
**Posting of Temporary Agency Workers in Europe
Country Fact Sheet**

Country: SPAIN

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National Regulation and provisions applicable to posted temporary agency workers

1. Employment and Working Conditions for posted temporary agency workers coming into your country

If any of this information is not available or unclear in current legislation please indicate in the box. If you know of practical examples please give details below.

<i>Element of national regulation</i>	<i>Qualitative information on your country</i>
Definition of a posted temporary agency worker according to national legislation and collective labour agreements in the TAW sector.	In accordance with article 2 of Law 45/1999, of 29th November, on the posting of workers within the context of the cross-border provision of services , the posted worker is defined as any worker, irrespective of his/her nationality, posted to Spain for a limited period of time within the context of the cross-border provision of services, provided that there is a labour relationship between such companies and the worker during the period of posting. In accordance with article 2.2 of Law 45/1999, of 29th November , the workers of temporary work agencies assigned to a user company abroad and posted temporarily to Spain by the latter within the context of the cross-border provision of services are understood to be included in the definition in the preceding paragraph



<p>Does a temporary agency worker posted into your country have the same legal status as a temporary agency worker employed directly? If not please explain.</p>	<p>Yes, whatever the legislation applicable to the labour contract, the temporary work agencies should guarantee their posted workers the working conditions established by Spanish labour legislation, to which article 3 of Law 45/1999, of 29th November, refers and moreover they should comply with the conditions established by Law 14/1994, of 1st June, which regulates temporary work agencies, for the assignment of workers to user companies, without prejudice to the application to posted workers of the more favourable working conditions arising from the legislation applicable to their labour contract, the collective bargaining agreements or the individual work contracts.</p>
<p>Relevant and applicable provisions on equal treatment & equal pay for temporary agency workers. Do these apply to posted temporary agency workers?</p>	<p>These aspects are dealt with in Law 14/1994, of 1st June, which regulates temporary work agencies, and in Law 45/1999, of 29th November, on the posting of workers within the context of the cross-border provision of services.</p> <p>During the temporary work period, the assigned worker has the right to the same salary/wage as he/she would have obtained if he/she had been hired by the user company as a permanent employee.</p> <p>Moreover, article 11.1 of Law 14/1994 establishes that "during the service provision periods, workers hired to be assigned to user companies will have the right there to the application of the essential work and employment conditions that would correspond them if they had been hired directly by the user company to occupy the same position".</p> <p>At the same time, according to section 2 of article 11, when the contract has been agreed for a specific period, and on the same assumptions to which article 49.1.c) SW refers, the worker will also have the right at the end of the assignment contract to receive a financial compensation equivalent to the proportional part of twelve days of salary per year of service, or to the amount established in the applicable specific regulation. The compensation may be apportioned over the term of the contract.</p> <p>In turn, article 17 of the same law establishes that "the workers assigned will have the right to present complaints in relation to their working conditions through the representatives of the workers of the user company.</p> <p>The said representatives will also be considered to represent the assigned workers while their assignment lasts, for the purposes of formulating any complaint in relation to their working conditions, in all matters pertaining to the provision of their services in the user company, though this may not suppose an increase in the monthly hours payable to said representatives, in accordance with the provisions of section e) of article 68 SW.</p>



	<p>Article 3 of Law 45/1999, of 29th November, establishes that, whatever the legislation applicable to the labour contract, the companies that post their workers to Spain within the context of the cross-border provision of services should guarantee them the working conditions established by the Spanish labour legislation relating to:</p> <ul style="list-style-type: none"> a) Working hours, in the terms established in articles 34 to 38 of the Law of the Statute of Workers' Rights, consolidated text approved by Royal legislative Decree 1/1995, of 24th March. b) The amount of the salary, in the terms referred to by article 4 of this Law. c) Equality of treatment and absence of direct or indirect discrimination on the basis of gender, origin, including racial or ethnic, marital status, age within the legal limits, social condition, religion or convictions, political ideas, sexual orientation, affiliation or not to a union and its agreements, family ties with other workers in the company, language or disability, provided that the workers are able to perform the work or job in question. d) Child labour, in accordance with the provisions of article 6 of the Statute of Workers' Rights. e) The prevention of occupational risks, including the regulations on maternity protection and children. f) The non-discrimination of part-time and temporary workers. g) The respect for the intimacy and the consideration due to the dignity of the workers, including protection against verbal or physical offences of a sexual nature. h) Rights to unionisation, to strike and to hold meetings. <p>The temporary work agencies, in addition to guaranteeing their posted workers, whatever the legislation applicable to the labour contract, the working conditions established by the above-mentioned Spanish labour legislation, should fulfil the conditions established by Law 14/1994, of 1st June, which regulates the temporary work agencies, for the assignment of workers to user companies, without prejudice to the application to the posted workers of the most favourable working conditions in the legislation applicable to their labour contract, in collective bargaining agreements or in the individual labour contracts.</p>
<p>Maximum work periods per day and per week for posted temporary agency workers. Is night work permitted for posted temporary agency workers? If so how many hours are allowed?</p>	<p>These aspects are regulated in arts. 34 and 36 of the Statute of Workers' Rights, as well as in the Sectoral Collective Bargaining Agreements**.</p> <p>Article 34.1 SW establishes that "the duration of the working day shall be that agreed in the collective bargaining agreements or labour contracts"; nevertheless, it subsequently establishes that "the maximum duration of the normal working day will be an average of forty hours per week of actual work per year".</p> <p>Hence, on the one hand, it is established that they may not exceed 40 hours weekly (annual average), although article 34.2 SW permits an irregular distribution over the year on the basis of</p>



	<p>agreements or collective bargaining agreements, as long as the annual average does not exceed the 40 hours indicated in point 1 of the same article.</p> <p>On the other hand, article 34.3 SW establishes that "the number of normal hours of effective work shall not be more than 9 hours daily". However, this has some flexibility as the reorganization of working hours is also permitted, by means of collective bargaining or other collective agreement, provided that the required minimum rest times are respected.</p> <p>A contract may establish a smaller annual and daily duration, but in no circumstances a greater one; collective bargaining agreements may reorder the distribution of work hours, but they must respect the annual maximum.</p> <p>Yes, night work is permitted for temporary agency workers. Article 36.1 SW establishes that night work is "that carried out between ten o'clock at night and six o'clock in the morning". For a worker to be regarded as a night worker he/she "should normally carry out not less than three hours of his/her working day in nocturnal hours"</p> <p>Article 36 SW establishes, among other limitations, that the work should not exceed a daily average of 8 hours, with no possibility of overtime.</p>
<p>Minimum rest periods per day and per week for posted temporary agency workers.</p>	<p>These aspects are regulated in arts. 34 and 37 of the Statute of Workers' Rights, as well as in the Sectoral Collective Bargaining Agreement.</p> <p>The minimum daily rest is established in article 34.4 SW, which establishes that if the continuous working day exceeds 6 hours, the rest period should be 15 minutes.</p> <p>In the case of workers aged less than 18 years, the rest period should be a minimum of 30 minutes, and this should be established if the duration of the continuous working day exceeds 4.5 hours.</p> <p>With regard to the weekly minimum rest, this is regulated in art. 37.1 SW, which establishes the worker's right to "a weekly minimum rest, which can be accumulated for periods of up to 14 days, of one and a half continuous days that, as general rule, will include the Saturday afternoon or, if appropriate, the Monday morning and all day on Sunday". For those under 18 years of age, it will be 2 continuous days per week.</p> <p>The establishment of a minimum weekly rest implies that it may be increased or improved by collective bargaining agreement or contract.</p> <p>To this weekly rest should be added the Bank Holidays. These are referred to in article 37.2 SW which specifies that "they may not exceed fourteen per year, of which two will be local". There are</p>



	<p>twelve national Bank Holidays and two local ones (making up the fourteen established in the statute).</p>
<p>Applicable minimum rates of pay hourly, weekly or monthly. Is this decided by a collective agreement or by law? How is it enforced?</p>	<p>These aspects are dealt with in Royal Decree 1046/2013, of 27th December, which sets the minimum wage for 2014, and in the Sectoral Collective Bargaining Agreements**.</p> <p>In Spain, the amount of the minimum wage for workers is established by law, specifically for 2014, by article 1 of Royal Decree 1046/2013, of 27th December.</p> <p>Thus, "the minimum wage for any activities in agriculture, industry or services, without discrimination by gender or age of the workers, is set at <u>€21.51 per day or €645.30 per month</u>, depending on whether the salary is set in terms of days or months".</p> <p>The collective bargaining agreements of the user companies, in turn, will establish the total salary for the posts occupied in them.</p>
<p>Applicable wage supplements, sick pay, social security, overtime and night work rates & allowances for temporary agency workers.</p>	<p>See Law 14/1994 of 1st June, which regulates the temporary work agencies</p> <p>During the temporary work period, the assigned worker has the right to the same salary/wage and other conditions that he/she would have enjoyed if he/she had been hired as a permanent employee by the user company.</p>
<p>Applicable provisions and legislations on health & safety at work.</p> <p>Whose responsibility is it to ensure these provisions/laws are enforced (user company or temporary agency)? Which organization is responsible for the health and safety of the workers?</p>	<p>Royal Decree 216/1999, of 5th February, on minimum provisions for security and health at work in the temporary work agencies, and article 28 of Law 31/1995, of 8th November, on Prevention of Occupational Risks.</p> <p><u>User company</u> During the temporary work period, the user company will be responsible for the working conditions in all aspects related to the workers' security and health.</p> <p>Moreover, the user company will be responsible for the obligations with regard to information established in sections 2 and 4 of article 28 of Law 31/1995, of 8th November, on Prevention of Occupational Risks.</p> <p><u>Temporary work agency</u> The temporary work agency will be responsible for the obligations with regard to training and health monitoring established in sections 2 and 3 of article 28 of Law 31/1995, of 8th November, on Prevention of Occupational Risks.</p>



	To this end, and without prejudice to the foregoing, the user company should inform the temporary work agency, and this in turn the workers affected, prior to the assignment, about the characteristics of the jobs they will have and the qualifications required
Minimum paid annual holiday (no. of days, rates) posted temporary agency workers are entitled to.	<p>See article 38 of the Statute of Workers' Rights, together with the Sectoral Collective Bargaining Agreements***.</p> <p>Article 38.1 SW establishes that "the period of paid annual holidays, not eligible for substitution for financial compensation, will be that negotiated in the collective bargaining agreement or individual contract. In no case will the duration be less than thirty calendar days".</p> <p>Both article 40.2 of the Spanish Constitution (SC) and article 38.1 SW describe the annual holiday as paid, i.e. the worker will receive his/her habitual salary during his/her holidays.</p> <p>Article 38.1 SW explicitly prohibits the effective holiday from substitution by financial compensation.</p> <p>It should be borne in mind that article 38.2 SW leaves the holiday dates to be agreed between worker and employer. When the latter are unable to reach agreement, it will be up to the labour courts to set the effective dates.</p>
Main, general provisions of collective labour agreements concluded in the TAW sector that are relevant to posted temporary agency workers	
Specific provisions on posted temporary agency workers in the collective labour agreements in the TAW sector	<p>The Sectoral Collective Bargaining Agreement (IV) was considered by the employers' organization ASEMPELO to have expired on 8th June 2013, on the basis of the interpretation of the government's labour reform with regard to the extension of collective bargaining agreements.</p> <p>The unions, however, consider it to be still in force, so the issue has been taken to the courts. At the time of finalizing and translating this questionnaire, it is still awaiting resolution by the Supreme Court</p>

II. Conditions for temporary work agencies to post to temporary agency worker or your country

Element of national regulation	Qualitative information on your country
Requirement to obtain to license	The requirements for authorization are established in article 2 of Law 14/1994 on Temporary Work Agencies, and in Royal Decree 4/1995, and are the following:



	<ol style="list-style-type: none"> 1. To have an organizational structure adequate to the obligations relating to its corporate purpose. This refers to aspects such as size, equipment and ownership of the workplace; the number, part/full-time, professional qualifications and stability of employment of the agency's own staff; and the organizational system and technological processes used for the recruitment and training of the temporary workers. In any case, the temporary work agency should have a minimum ratio of 12 own staff with permanent contracts, either part-time or full-time, for every 1,000 workers (or fraction thereof) hired the preceding year, calculated as the total man-days assigned, divided by 365. Compliance with this requirement will have to be demonstrated both for the initial authorization and for the concession of the first annual extension. 2. Exclusive dedication to this activity. 3. To be free of outstanding debts to fiscal authorities or Social Security. 4. To guarantee the fulfilment of its obligations with regard to salaries and Social Security, by means of a financial guarantee. The financial guarantee may take the form of a deposit of cash or government securities in the General Depository of the relevant Administration, or a guarantee or surety of joint and several liability constituted in a bank, savings bank, credit union, mutual guarantee company or through an insurance policy taken out for this purpose. For the initial request, the amount of the financial guarantee will be 25 times the annual minimum wage. For 2014, the annual minimum wage is €9,034.20; hence the financial guarantee will be €225,855. 5. Not to have been penalized with suspension of activity on two or more occasions. 6. To include the words "temporary work agency" in the name of the company.
Requirement to establish in the receiving country	There is no such obligation for the temporary work agencies from EU countries.
Mandatory Declarations	
Sectoral bans for temporary agency work activities	See article 8 of Law 14/1994 of 1st June, which regulates the temporary work agencies.



	<p>Companies may not enter into temporary work contracts in the following cases:</p> <ul style="list-style-type: none"> a) To replace workers in strike in the user company. b) For the execution of works or occupations which are especially dangerous for security and occupational health, in the terms established in the second additional provision of Law 14/1994 and, in accordance with this, in collective bargaining agreements or other collective agreements. c) When, in the twelve months immediately preceding the hiring, the company has laid off staff from the jobs it intends to cover, by improper dismissal or for the causes established in articles 50, 51 and 52, section c) SW, except in the case of <i>force majeure</i>. d) To assign workers to other temporary work agencies.
<p>Applicable reasons for use of temporary agency work services</p>	<p>See article 6 of Law 14/1994, of 1st June, which regulates the temporary work agencies, and article 15 of the Statute of Workers' Rights.</p> <p>Temporary work contracts may be concluded between a temporary work agency and a user company on the same terms and under the same conditions and requirements on which the user company would be able to enter into a fixed-term contract in accordance with the provisions of article 15 of the Statute of Workers' Rights, which are the following:</p> <ul style="list-style-type: none"> a) When the worker is hired for the execution of specific works or services, not forming part of the typical activity of the company, and whose execution, although limited in time, is in principle of uncertain duration. b) When the circumstances of the market, accumulation of work or excess of orders so require, even when it is the company's normal activity. c) When it is a matter of replacing workers with the right to return to the job, provided that the labour contract specifies the name of the worker substituted and the cause of the substitution. <p>Likewise, temporary work contracts may be concluded between a temporary work agency and a user company on the same terms and under the same conditions and requirements on which the user company would be able to enter into a work experience or training and apprenticeship contract in accordance with the provisions of article 11 SW.</p>



<p>Applicable minimum and maximum length of temporary agency work assignments</p>	<p>See Law 14/1994, Statute of Workers' Rights, and Sectoral Collective Bargaining Agreements.</p> <p>a) A maximum of <u>six</u> months, within a period of twelve months, when the purpose of the contract is to meet the temporary demands of the market, accumulation of work or excess of orders, even when it is the company's normal activity. Collective bargaining agreements may modify the maximum duration of the contract and the period during which it may be carried out, though the maximum period within which may be carried out will be eighteen months, with the maximum duration of the contract being the lesser of three quarters of the reference period or twelve months.</p> <p>b) A maximum of <u>three months</u> when the purpose of the contract is to provide temporary cover for a permanent job during the process of recruitment or promotion of staff for the company.</p> <p>c) The minimum duration of the work experience contracts <u>will be six months and the maximum two years</u>. Nevertheless, collective bargaining agreements may establish different durations for the contract, depending on the characteristics of the sector and the work experience in question.</p> <p>d) The minimum duration of the training and apprenticeship contracts <u>will be one year and the maximum three</u>. Nevertheless, collective bargaining agreements may establish different durations for the contract, though the duration may not be less than six months or more than three years.</p> <p>In other cases, the duration of the contract will coincide with the period in which the reason for the contract persists.</p> <p>Moreover it is necessary to keep in mind that the period of training in prevention of occupational risks which the worker may need from the temporary work agency prior to his/her assignment will form part of the duration of the contract.</p> <p>Likewise, if the worker continues to provide services in the user company after the end of his/her assignment, he/she will be deemed to have a permanent contract with the company.</p> <p>It should be borne in mind that the clause of the temporary work contract that prohibits the user company from hiring the worker will be nullified by the ending of the temporary work contract.</p>
<p>Restrictions on labour contracts to be offered to posted temporary agency workers</p>	<p>In principle there are no limitations, beyond those justified by reasons of general interest in the different collective bargaining agreements agreed by the social partners.</p>
<p>Which services (if any) do you</p>	<p>The worker of the temporary work agency is charged absolutely</p>



provide for the posted temporary agency workers? Are these workers charged any fees for these services?	nothing.
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Additional Information – Useful public sources

Do you know the country of origin of the posted temporary agency workers in your country/organization? If so please give details.	
Useful websites (Labour inspectorate, Ministry of Labour, Trade Union information etc...)	Ministry of Labour and Social Security: http://www.empleo.gob.es/index.htm Labour Unions: www.ccoo.com / http://www.comfia.net/ www.ugt.es / http://www.fesugt.es/
Contact people from the national social partner associations in the TAW sector	ENRIQUE PEREZ MORATILLA Plaza de Cristino Martos, 4, 7ª planta, 28015 Madrid, Spain +34 91 540 92 77 COMFIA-CCOO
Relevant publications	Guia de buenas prácticas para inmigrantes (Good practices guide for immigrants), published by the SINDETT foundation

If you have any questions on this factsheet, please contact the European Sectoral Social Partners:

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