POST-MEET
PROJECT

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SPAIN



GUIDE ON POSTING IN COSTRUCTION SECTOR

Introduction

Important notice and aims of the guide

This guide provides detailed information on the terms and conditions of employment and procedures applicable in the construction sector, including those related to postings.

Produced within the framework of the EU-funded Post-meet project (No. 101140103), it was published as part of a set of publications addressing Bulgaria, Italy, Poland, Slovenia, and Spain.

The Post-meet project aims to enhance the availability of information on posting targeting workers and employers, in this way supporting compliance with legislation. It also supports partner organisations in improving their communication channels. You can find more information on the project on the website of the organisations hosting this guide.

This guide does not provide legally binding information, nor is it intended as an exhaustive source of information on posting. Its structure was elaborated bearing in mind information already available in public portals, most notably the Your Europe web-page on posting, the practical guide on posting of the European Commission, and the leaflet "Posted workers in the construction sector" elaborated by the European Labour Authority, all available in the 'Useful contacts and sources' section at the end of this document. The idea was to complement existing official sources of information on this subject and to focus on country-level provisions related to posting in the construction sector.

The guide is thought to suit the standard situation whereby posted workers remain affiliated for social security purposes in the home country and are subject to the legislation of the host country for selected matters. As explained below, there are exceptions to this standard, for instance, in case the posting has a long duration or if the worker is sent to replace another person. It is also important to stress that the host country.

While recommending seeking customised advice in case of need, we recall that the provisions indicated in this guide may be subject to developments following amendments in the relevant legal sources, as well as in national and European case law, which can especially affect the boundaries of national provisions applicable in cases of posting

Asturias Construction Labour Foundation of the Principality of Asturias (FLC Asturias)

FLC Asturias, a non-for-profit social and labour joint organisation and the first labour foundation in the sector in Spain, was created in 1988 to support professionals in the construction sector in Asturias. It is a joint institution created by the employers' organisation Confederación Asturiana de la Construcción - ASPROCON (CAC-ASPROCON) and the trade union organisations Comisiones Obreras del Hábitat de Asturias (CCOO Hábitat) and the Federación de Industria, Construcción y Agro de la Unión General de Trabajadores (UGT FICA). It has two offices in Asturias.

Its mission is to provide services of general interest for the construction sector in the Principality of Asturias through the joint management of social agents and the linking of resources in favour of workers and companies in the industry.

Its vision is to support the sustainability, development and improvement of the construction sector in the Principality of Asturias, by fulfilling its foundational purposes through effective and efficient management of available resources under conditions of impartiality and transparency.

It has a Vocational Training School with a wide range of specialised courses for workers in the sector. It grants financial aid and social benefits that reward loyalty to the sector and support workers and their families. It encourages research, development and promotion of activities that prevent accidents and improve occupational health and safety. It supports access to the first home for workers in the sector. It encourages scientific and technical research in the construction sector, supporting the use of new technologies, and promotes the reputation of the Asturian construction sector in Spain and abroad.

Asturian Construction Confederation Asprocon (CAC-ASPROCON)

CAC-ASPROCON, the business association representing the construction sector in Asturias, was created in 2009 through the merger of CAC, created in 1978, and ASPROCON. It has two headquarters, the main one in Oviedo and the other in Gijón. It has more than 300 associated companies integrated in the different sub-sectors: Real Estate Developers, specialised in all types of residential building; Contractors, dedicated to the construction of large works, public and private building, and to renovation works; and Industry and Construction Services, which develops various activities that represent the entire value chain of the sector.

CAC-ASPROCON constantly supports its members by providing advisory services in various areas (legal, labour, tax, occupational risk prevention, quality, environment, international activities, tenders and bids, etc.), organising training activities and preparing and disseminating technical reports.

Its mission is to defend, lead and represent the general interests of all its associated companies before public administrations, institutions and society in the Principality of Asturias. It is a member of several national associations in the sector and promotes the internationalisation of its member companies.

Its vision is to be the main reference for companies in the sector through an efficient, flexible and transparent organisation made up of highly qualified professionals.

What is the transnational posting of workers?

Under Directive 96/71/EC (as amended by Directive 2018/957/EU) and Regulation (EC) 883/2004, the notion of 'posting of workers' is used to define rules applicable in case of temporary mobility of workers in the framework of a provision of services in the European Union.

Requisites for posting are the existence and the prosecution of an employment relationship between an employer, to be typically established in an EU Member State (sending undertaking), and an employee therein habitually employed, who is sent to a company based in another EU Member State (host undertaking) to provide a service for a limited period. The two companies shall be linked by a contractual relation (for instance, subcontracting), by participation in the same group, or by a contract for the provision of temporary work, in case of posting by a temporary work agency.

As a rule, posted workers remain attached to the social security institutions of the sending country. Still, they are entitled to the remuneration defined in the legislation and collective agreements of the country where they temporarily work (referred to as the country of destination or the 'host country').

According to Directive 96/71/EC, as amended by Directive EU 2018/957, they are entitled to the application of the host country legislation under several matters, if more favourable, including:

- maximum work periods and minimum rest periods;
- minimum paid annual leave;
- remuneration, including overtime rates, and excluding supplementary occupational retirement pension schemes;
- the conditions of hiring of workers, in particular the supply of workers by temporary employment agencies;
- health, safety and hygiene at work;
- protective measures concerning the terms and conditions of employment of pregnant women or women who have recently given birth, of children and young people;
- equality of treatment between men and women and other provisions on non-discrimination;
- the conditions of workers' accommodation if provided by the employer, to workers away from their regular place of work;
- allowances or reimbursement of expenses to cover travel, board, and lodging for workers away from home for professional reasons.

Regarding supplementary occupational retirement pension schemes, in the light of Article 6 of Council Directive 98/49/EC, workers can still be covered by the host country provisions if they are not insured in the sending Member State.

According to Directive EU 2018/957, the requisite of 'limited duration' of posting shall be assessed based on the actual circumstances, for instance in the light of the nature of the implemented activities, or of the assumption that the worker will resume activities in the sending country after the completion of the service abroad.

Anyhow, Directive EU 2018/957 introduced a specific limit to the application of the host country's labour legislation only for selected matters. Suppose posting exceeds 12 months (so-called 'long-term posting'). In that case, posted workers are entitled to the complete set of labour law applicable in the host country, net of procedures, formalities, and conditions for the conclusion and termination of the employment contract (including non-competition clauses), as well as supplementary occupational pension schemes. Upon a motivated notification to the authorities of the host country, the sending undertaking can postpone the application of long-term posting rules up to a maximum of 18 months from the beginning of posting.

In the event of posting, companies must submit a preliminary declaration to the authorities of the host country before commencing works abroad. In accordance with Directive 2014/67/EU, this declaration includes details necessary to identify the company and workers involved, the place of work, and other complementary information. Following the principle of freedom to provide services in the EU, this declaration is not subject to any formal authorisation.

On the Your Europe web-page on posting linked in the 'Useful sources and contacts' section, it is possible to find national websites on posting, usually available at least in English, and including information on working conditions, valuable contacts and templates of the declaration.

Furthermore, to certify compliance with the minimum criteria necessary for maintaining affiliation in the sending country during works abroad, as per Article 12 of Regulation (EC) 883/2004, companies must request the release of the 'A1 form' to the social security authorities of the sending country, preferably before posting.

It is also possible to remain affiliated with the social security authorities of other non-EU countries in the presence of bilateral agreements with the relevant EU country of posting.

In other residual cases, for instance in case of posting from other non-EU country, in case of posting lasting more than the length of 24 months entailed by Article 12 of Regulation (EC) 883/2004 or if posted workers are sent to replace other persons, workers shall be affiliated as a rule to social security authorities of the host country. Upon request, the competent authorities of the sending and host countries can agree on exceptions, such as keeping insurance in the sending country for more than 24 months, in the interest of concerned persons (Article 16).

Regarding the taxation of posted workers' remuneration, relevant information should be sought in bilateral conventions to avoid double taxation. Typically, these agreements follow the so-called 183-day rule, which stipulates that taxation remains in the sending country, provided the period spent abroad does not exceed 183 days within a taxable year.

Terms and conditions of employment

What is the minimum wage applicable in Spain?

Please specify here: (i) presence of legal/collectively agreed minimum wages; (ii) presence or not of different minimum wage levels according to experience/occupation; (iii) determination and amount of minimum wage in the construction sector according to current legislation/collective agreements.

Conclude by stating that posted workers are entitled to the fullest "remuneration" applicable under your country's legislation or collective agreements, recalling the following questions.

The Minimum Interprofessional Wage (SMI) is the minimum wage paid to a worker for a full working day. It is set annually by the government, after consultation with the most representative trade union organisations and employers' associations. The minimum wage includes only monetary remuneration. This wage is understood to refer to the legal working day in each activity. If a shorter working day is worked, it shall be paid on a pro rata basis.

In the year 2025 and for all activities in agriculture, industry and services, regardless of the sex and age of the workers, it is fixed at 39,47 euros gross per day, or 16.576 euros gross per year, distributed over 14 payments of 1.184 euros.

The Minimum Interprofessional Wage refers to the gross salary of workers. The 1.184 euros per month in 14 payments represent the total salary payments, and if the extra costs are prorated, it will be 1.381 euros per month in 12 payments.

Employers who post workers to Spain must guarantee the minimum wage established in the collective agreements applicable in the place and the sector/branch of activity, for the same professional group or category as a national worker. This amount may never be less than the Minimum Interprofessional Wage (SMI) in force at any given time, established by the government or by decree.

In addition, posted workers have the right to the application of the full remuneration applicable under the national and provincial Spanish collective agreements, as detailed in the following sections.

What other elements of remuneration apply to posted workers?

Indicate here other salary elements applicable independently of the working conditions, such as thirteen months' salary or additional remuneration fixed at the company or local level according to the national context, specifying that the worker will receive at least the equivalent of the amount of the minimum wage. These elements comprise the gross amount of remuneration, plus reimbursement of travel, accommodation, and subsistence expenses, as determined by the home country's regulations. In this case, an example of the

calculation of the monthly salary for a full-time position according to the most representative legislation or collective agreements would be useful.

Other fixed elements of remuneration on top of the minimum wage may be set by provincial agreements, which can be consulted on the website of the National Construction Confederation (CNC).

The worker shall be entitled to the amounts therein determined, plus reimbursement of expenses actually incurred (travel, board and lodging) as a result of the posting from abroad. These expenses shall be determined in accordance with the regulations of the country of origin.

Suppose neither the employment contract nor the provisions applicable to the employment relationship in the sending country indicate whether the elements of the specific travel allowance are paid as reimbursement of travel expenses or as part of the remuneration and what these elements of the remuneration are. In that case, the full allowance will be considered to be paid as reimbursement of expenses. And they will not be taken into account in comparing the remuneration paid with the remuneration applicable under Spanish law.

Does the remuneration include other benefits due in specific circumstances?

Please confirm and indicate the extent and amount of: per diems or reimbursements due in case of travel from the place of work in the host country; amount of the most usual items due for additional work or work under specific conditions (allowances in case of travel within the host country, overtime and allowances for night and weekend work, plus the most usual allowances due for work under specific conditions (e.g. heavy work or work in tunnels).

Yes, in addition to the minimum wage, allowances or amounts based on specific conditions can be paid, such as:

- Seniority allowance and disability allowance according to personal conditions;
- benefits for work-related working conditions (night work or exceptionally toxic, arduous or dangerous work)

Bonuses, incentives, piecework, activity or attendance bonuses may also be paid, or overtime, depending on the quality and quantity of the work.

Employers may freely and voluntarily pay additional amounts.

Disability allowance

1. Workers who are recognised by the corresponding official body as having a degree of disability shall be entitled to receive a personal allowance at the amounts established in the sectoral agreement.

2. The degree of disability is unique and therefore entitles to a single benefit; consequently, no subsequent higher degree of disability may be added to the existing degree of disability. If the degree of disability is reduced, the benefit to be received shall be adjusted to the new percentage recognised.

Exceptionally arduous, toxic or dangerous work.

1. Workers who are required to perform exceptionally arduous, toxic, or dangerous work shall receive an increase of 20% of their basic pay. If such work is performed for half the working day or less, the increase shall be 10%.

2. The amounts equal to or greater than the bonus fixed in this article, established or set by the companies, shall be respected, provided that they have been granted for reasons of exceptional hardship, toxicity or dangerousness, in which case the increases shall not be required to be paid. The increase does not apply if the company establishes a bonus of the same or larger size, possibly as part of the qualifying salary f

Night work

1. Staff on duty between 10 p.m. and 6 a.m. shall receive a night work bonus equal to 25 per cent of the basic salary of their grade.

2. If the time worked during the night period is less than four hours, the bonus will be paid for the actual time worked. If the night hours exceed four hours, the bonus shall be paid for the entire day worked.

3. Where there are two shifts and only one hour of the night period is worked on each shift, the bonus shall be 1% of the basic salary of their category.

Other bonuses

Considering that workers' mobility is widespread in the sector, an additional bonus for transport costs may be established to compensate workers for the expenses incurred while travelling to their workplace. It should be calculated according to each provincial collective agreement, taking into account the distance travelled and the actual working hours. The amount must be the same for all groups and categories of workers.

The sectoral agreements establish supplementary benefits, such as tools and work clothes, to compensate for expenses incurred by the worker, within the limits established in the agreement.

Another bonus established by the provincial agreements is the subsistence allowance, which is of an indemnifying or compensatory nature and irregular in nature. Its purpose is to compensate the worker's food and accommodation expenses incurred as a result of their posting situation. It is calculated in accordance with the following conditions:

1. The worker shall receive a full subsistence allowance when, as a result of the journey, they are unable to stay overnight at they usual place of work or residence in Spain. It shall always be paid on a per-calendar-day basis.

2. If the employer organises and pays for the board and lodging of posted personnel, provided that the conditions and sufficient facilities are fulfilled, only 20 per cent of the full daily subsistence allowance shall be due to the worker.

3. A half-day allowance shall be paid if, as a result of the journey, the worker has to eat away from their normal place of residence, provided that the undertaking does not provide it and the worker can spend the night at their normal place of residence. The half-day allowance shall be paid for each day worked.

4. The per diem or half-day allowance shall always be paid independently of the employee's remuneration and on the exact dates as the latter; however, for journeys lasting more than one week, the employee may request fortnightly advances of the allowances mentioned above, which must be justified.

5. The amount of the full benefit and the half benefit shall be fixed within the framework of collective agreements.

6. The full subsistence allowance shall not be paid in cases of legal suspension of the employment contract, except in cases of temporary incapacity, in which the company maintains travel arrangements.

Are there sectoral funds that intermediate holiday pay or other elements of remuneration?

Unlike in other countries, Spain does not have sectoral funds for workers in the construction sector.

Where is the official and updated information on applicable remuneration?

Wages are set in the collective agreements of the construction sector. There is a basic regulation established in the General Agreement of the Construction Sector, but in each province and autonomous community, there is an agreement that tends to improve the working conditions of the state agreement.

In the construction sector, information on the different agreements applicable can be found on the Provincial Agreements of the National Confederation of Construction Companies (CNC) website.

What are the maximum work periods and minimum rest periods to which workers are entitled?

The duration of working time is agreed in collective agreements or employment contracts.

The maximum duration of the ordinary working week shall be forty hours a week of actual work on an annual average.

At least 12 hours must elapse between the end of one day and the beginning of the next.

The normal number of hours of actual work may not exceed nine per day, unless a collective agreement or, failing that, an agreement between the undertaking and the workers' representatives provides for a different distribution of daily working time, with due regard in all cases for the rest period between shifts.

When the duration of a continuous working day exceeds six hours, a rest period of not less than fifteen minutes shall be granted. This rest period shall be regarded as actual working time where this is provided for or laid down in the collective agreement or contract of employment.

Working time shall be calculated in such a way that, both at the beginning and at the end of the working day, the worker is at his or her workstation.

The collective agreement for the construction sector sets the standard annual working time for the year 2025 at 1.736 hours.

In construction, each provincial or, where appropriate, regional collective agreement establishes a working timetable that distributes the agreed annual working hours. This timetable will be applied as long as the company and the workers' legal representatives have not agreed on a different adjustment at the different workplaces. At each workplace, the company must display the working timetable agreed upon in the provincial or, where appropriate, regional agreement, or for the workplace itself, in a visible place.

The company shall ensure that daily records of workers' working time are kept, including the specific start and end time of the working day. Mandatory records of workers' presence at the workplace on each working day, public holiday or non-working day shall be appropriately identified.

Each company will implement its daily time recording for its employees.

However, in the case of subcontracting, upon agreement between the main contractor and the subcontracting company, the latter may use the time recording systems of the main company, provided that each worker and their respective company are identified to deduct possible responsibilities in case of non-compliance with the time recording obligations. The legal representatives of the employees of both companies shall be informed of any agreement on the use of the time recording systems of the main company by the subcontractor.

The records shall remain available for consultation by workers and their legal representatives.

How long is the minimum paid annual leave?

The period of paid annual leave, not replaceable by financial compensation, shall be that agreed in the collective bargaining agreement or individual contract. In no case shall its duration be less than thirty calendar days.

In construction, regardless of the type of employment contract, all workers shall be entitled to an annual paid leave period of thirty calendar days, of which twenty-one days must be working days, which may be divided into periods of at least ten working days and which, in any case, shall begin on a working day that is not a Friday.

Leave shall be taken in calendar years. During the first year of service in the company, only the proportional part corresponding to the time worked during that year shall be taken.

Leave entitlement is not subject to financial compensation. However, staff who cease to work during the year shall be entitled to payment of the salary corresponding to the part of the accrued and not taken leave, as an integral part of the severance pay.

Who are the actors involved in occupational safety and health, and what are the related responsibilities?

Conclude by presenting the different roles at the site and company levels. According to the EU Framework Directive on Safety and Health at Work and the Directive on temporary or mobile construction sites, these will include site health and safety coordinators, protective and preventive services and workers' representatives. Please highlight here the information and consultation rights of workers.

The promoter plays a crucial role in assessing and mitigating risks during construction. It must ensure that all companies and self-employed workers involved in the execution of the works are aware of the specific risks of the site (as a work centre), as well as the preventive measures necessary for their control and those relating to possible emergencies that may arise. To this end, he will inform the contractor so that it can adapt its work procedures to the specific work situations, as outlined in the occupational health and safety plan.

The health and safety coordinator during the execution of the work shall provide each company present on the site, including self-employed workers, with the information and means necessary for their coordination. The coordinator shall provide each contractor, as well as other companies and self-employed workers, with the means he deems appropriate to ensure an adequate exchange of information between them and the adoption of working methods that allow all agents active on the site to work simultaneously and safely.

More specifically, in the field of construction, most of the responsibility for preventive control lies with the main contractor, who must plan, organise and control the actions necessary for effective coordination between the companies and self-employed workers who depend on him. He must also draw up an occupational health and safety plan for the site, detailing all the work procedures to be followed by his own workers, the self-employed and those of his subcontractors. The contractor, before the start of the works, must have given each subcontractor and self-employed worker their share of the occupational health and safety plan. The contractor shall also continuously monitor the activity of these subcontractors and self-employed workers, paying particular attention to the risks arising from their participation in the works. In addition, whenever certain activities may pose a serious risk to the workers who carry them out, the main contractor must designate a Preventive Resource, a person responsible whose main function is to supervise compliance with the preventive activities in relation to the risks arising from the situation that has determined their presence, to achieve adequate control of these risks.

Each subcontractor shall be responsible for its employees, regardless of the obligations incumbent on the contractor or the developer. The subcontractor shall comply with and ensure that its employees respect the provisions of the health and safety plan and the occupational risk prevention regulations. Workers must heed the indications and comply with the instructions received from the health and safety coordinator during the execution of the work.

In particular, subcontractors and self-employed workers shall act under the direct coordination of their contractor. They shall also comply with the instructions given to them by the health and safety coordinator during the execution of the work.

Health and safety information on the site will be provided by the main contractor, who is responsible for drawing up the site safety plan. Each subcontractor or self-employed worker shall receive a copy of the sections of the safety plan necessary for the execution of their work and shall inform their workers of the necessary preventive measures to be complied with.

About posted workers, the employer shall provide them with the necessary health and safety information and training, as well as the equipment of work required for the execution of the construction work.

The information that companies must provide to workers must be prior to the start of the works. This information shall refer both to the risks inherent to their own professional activity and to those corresponding to the job to be carried out and to the other risks existing on the site that may affect them, as well as the preventive measures implemented for their elimination or reduction. The worker may not start work on the site until they have completed the process of receiving information on the risks and the preventive and protective measures for work on the site.

The occupational health and safety plan and its amendments shall be made available to the legal representatives of the employees of both the contractor and subcontractors. The relevant information to be included shall relate to the site as a whole, with particular attention to interactions and incompatibilities that may occur both on and in the immediate vicinity of the site.

Are there specific requirements in OSH legislation on subcontracting, and how do they affect subcontracting with a foreign company?

Subcontracting is a widespread practice in the construction sector in Spain. It is commonly used to outsource specialised work or to manage demand variability. It is the usual type of service provision under which posting between companies not belonging to the same group is legitimate. Some of the main reasons for this practice are:

Specialisation:

Many construction companies choose to subcontract specific jobs that require specialised skills or equipment, such as electrical installations, plumbing or carpentry work.

Flexibility:

Subcontracting allows construction companies to tailor their workforce to the needs of each project, avoiding the hiring of permanent staff for one-off jobs.

Cost reduction:

In some cases, outsourcing can be more cost-effective than hiring staff directly, especially for jobs that require a high investment in equipment or training.

Subcontracting in construction in Spain is subject to strict regulation to guarantee the safety and rights of workers. Law 32/2006, which regulates subcontracting in the construction sector, establishes limits and requirements to avoid job insecurity and guarantee compliance with health and safety regulations.

The subcontracting of foreign companies in the construction sector in Spain entails compliance with a series of specific obligations and requirements regarding occupational health and safety. These requirements aim to ensure that, regardless of the company's origin, worker protection standards are maintained.

In general, Spanish OSH legislation applies to all work carried out on Spanish territory, regardless of the origin of the company.

Foreign companies wishing to subcontract in construction works in Spain must register in the Register of Accredited Companies (REA). This registration is an essential requirement to be able to operate legally in the sector. Registration in the REA involves demonstrating that the company complies with the obligations set out in the Spanish OSH regulations. This may require the presentation of documentation accrediting the training in occupational risk prevention of its workers, as well as the possession of an adequate preventive organisation.

The following are the main requirements that companies must fulfil to register in the REA:

1. To have an adequate preventive organisation in place:

Companies must have an organisational structure that guarantees the integration of occupational risk prevention in all their activities.

This implies the designation of human and material resources for prevention, as well as the elaboration of prevention plans and risk assessment if it is a main contractor.

2. Proof of training in occupational risk prevention:

Both management and employees of the company must have the necessary training in occupational risk prevention, in accordance with the sectoral collective bargaining agreement in force.

The completion of courses and the obtaining of certifications that demonstrate competence in this area must be accredited. These must be given by entities authorised by the FLC to provide compulsory training in Health and Safety in Construction by the FLC.

3. To have adequate infrastructure, material and human resources:

Companies must have the necessary resources to carry out their activity safely, including personal protective equipment, machinery and suitable tools. All machinery and equipment used on-site must have the necessary documentation and comply with European and Spanish regulations.

They must also have the qualified personnel to carry out the work.

4. Directly organise and direct the work carried out by his workers on the site:

Companies registered in the REA must be responsible for the organisation and management of the work carried out by their workers on the site.

This implies that they must take responsibility for the health and safety of their workers during the execution of the work.

5. Assume the risks, obligations and responsibilities inherent to the development of the business activity:

Companies must assume responsibility for the occupational risks derived from their activity, as well as the obligations and responsibilities established in the regulations in force.

What are the requirements applicable to the Spanish ORP legislation on training and medical surveillance?

Companies must ensure that all workers receive adequate training, according to their job or function, in the prevention of occupational risks, so that they are aware of the risks and the measures to prevent them.

The General Agreement for the Construction Sector (CGSC) defines the characteristics of the preventive training, aimed at workers who provide their services in companies included in its scope of application.

This agreement stipulates that workers must receive training corresponding to the job or trade they perform. In addition to the initial training, the specific training shall include knowledge and standards related to the job and the activities performed. The training activities and their corresponding schedules are detailed in the agreement.

Furthermore, this training preventive by trades has a specific training content and a duration of 20 teaching hours, which must be classroom-based and must be given before the worker starts work on the site.

All this training must be given by an entity approved by the Fundación Laboral de la Construcción (FLC), without it being necessary to recognise specific training given abroad.

Regarding health surveillance of workers, the employer shall ensure that employees are regularly monitored to reduce or prevent risks inherent in their work. This monitoring may only be carried out with the worker's consent. The only exceptions to this voluntary monitoring are the mandatory examinations to assess the impact of working conditions on the employee's health or to check whether the employee's state of health may pose a danger to himself, to other workers or other persons connected with the undertaking, or when so provided by a legal provision in relation to the protection of specific risks and particularly hazardous activities.

This health surveillance may only be carried out by the company's own or external prevention services, which the public administration must accredit.

Who are the main people to contact in case of occupational safety and health problems?

It is necessary to contact the company's prevention department if the safety problems focus on activities that may pose a serious risk to workers. The main function of the prevention department is to supervise compliance with preventive activities in relation to risks arising from the specific situation in order to achieve adequate control of these risks.

In the field of construction, most responsibilities in preventive matters fall on the main contractor, who must plan, organise and control the necessary actions for effective coordination between the companies and self-employed workers who depend on him. In addition, he must continuously monitor the activity of subcontractors and self-employed workers, paying special attention to the risks arising from their concurrence on the site. Therefore, in the event of health and safety problems on the site, the main contractor or their representative on site (foreman or site manager) should be contacted.

Workers may also address or report any incident to the health and safety coordinator.

Finally, it should be noted that the Labour and Social Security Inspectorate (ITSS) is responsible for supervising compliance with regulations on occupational risk prevention, proposing the corresponding sanction to the competent labour authority in the event of non-compliance (www.mites.gob.es/itss/web/index.html).

Through the ITSS, workers can report any lack of safety that has not been taken into account by those responsible for the work site.

In the event of an accident at work, the Law on Prevention of Occupational Risks establishes that the employer is obliged to notify the labour authority in writing of any damage to the health of the workers in their service that has occurred as a result of their work.

The deadline for reporting the accident to the competent Labour Authority in cases of a very serious accident, fatal accident or accident involving more than four workers is 24 hours.

The accident reporting system (DELTA) is currently the responsibility of the Social Security General Treasury (TGSS). The current system requires affiliation to the Spanish Social Security in order to use it, so at present, posted workers cannot comply with the obligation to declare accidents.

The worker's occupational accident insurance remains valid in the country of destination, provided that the company has notified the Spanish Social Security of the worker's posting.

What provisions must be observed with regard to the working and employment conditions of pregnant women, women who have recently given birth, children or young people?

The assessment of occupational risks is a process aimed at identifying, estimating and evaluating risks that cannot be avoided, obtaining the necessary information for the adoption of the necessary measures to eliminate and control these risks. All companies are required to conduct a risk assessment of all their workplaces.

The risk assessment should analyse the risks in jobs where pregnant women or women may be affected.

On maternity protection:

The risk assessment shall include the determination of the nature, degree and duration of exposure of pregnant workers or newborn workers to agents, processes or working conditions which may adversely

affect their health or that of the unborn child, in any activity which may present a specific risk. If the risk assessment reveals a risk to the safety and health or a possible impact on the pregnancy or breastfeeding of such workers, the employer shall take the necessary measures to avoid exposure to that risk by adapting the working conditions or working hours of the worker concerned. Such measures shall include, where necessary, avoiding night work or shift work. If it is not possible to adapt the working conditions or working hours or, despite such adaptation, the working conditions are likely to adversely affect the health of the pregnant worker or the unborn child, she shall be required to perform a different job or function compatible with her condition. The employer shall determine, after consultation with the workers' representatives, the list of jobs exempted from risk for this purpose.

The change of post or function shall be carried out in accordance with the rules and criteria applied in cases of functional mobility and shall remain effective until the worker's state of health allows them to return to their previous post.

Suppose such a change of post is not technically or objectively possible, or cannot reasonably be required for justified reasons. In that case, the worker concerned may be suspended from her contract for risk during pregnancy for the time necessary to protect her safety or health and for as long as she can't return to her previous post or another post compatible with her condition.

Pregnant workers are entitled to paid time off from work for prenatal examinations and childbirth preparation techniques, subject to prior notification to the employer and justification of the need to carry them out within the working day. The standard maternity leave duration is currently 16 weeks.

On the protection of minors:

Persons under the age of sixteen are prohibited from working.

Workers under the age of eighteen may not perform night work or those activities or jobs for which limitations on their employment are established in accordance with the provisions of the Law on Occupational Risk Prevention (LPRL) and the applicable regulations. Likewise, they may not work overtime.

Before young persons under the age of 18 take up employment and before any significant change in their working conditions, the employer shall assess the jobs they are to perform in order to determine the nature, degree and duration of their exposure, at any activity likely to present a specific risk in this respect, to agents, processes or working conditions likely to jeopardise the safety or health of such workers.

To this end, the assessment shall take particular account of the specific risks to the safety, health and development of young people arising from their lack of experience, their immaturity in assessing existing or potential risks and their still incomplete development.

In any case, the employer shall inform these young people and their parents or guardians involved in the recruitment of the possible risks and of all measures taken for the protection of their health and safety.

What is non-discrimination in Spain, and where can I find more information?

The principles of anti-discrimination legislation are presented here, reference is made to the bodies that provide support in cases of discrimination and reference is made to relevant legal acts for further information.

In Spain, non-discrimination is defined as the absence of any distinction, exclusion or restriction based on personal or social grounds. This implies that all people are entitled to enjoy the same rights and freedoms, regardless of their origin, race, sex, religion, opinion, age, disability, sexual orientation, gender identity or any other personal or social condition or circumstance.

Anti-discrimination legislation in Spain is based on the following principles:

- Equality: All persons are equal before the law and are entitled to the same rights and freedoms.
- Non-discrimination: No one shall be discriminated against on any personal or social grounds.
- Equal opportunities: All individuals have the right to equal opportunities in all areas of life.
- Comprehensive protection: Anti-discrimination legislation protects individuals in all areas of life, including work, education, housing, health, access to goods and services, and participation in public life.

In Spain, there is currently a Ministry of Equality whose competences are the proposal, elaboration and development of norms, actions and measures aimed at guaranteeing equal treatment and opportunities, especially between women and men.

Workers have the right not to be discriminated against, directly or indirectly, in employment or once employed, on the grounds of sex, marital status, age, racial or ethnic origin, social status, religion or beliefs, political ideas, sexual orientation, trade union membership or not, as well as on the grounds of language, within the Spanish State.

Regulatory precepts, clauses in collective agreements, individual agreements and unilateral decisions by the employer that give rise to situations of direct or indirect unfavourable discrimination on grounds of age, sex, origin (including racial or ethnic origin), marital status, social status, religion, social origin or disability are considered null and void (Art. 17 ET).

Unilateral decisions by the company that involve direct or indirect unfavourable discrimination on the grounds of age or disability, or favourable or adverse discrimination in terms of pay, working hours, training, promotion and other working conditions, on the grounds of sex, origin, including racial or ethnic origin, marital status, social status, religion or beliefs, political ideas, sexual orientation, membership or non-membership of trade unions and their agreements, constitute very serious breaches.

Anyone can file a complaint for any type of discriminatory attitude in the workplace with the Labour and Social Security Inspectorate (ITSS).

Are posted temporary agency workers subject to different conditions than other posted workers?

Temporary agency workers are entitled to the same pay and working conditions as workers in the user undertaking.

Employers who post their workers to Spain in the framework of a transnational provision of services must guarantee them, irrespective of the law applicable to the employment contract, the working conditions provided for in Spanish employment legislation. The working conditions provided for in Spanish employment legislation shall be those contained in the legal or regulatory provisions of the State and in the collective agreements and arbitration awards applicable in the place, sector, or branch of activity.

Temporary employment agencies and user undertakings shall guarantee the working conditions and the prevention of occupational hazards of posted workers, without prejudice to the application of more favourable working conditions or labour legislation of the State of establishment or where the user undertaking sending the worker to Spain carries out its activity.

These workers are entitled to receive the same remuneration as workers of the user enterprise who perform equivalent tasks. This means that they cannot be discriminated against in terms of pay. In addition to wages, workers posted through employment agencies are entitled to the same basic working conditions as those in the user company, including working hours, weekly rest, holidays, health and safety at work, among others.

Temporary work agencies (ETTs) are obliged to ensure that posted workers comply with Spanish labour regulations and to inform them of their rights and obligations. In addition, they must comply with the reporting obligations set out in the Act, which are more stringent for temporary employment agencies than for other companies. The contractor also has the right to obtain information on the provisions applicable to the agency's workers.

In addition, the law stipulates that the user undertaking must inform the temporary agency of the working conditions applicable in its undertaking.

Other administrative and legal aspects

What are the reporting obligations in the case of posting?

See here for pre-notification of posting, how to notify long-term posting and the A1 form provided for in Regulation 883/2004. Please also explain if you are applying for a posted worker card.

Companies shall also request the A1 certificate to confirm the lawful affiliation of the worker for social security purposes in the home country. The competent authority can be found for each Member State at this link: https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/social-security-forms/contact_points_pd_a1.pdf

The employer who posts workers to Spain in the framework of a transnational provision of services must notify the posting, before its commencement and regardless of its duration, to the labour authority of the Autonomous Community where the services are to be provided. In the event that the services are provided in the territory of the Autonomous Cities of Ceuta and Melilla, the notification of the posting must be addressed to the Labour and Immigration Areas of the respective Government Delegations. The notification shall be made by electronic means.

It is not necessary to report the posting if its duration does not exceed eight days, unless the company is a temporary employment agency.

The posting declaration shall contain information on the company, the workers and the service to be provided in accordance with the indications laid down at the EU level by the Enforcement Directive 2014/67/EU.

When the company posting workers to Spain is a temporary employment agency, the notification of posting must also include the following document/information:

1. Proof that it meets the requirements of the legislation of its State of establishment for making workers employed by it available on a temporary basis to another user undertaking.

2. Specification of the temporary needs of the user undertaking to be met by the contract for the provision of services, indicating the relevant case of those provided for in Art. 6 of Law 14/1994 of 1 June 1994, which regulates temporary employment agencies.

In the case of chain posting of temporary agency workers, the temporary agency shall notify the posting and include in the notification, in addition to the above provisions, the following:

1. Identification of the foreign user company sending the worker to Spain.

2. The determination of the services that the posted workers are going to provide in Spain, with an indication of the corresponding case of those provided for in Art. 2.2 of Law 45/1999.

The competent Autonomous Community shall determine the procedure for notification of posting.

The obligation to report movement is without prejudice to any other reporting, declaration or activity reporting obligations that employers are required to perform to public authorities under other provisions.

When the company sending workers to Spain intends to be contracted or subcontracted to carry out work on a construction site, it must also comply with the provisions of the First Additional of Royal Decree 1109/2007, of 24 August, which implements Law 32/2006, of 18 October, regulating subcontracting in the construction sector:

1. Provide proof that they have human resources, at management and production level, who have the necessary training in occupational risk prevention, as well as an adequate preventive organisation, by means of documentation justifying compliance with the obligations established in the transposing national regulations on the application of measures to promote the improvement of the safety and health of workers at work.

2. In the case of postings lasting more than eight days, they must register in the Register of Accredited Companies (REA) of the labour authority in whose territory they are going to carry out their first provision of services in Spain.

For these purposes, the first notification of posting made in accordance with Art. 5 of Law 45/1999 shall be considered an application for registration, to which a declaration shall be attached in accordance with the model set out in Annexe IA of Royal Decree 1109/2007. The application thus formulated shall provisionally allow the company to participate in the subcontracting process until the date of registration or rejection.

Once registration has been completed, communications relating to subsequent movements must include, together with the legally required data, the registration number in the Register of Accredited Companies.

What sanctions apply in case of non-compliance with reporting obligations or non-compliance with posting legislation?

Minor infringements of the obligation to give prior notification are considered to be those in which there are formal defects in the notification.

Any communication submitted after the start of the posting period, or without designating a company representative to liaise with the competent Spanish authorities for the sending and receiving of documents or notifications, is considered a serious infringement. It is also considered a serious infringement to justify the extension of the publication deadline with false or inaccurate information. Facts and circumstances.

And finally, the absolute failure to notify the competent labour authority, as well as the falsehood or concealment of data in the notification, is considered a very serious infringement.

Inauthentic posting is defined in Spanish law as a posting for the sole purpose of circumventing the legal or contractual obligations applicable in the Member State of posting. The penalties for inauthentic posting are the same as those foreseen for serious misconduct.

The financial amounts, depending on the degree of infringements, are as follows:

a) For minor offences, a fine of between 70 and 150 euros at the minimum level, a fine of between 151 and 370 euros at the medium level, and a fine of between 371 and 750 euros at the maximum level.

b) Serious infringements, with a fine of between 751 and 1.500 euros at the minimum level, between 1.501 and 3.750 euros at the medium level and between 3.751 and 7.500 euros at the maximum level.

c) Very serious infringements with a fine, in its minimum degree, from 7.501 to 30.000 euros; in its medium degree, from 30.001 to 120.005 euros; and in its maximum degree, from 120.006 euros to 225.018 euros.

You can consult the infringements and sanctions in the social legislation here.

What are the specific rules and procedures regarding the posting of third-country nationals?

For third-country companies, the same obligations apply as for EU/EEA companies to the extent that such companies may provide services in Spain in accordance with the provisions of the applicable international conventions.

In particular, companies from World Trade Organisation (WTO) countries have to comply with the same obligations as companies from EU/EEA countries.

Are there joint and several liability clauses affecting contractors in case of non-payment to posted workers?

Companies that contract or subcontract the execution of works or services corresponding to their own activity to other companies must check that these contractors are up to date with the payment of Social Security contributions.

Contractors and subcontractors shall be jointly and severally liable for wage obligations to their employees for a period of one year from the completion of the work.

Employees of the contractor or subcontractor shall be informed in writing by their employer of the identity of the main company for which they provide services at any time. This information shall be provided before the commencement of the respective provision of services. It shall include the name or business name of the main company, its registered office and its tax identification number.

In Spain, for all construction works with a subcontracting regime, each contractor is required to maintain a subcontracting book. In this way, each construction site will have one or more subcontracting books, in which all the information on the concurrence of companies on the site will be recorded. This book establishes the levels of subcontracting, as well as the relationship between the different companies involved in the work, so that responsibility for wage obligations can be determined.

Employees of contractors and subcontractors, where there is no employee representation, shall have the right to ask the legal representatives of the main company questions concerning the conditions under which the work is carried out, provided that they share a workplace and are not represented.

What information must the employer provide to posted workers before their posting?

The information that employers must provide to posted workers in Spain is based on existing national regulations, as the Directive 2019/1152/EU on transparent and predictable working conditions has not yet been transposed in Spain.

According to Law 45/1999, on the posting of workers in the framework of a transnational provision of services, it is established that the employer must communicate to the worker, sufficiently in advance, information on the essential conditions of the employment contract, including: Place of work, Duration of posting, Remuneration, Conditions of accommodation and stay, Occupational risks, Applicable legislation, Complaint procedures.

Most of these essential contract conditions are laid down in the collective agreement applicable to the workplace. This agreement may also lay down additional reporting conditions for the employer.

It should be borne in mind that the company must inform and train its workers, before starting work, about the occupational hazards of the job and the preventive measures to be adopted.

Glossary

CGSC (General Collective Bargaining Agreement for the Construction Sector)

This is a collective agreement that sets out the terms and conditions of employment for workers in the construction sector in Spain.

ETT (Temporary Employment Agency)

It is a private company that makes workers available to other companies to fill temporary jobs.

ET (Workers' Statute).

It is the main law that regulates labour relations in Spain. It is like a general contract that establishes the rights and duties of workers and companies. This law guarantees a legal framework that protects the interests of both and promotes fair and equitable labour relations.

ITSS (Labour and Social Security Inspectorate)

It is a public body responsible for ensuring compliance with labour and social security regulations.

LPRL (Law on the Prevention of Occupational Risks)

The main objective of this law is to guarantee the safety and health of all workers in their workplaces, regardless of the sector in which they work.

TGSS (Tesorería General de la Seguridad Social) (General Treasury of the Social Security)

It is a public body responsible for managing the collection of social security contributions and the payment of benefits to workers.

SMI (Salario Mínimo Interprofesional) (Minimum Interprofessional Wage)

This is the minimum amount of money an employer must pay a worker per hour worked.

Useful sources and contacts

Your Europe on the move website: https:

The European Commission's Practical Guide to Travelling: https:

Brochure "Posted workers in the construction sector" of the European Labour Authority: https:

The only nationally unique official website on displacement:

https://www.mites.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores/desplazamiento/index.htm

Official website with general information about living and working in the country for foreigners

Not available.

Eures website "Living and working conditions in Spain":

https://eures.europa.eu/vivir-y-trabajar/condiciones-de-vivir-y-trabajar/condiciones-de-vivir-y-trabajar-spain_es

Workers' Statute (ET)

Labour and Social Security Inspectorate - Complaint (ITSS)

Information on offences and sanctions Displaced persons

Information on labour issues for displaced persons

Information on displaced persons from the Social Security system

Equal treatment and non-discrimination

General Agreement for the Construction Sector (CGSC)

Provincial collective agreements

Construction safety

Technical guide for the assessment and prevention of risks related to construction works.

Health and safety regulations

Compulsory training in health and safety in construction

Entities authorised to provide compulsory training in Health and Safety in the Construction Industry

Other contacts

Ministry of Labour and Social Economy
It is the Spanish government department in charge of enforcing workers' labour rights, promoting employment and active employment policies.
www.mites.gob.es/

General Treasury of the Social Security

It is a public body responsible for managing the collection of social security contributions and the payment of benefits to workers.

www.seg-social.es/

Labour and Social Security Inspectorate

It is a public body responsible for ensuring compliance with labour and social security regulations.

www.mites.gob.es/itss

Ministry of Equality

It is a Spanish government body responsible for promoting equal opportunities between men and women, eradicating gender-based violence and guaranteeing the rights of all people, regardless of their sex, sexual orientation or gender identity.

www.igualdad.gob.es

Ministry of Finance and the Civil Service

It is a department of the Spanish government responsible for managing the country's public finances. Its main function is to ensure economic and financial stability through the design and implementation of fiscal and budgetary policies.

www.hacienda.gob.es

National Construction Confederation

It is the most representative business organisation of the construction sector in Spain. It brings together the vast majority of business associations in the sector, covering all activities and areas of construction.

www.cnc.es

+34915624585

cnc@cnc.es

FICA UGT

It is the federation of industry, construction and agriculture of the General Union of Workers (UGT). This trade union organisation represents and defends the interests of millions of workers in sectors as diverse as metallurgy, automotive, wood, construction, agriculture and food.

www.ugt-fica.org

HABITAT CCOO

It is a trade union federation that is part of the Trade Union Confederation of Comisiones Obreras (CCOO) and is specifically dedicated to representing workers in the construction, wood, furniture and cork sectors, as well as services.

www.habitat.ccoo.es

Construction Labour Foundation

It is a non-profit organisation created in Spain with the main objective of improving working conditions and safety in the construction sector. It was born as a result of an agreement between the main social agents in the sector and, since then, has played a key role in the professionalisation and modernisation of the sector.

www.fundacionlaboral.org

+34913984500

infocentro@fundacionlaboral.org

Asturian Construction Confederation

It is the most representative business organisation of the construction sector in the Principality of Asturias. It brings together the vast majority of Asturian construction companies, from large developers to small local companies.

www.cac-asprocon.as

+34985966251

info@cac-asprocon.as

Construction Labour Foundation of the Principality of Asturias

It specialises in providing services and programmes aimed at improving working conditions and training in the construction sector in the region. Like its national counterpart, this foundation plays a crucial role in promoting safety, quality and innovation in the Asturian construction sector.

www.flc.es

+34985982818

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