



International
Labour
Office
Geneva

Spain approves new regulations for domestic employees

The Government of Spain recently promulgated Royal Decree 1620/2011¹ of 14 November, regulating the special relationship that characterizes service within the family household.²

The Royal Decree updates the rules governing the labour relationships of domestic employees and sets out to improve working conditions in the sector by bringing them as far as possible into line with those of other workers, while making due allowance where appropriate for such differences as may exist.

The legal framework for this special labour relationship was first

introduced more than 25 years ago by Royal Decree 1424/1985 of 1 August. Since then the social and legislative context and people's habits and customs have considerably evolved, and it was therefore decided that a thorough revision of the legislation was called for.

The new Royal Decree was adopted as part of a process of updating the standards applicable to domestic workers. In addition, Act No. 27/2011³ of 1 August on the updating, adaptation and modernization of the Social Security scheme incorporates the Special Social Security Scheme for Domestic Workers into the General Social Security Scheme.

¹ The full text of the Royal Decree is available from the ILO's NATLEX database at www.ilo.org/dyn/natlex/docs/ELECTRONIC/88580/101346/F649559102/ESP-88580.pdf

² Royal Decree 1620/2011 entered into force the day after its publication in the Official Gazette on 17 November 2011, with effect from 1 January 2012.

³ The full text of the Act is available from the ILO's NATLEX database at www.ilo.org/dyn/natlex/docs/ELECTRONIC/88597/101367/F764532863/ESP88597.pdf

Main innovations

Scope and exclusions

Decree 1620/2011 provides that any labour relationship between a householder, as an employer, and an employee who provides services for remuneration within the employer's family household shall be deemed a special domestic service labour relationship. For the purpose of the Act, where services are provided for two or more persons who do not constitute a legal entity or belong to the same family but who live in the same household, the person who owns the living quarters or who represents those persons shall be deemed to be acting in the capacity of titular head of the household, it being understood that each of the persons concerned in turn may act in that capacity (article 1).

The Decree identifies labour relationships that are excluded from the regulations, notably those concluded by temporary employment agencies, by care-providers (whether professional or otherwise) of persons in a situation of dependency (article 2).

Wages

The Decree guarantees as a minimum wage the payment in cash of the minimum inter-occupational wage, in proportion of the hours worked (article 8.1).

No payment in kind for accommodation or upkeep may entail a reduction in the minimum inter-occupational wage paid or constitute more than 30 per cent of total earnings (article 8.2).

Wages increases are determined by agreement between the parties or, where there is no such agreement, in accordance with the statistics for the collective agreement for the corresponding month (article 8.3).

Hours of work

The normal working week shall be a maximum of forty hours. The employee's work hours shall be scheduled by agreement between the parties (article 9.1).

The Decree increases the daily rest period, so that the minimum rest between the end of one workday and the start of the next is now a minimum of 12 hours. This period may however be reduced to 10 hours, provided that compensatory rest is accorded for the remaining hours which may be accumulated over a period of not more than four weeks (article 9.4).

Employment contract

In addition to direct recruitment and the use of public employment services, the Decree provides for recourse to duly authorized placement agencies as a means of employment, prohibiting any discrimination on grounds of sex, racial or ethnic origin, religion, age and several other grounds (article 4).

The Decree lays down the general rule that the contract is assumed from the start of the labour relationship to be for an indefinite period (article 5).

The contract may be written or verbal, on the understanding that either of the parties concerned may insist that it be set out in writing, including during the course of the labour relationship. Moreover, the contract must be in writing wherever a legal requirement exists to that effect, and in all cases where a fixed-term contract is for a duration of four weeks or more. Model employment contracts are to be made available to employers by the Ministry of Labour and Immigration (article 5).

The Decree provides that the 36 hours of weekly rest must be consecutive and that as a general rule they shall comprise the afternoon of the Saturday or morning of the Monday and the whole of the Sunday (article 9.5).

The Decree provides that employees are entitled to all leave covered by article 37 of the Labour Code, as regards weekly rest, public holidays, maternity leave and short workdays to allow them to reconcile their working and private life like any other workers (article 9.6).

Employees are entitled to a total of 30 days' annual leave in one or more periods, as agreed between the parties. Where there is no such agreement, 15 days may be fixed by the employer according to family requirements and the remainder freely chosen by the employee. In such cases, the party concerned shall notify the other party two months prior to the said leave.

During the period or periods of annual leave domestic employee are not required to reside at the family's home or wherever the family or a member thereof moves (article 9.7).

The Decree recognizes explicitly that hours spent on stand-by, i.e. periods when the employee's services are available to the employer without him or her actually working, must be compensated by an equivalent period of rest or by such remuneration as the parties agree upon, on the understanding that the amount agreed upon may not be less than for normal working hours (article 9.2).

The Decree provides for the application of the restrictions established in the Labour Code for persons under 18 years of age, with regard to daily hours of work, hours of rest, night work and overtime (article 9.8).

Termination of the employment contract

The contract may be terminated at any time at the employer's initiative, in which case the employee must be informed of the decision with clear and unequivocal written confirmation that the termination is at the employer's sole initiative. In such an eventuality, the employer must pay the employee the equivalent of 12 normal days' wages per year of service in compensation, up to a maximum of six month's pay (article 11).

Enforcement of the legislation

Enforcement of the labour legislation as it relates to domestic employment contracts is the responsibility of the Labour and Social Security Inspectorate, and any disputes that may arise as a result of the new regulations must be brought before the relevant labour courts (articles 12 and 13).

The administrative charges payable by employers are reduced in order to facilitate their compliance with its requirements. The General Treasury of the Social Security Scheme is responsible for informing the Public Employment Service of the terms of domestic work contracts and of their termination (first additional clause).

All relevant information must be made available to the employers and employees via the Internet sites and labour information offices of the Ministry of Labour and Immigration, in order to enable them to fulfil their obligations (third additional clause).

Social Security

Act 27/2011 lays down the bases of social security contributions for 2012 covering common and work-related contingencies, according to a scale of 15 tranches corresponding to the remuneration of domestic workers, ranging from 90.20 euros a month for the lowest monthly remuneration to 748.20 euros a month for the highest. From 2013 to 2018 contributions will increase in identical proportion to increases in minimum contributions under the General Social Security Scheme for each year (39th additional clause of Act 27/2011).

The Act stipulates that for the year 2012 the rate of contribution for common contingencies is 22 per cent – 18.30 per cent payable by the employer and 3.70 per cent by the domestic worker. From 2013 to 2018 the rate is increased each year by 0.09 percentage points, its amount and distribution between employer and employee being determined by the State Budget Act (39th additional clause of Act 27/2011).

Subject to certain special arrangements, the Act establishes the right of domestic workers to social security protection under the terms and conditions laid down in the General Social Security Scheme, with respect to health care, occupational rehabilitation (including maternity benefits), invalidity and retirement, family allowances, social services and social welfare benefits (article 38.3 of Royal Legislative Decree 1/1994⁴ of 20 June).

Specifically, the Act contains special clauses and corresponding rules and regulations for calculating contributory periods for part-time employees, for the payment of compensation for temporary invalidity in respect of common contingencies, for calculating permanent invalidity pensions arising from common contingencies and retirement benefits and for work-related contingencies. Domestic workers are currently excluded from unemployment benefits (39th additional clause of Act 27/2011).

Assessment of the new legislation

The Act requires the Ministry of Labour and Social Security, prior to 31 December 2011, to assess the possible impact on the employment and working conditions of domestic workers of the new legislative provisions. The assessment is to take into account a report by a tripartite committee of experts dealing inter alia with the possibility that domestic workers should at some time in the future have access to an unemployment scheme. In the light of the Ministry's assessment, the Government is to take appropriate decisions in the course of 2013.

⁴ The full text of the Royal Legislative Decree is available from the ILO's NATLEX database at www.ilo.org/dyn/natlex/docs/WEBTEXT/37505/64927/S94ESP03.htm

Conditions of Work and Employment Branch (TRAVAIL)

Labour Protection Department
International Labour Office
Route des Morillons 4
CH-1211 Geneva 22, Switzerland

Tel. +41 22 799 67 54
Fax. +41 22 799 84 51
travail@ilo.org
www.ilo.org/travail