)	Yes, except if posted (then covered in the sending country)	Yes	Yes, except if TCN is a posted worker	Yes, except if posted
High-level professionals	Yes	Yes	Yes	Yes	Yes	No (only if permanent or at least temporary resident)
Self-employed ⁴	Yes	Yes	No	Yes	Yes	Entitled if the third-country national and the children reside lawfully and permanently in Spain

Note: * The social security legislation of the country of origin must be applied to third-country-national posted workers by a company established in an EU country. In the case of posting by a company established outside the EU, Spanish social security legislation applies, although the agreements between Spain and the country in question must also be taken into account.

Source: Author's analysis, 2022.

Box 2 Changes during the Covid-19 pandemic

Exceptionally, several orders were passed to temporarily restrict non-essential travel from third countries to Spain, in line with European guidelines. The measures promoted by the Spanish government to contain the Covid-19 pandemic included the denial of entry of third-country nationals, except for holders of a long-stay visa issued by an EU Member State, cross-border workers, health professionals or care workers on their way to or returning from work, and transport workers in transit (Article 1 of Order INT/356/2020 of 20 April). However, there were no changes related to social security protection for third-country-national workers during the Covid-19 pandemic, who continued to receive the social protection offered by the Spanish system to those included in the system as employed workers.

3. Social security legislation of the country of origin must be applied to third-country-national posted workers by a company established in an EU country. In the case of posting by a company established outside the EU, Spanish social security legislation applies, although the agreements between Spain and the country in question must also be taken into account.
4. Third-country nationals with a permit for self-employment must fully respect Spanish social security legislation. They are usually obliged to pay social contributions, but do not benefit from all social benefits conferred on employees.

Description of the Spanish system

1. Overview of social security rights of short-term third-country-national migrant workers

The main legal norm that regulates the rights and obligations in terms of social security in Spain Royal Legislative Decree 8/2015 (Social Security Law) which, in its article 7, determines that foreigners who reside or are legally in Spain will be included in the social security system, provided that they carry out their activity in national territory. If third-country-national workers comply with the requirements set out in this legal framework, they will have access to all the social benefits offered by the system under equal conditions with Spanish workers, such as health care, illness, temporary disability, as well as unemployment benefits, social assistance and family benefits.

In fact, the effect of the initial residence and work permit is conditional on the worker's registration in the Spanish social security system by the employer. When this is valid, third-country nationals are subject to the Spanish social security system, meaning that from then on their employer must pay contributions on their behalf and these workers will have the right to access the benefits and services offered by the system on equal terms with Spanish employees, as there is full equality between them and foreigners who provide services in Spain legally, including social services and benefits (Article 14 of Law 4/2000).

2. Differences in social security rights of different categories of short-term third-country-national migrant workers

(i) Third-country-national seasonal workers

In Spain, third-country nationals who perform seasonal work (short period) are often not entitled, for example, to unemployment benefits or other social security benefits. This is because of the short duration of their work in Spain; they do not usually qualify for benefits that are designed for beneficiaries who contribute for a longer period to the system (12 months for contributory unemployment benefits, for example). In any case, there are no differences in Spain in relation to eligibility for access to social security benefits for third-country-national workers. If they meet the requirements, they will be entitled to social security benefits under equal treatment with national or local workers such as health care, illness, temporary disability, social assistance and family benefits.

(ii) Third-country-national posted workers

During their posting to Spain, posted workers shall maintain their employment contract and social security status with the company that posted them. Exclusively with regard to posting from non-EU/EEA countries, in the case of an applicable international instrument of social security, a posting certificate must be obtained from the competent authorities of the country of origin certifying that the worker

remains subject to the social security legislation of that country. In this case, the effectiveness of the temporary residence and work permit will take place at the time of the worker's legal entry into Spain. On the other hand, if there is no international legal social security instrument, the residence and work visa that is issued entitles the worker to enter and stay for a maximum period of three months, and to start work activity and registration in the social security system during the three months following legal entry into Spain. In this case, the company must designate, by means of a public document, a representative in Spain for the purpose of complying with social security obligations.

(iii) Third-country-national temporary agency workers

In Spain there are no differences in social security rights and obligations and no different categories for the access of third-country-national temporary agency workers. They must comply with the general requirements set out in the General Social Security Law for all other workers.

3. Conditions for obtaining different social security rights

The main legal norm that regulates social security rights and obligations in Spain is Royal Legislative Decree 8/2015 (Social Security Law) which, in its article 7, determines that foreigners who reside or are legally in Spain will be included in the social security system, provided that they carry out their activity in national territory. If third-country-national workers comply with the requirements set out in this legal framework, they will have access to all the social benefits offered by the system under equal conditions with Spanish workers, such as health care, illness, temporary disability, as well as unemployment benefits, social assistance and family benefits. Although there is formal equality, it is true that, due to the short duration of third-country nationals' work they have difficulties in accessing benefits, such as unemployment benefits, which require a minimum period of contribution to the Spanish system of 12 months.

4. Portability of benefits between host country and country of origin

Spain has signed bilateral international agreements with 23 countries, the aim of which is to ensure that workers who are nationals of signatory states and who move for professional reasons do not suffer any detriment to their social security rights, nor are they subject to unjustified double protection. To this end, rules are introduced to remove obstacles to the application of the different legislations, to connect them with each other and to harmonise relations among the different social security administrations.⁵

5. To access to bilateral agreements signed between Spain and other countries, please see: <http://www.seg-social.es/wps/portal/wss/internet/InformacionUtil/32078/32253?changeLanguage=en>

5. Social security rights of short-term third-country-national migrant workers during the Covid-19 pandemic

Several orders were passed to temporarily restrict non-essential travel from third countries to Spain, in line with European guidelines. The measures promoted by the Spanish government to contain the Covid-19 pandemic included the denial of entry of third-country nationals, except for holders of a long-stay visa issued by an EU Member State, cross-border workers, health professionals or care workers on their way to or returning from work, and transport workers in transit (Article 1 of Order INT/356/2020 of 20 April). There were, however, no changes related to social security rights or protection for short-term third-country-national migrant workers during the Covid-19 pandemic, who continued to receive the social protection offered by the Spanish system to those included in the system as employees.