

labour

1-2012
January, 2012

II AGREEMENT FOR EMPLOYMENT AND COLLECTIVE BARGAINING 2012, 2013 AND 2014

This legal update takes a look at key components of the II Agreement for Employment and Collective Bargaining, entered into on January 25, 2012, between representatives from the Spanish Employers Confederation (CEOE), the Spanish Small Business Confederation (CEPYME) and the Labor Union Confederations *Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT).

1. INTRODUCTION

On January 25, 2012, labor union and employers' representatives entered into the II Agreement for Employment and Collective Bargaining, which aims to provide the criteria and parameters that are to underpin collective bargaining for 2012, 2013 and 2014.

This agreement, which is designed as a guide and is not primary legislation, has been fashioned around the current economic backdrop, one of its aims being to seek wage restraint. The most striking change it contains is a proposal to set in place an array of new mechanisms seeking internal flexibility targeted at helping companies to adapt and boost their ability to compete.

2. STRUCTURE OF COLLECTIVE BARGAINING

The signing parties want to see "controlled" decentralization of collective bargaining and, to this end, have proposed that industry-wide collective labor agreements should encourage bargaining at the company in relation to working hours, tasks and salaries, as this is the best place for determining these conditions, without leaving aside other alternatives such as company agreements or covenants.

They also stressed the importance of preserving provincial collective bargaining and seeking to ensure that these agreements, as they are closely related to companies, promote flexibility in order to help companies adapt in competitive terms and help achieve stability and quality in employment.

3. SALARY-RELATED CRITERIA

The organizations signing the agreement have agreed that any salaries negotiated over the next three years (2012, 2013 and 2014) should fall in step with the following guidelines:

- For 2012, salary increases should not exceed 0.5%, and there should be a salary review clause applicable at the end of the year, set at the percentage by which the annual variation in the general Spanish CPI in December exceeds the objective of the European Central Bank (2%).

If the Spanish rate is higher than the annual variation in the harmonized eurozone CPI, this second rate would be used to calculate the excess. If this is the case, the resulting amount would be applied in one go.

If the average international Brent oil price in euros in the month of December is 10% higher than the average price in December of the previous year, the inflation indicators (not including fuels) would be used to calculate the excess.

To keep the parties' autonomy as regards any agreements providing for salary review clauses in force for the next three years, the parties have proposed that the negotiators take into account the impact these clauses have on overall salary growth, to ensure that it is in line with the aim of wage restraint.

- Salary increases for 2013 should not exceed 0.6%, and a salary review clause should be in place on the same terms as those set for 2012.
- In 2014, salary increases should depend on the pace of economic activity, in accordance with the following rules:
 - Where the increase in GDP at constant prices in 2013 falls below 1%, salary increases should not exceed 0.6 %.
 - Where the increase in GDP at constant prices is greater than 1% and less than 2%, salary increases should not exceed 1%.
 - Where the increase in GDP at constant prices in 2013 is equal to or greater than 2%, increases should not exceed 1.5%.

Collective labor agreements must include salary review components based on the changes in (variable) economic indicators linked to the company's performance (income, sales, productivity). Any increases will preferably be included in the variable component of employees' salaries, which must be brought into line with the circumstances of the industry and the company.

All salary increases agreed on for 2014 will be increased by 50% of the result of applying the review clause agreed on for 2012 and 2013. Where no additional variable salary component has been agreed, this clause will be applied at 100% of the result.

4. INTERNAL FLEXIBILITY

The signing organizations believe that collective labor agreements should include (at least) internal flexibility measures, above all coming into play for short periods of time in order to tackle temporary circumstances, as a tool to help companies adapt to the competition and pave the way for stable, quality employment. Industry-wide collective labor agreements should encourage bargaining on internal flexibility at company level, as this is the best scope for determining these conditions.

A collective labor agreement is considered a suitable tool to organize the flexible use of working time and functional mobility at companies. With this in mind, agreements should (at least) provide for the criteria, grounds, procedures, time periods and reference periods for functional mobility and the uneven distribution of working hours at companies.

They should also contain procedures to adapt and modify the agreements reached with the workers' representatives easily, for intervention in the event of disagreement on joint employer/employee committees, and to provide expedient solutions to deadlocks in consultation and negotiation periods.

According to the Agreement, internal flexibility can be achieved in three main areas: working hours, duties (functional mobility) and salary.

4.1 Working hours and functional mobility

With respect to working hours and functional mobility, the parties distinguish between two levels:

- **Ordinary flexibility:**

At the very least, collective labor agreements must determine the annual computation and uneven distribution of **working hours**. The main provisions in relation to working hours are as follows:

- Uneven distribution of working hours should now be seen as a general principle in a bid to avoid overtime or temporary hiring and, with this in mind, collective agreements should allow employers to distribute 10% of the applicable ordinary annual working hours unevenly, affecting the maximum monthly, weekly and even daily working hours (subject to the limitations under the Workers' Statute).
- The collective labor agreements should also make it possible for employers to set in place a bank of five days (40 hours) per year, which they may alter in the distribution provided for in the annual calendar.
- Industry-wide collective labor agreements (and provincial agreements in particular) must set the general rules on flexible working hours, and also encourage the adaptation of industry-wide agreements at company level, in

conjunction with the workers' legal representatives or, failing that, the labor unions signing the agreement, unless the workers appoint a committee to represent them.

- Collective labor agreements (above all those at company level) must encourage the rationalization of working hours to enhance productivity and strike a better work/life balance.
- Flexibility must go hand in hand with guarantees and safeguards that enable a balance to be struck between work and personal life.

With respect to **functional mobility**, the Agreement provides for the implementation of (i) systems of classification by professional groups and functional divisions, specifying transitional phases where the professional category system remains in force, (ii) functional mobility as a mechanism for flexibility and adaptation, setting in place efficient formulas, without any further restrictions than those laid down to join a professional group, or, where applicable, the qualifications required to perform the work (and therefore not taking professional category into account for these purposes) and (iii) an analysis of multi-disciplinary skills and their impact on compensation under collective labor agreements and company agreements.

■ **Extraordinary flexibility:**

With respect to **working hours**, it has been agreed that collective bargaining should provide tools enabling employers to meet temporary needs for flexibility, by altering the regulations on working hours.

There must be measures that kick in where there are founded economic, technical, organizational or production-related grounds (as defined in Article 41.1 of the Workers' Statute), so that employers can alter working hours by distributing working hours unevenly beyond the limits referred to above or modifying the annual calendar in excess of the bank of working hours referred to above, without under any circumstances being entitled to increase the applicable annual working hours.

In these cases, the workers' representatives would have to be notified as far in an advance and as soon as possible, unless the employer can evidence that compliance with this requirement would prevent it from meeting the envisaged needs. The joint employer/employee committee and, if need be, the mediation and arbitration services should intervene in the event of disagreement. Where alteration is required throughout the rest of the collective labor agreement, the procedure for material modifications under Article 41 of the Workers' Statute must be implemented.

As far as **functional mobility** is concerned, criteria have been introduced to allow for a greater degree of flexibility in collective labor agreements than that described in the preceding section, based on economic, technical, organizational or production-related grounds (under Article 41.1 of the Workers' Statute). In these scenarios, employees should be allowed to perform duties other than those

belonging to their professional group for as long as may be necessary, which may not exceed six months in one year or eight months over the course of two years. Also in these scenarios, notice must be given to the workers' representatives as soon as possible, the joint employer/employee committee's activity is envisaged and, if need be, the mediation and arbitration services must intervene in the event of disagreement.

Any mobility will have to observe any rights attached to the new duties, unless the new duties belong to a lower category, in which case the worker's original compensation must be maintained. Employment contracts cannot be terminated on the ground of supervening incompetence, and the promotion and compensation-related clauses under the Workers' Statute will continue to apply.

Where functional mobility lasts for longer than the period referred to above, the terms agreed between the parties will apply and, failing that, Article 41 of the Workers' Statute.

4.2 Salary-related flexibility

The parties believe that the salary structures should have variable components, meaning a certain percentage of the employee's salary should be tied to the company's situation and earnings, and that these components should replace other obsolete items unrelated to productivity.

Collective bargaining is again viewed as an ideal instrument to define and set the criteria for a salary structure in keeping with the situation of the industry and company. The variable items should be defined using objective and clear parameters, there should be provisions on the percentages that variable components should bear to total salary, the right to information and participation of the workers' representatives and the specific circumstances of each industry and company.

5. **NEGOTIATED AUTHORIZATION FOR COMPANIES NOT TO APPLY CERTAIN WORKING CONDITIONS STIPULATED IN INDUSTRY-WIDE COLLECTIVE LABOR AGREEMENTS**

In view of the economic and employment situation, the parties have considered including negotiated clauses giving temporary authorization not to apply certain working conditions that could avoid temporary and permanent layoff procedures, independently of the mechanisms already in force regarding the material modification of collective conditions and authorization not to apply the salary regime. The following are mentioned: (i) timetable and distribution of working hours, (ii) the shift work system, (iii) compensation systems, (iv) work and performance systems, and (v) duties.

The grounds for temporary authorization not to apply the above conditions and salary regime must be set forth in the collective labor agreement itself, and may include a persistent reduction in earnings or where the economic situation and outlook may be

affected by the fact of applying the collective labor agreement provisions. It has been underlined that it would be advisable for the parties first to define the figures (percentage-related or otherwise) triggering the authorization not to apply the provisions.

Authorization not to apply collective labor agreement provisions can only come into play if an agreement has been reached between the company and the workers' representatives. The agreement cannot give rise to a gap in the regulations, but rather must define precisely the regulations that will replace the provisions of the collective labor agreement.

If the consultation period (the length of which must be determined in the collective labor agreement) comes to an end without an agreement, any of the parties can submit the dispute to the joint employer/employee committee and, if the disagreement is not resolved, the parties can use a dispute resolution system.

The measure may not exceed the term of the collective labor agreement or, in all cases, three years.

6. OTHER ASPECTS

The Agreement also deals with other aspects such as types of contract, outsourcing, training and professional classification, teleworking, restructuring and the rights to information, consultation and participation of the workers' representatives, which we summarize below.

- With respect to **employment and types of contract**, the need was stressed to promote indefinite-term contracts, the proper use of temporary contracts, the possibility and, in some cases, advisability of collective labor agreements containing provisions on the volume of temporary employment, promoting the hiring of young people, monitoring compliance with the objectives under training contracts, the use of part-time contracts as opposed to temporary contracts and overtime, partial retirement, hand-over contracts as a suitable instrument for maintaining employment and rejuvenating the workforce, maintaining the possibility of early retirement, preretirement and the implementation of mandatory retirement clauses within the context of collective bargaining.
- With respect to the **outsourcing of services**, the need was stressed to ensure that collective bargaining determines the mechanisms to coordinate and inform the workers' representatives at the principal companies and subcontractors.
- The parties recognized the importance of **training** and the development of professional skills and have agreed to maintain the extension to the IV National Training Agreement and to perfect the V Training Plan within six months.
- The employee and employers' representatives recognized **teleworking** as a means to modernize the organization of work, as well as the need of regulate matters such as privacy, confidentiality, risk prevention, facilities and training.

- The need was stressed to ensure that collective bargaining provide the mechanisms enabling the adoption of alternative measures to **restructurings** affecting employment, giving priority to internal flexibility and promoting the use of the temporary layoff and suspension procedures as a means to tackle temporary situations and to maintain employment.
- Collective bargaining was highlighted as a means to specify and implement the rights to **information, consultation and participation** of the workers' representatives.

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