

SPAIN

Alternatives to the Termination of Employment Contracts

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The current financial situation obliges companies to minimise costs in order to overcome the crisis. Of course, one type of costs companies consider is employment costs. Generally, the first idea that comes to mind is to terminate employment contracts as the most direct way to reduce these costs. However, Spanish employment law foresees measures that may help companies to overcome the crisis without terminating employment contracts. Following are the legal alternatives to the termination of contracts.

Change in the Functions Originally Assigned to Employees

In general, employees within a company are assigned functions according to their professional training and skills. In a normal context, the job originally assigned to the employee does not change during the employment relation. Nevertheless, this is just a general rule and not an obligation for the employer.

In fact, according to Spanish employment law, employers may change their employees' functions when, within a company, there are jobs that become unnecessary whilst others remain profitable.

The only requirement the company will have to comply with is informing the employees' representatives should the transfer imply that the transferred employee will carry out functions corresponding to a lower employment status. Additionally, the employee must receive the salary corresponding to his/her professional group whilst carrying out the work corresponding to the lower professional status.

On the other hand, the employee may be transferred to a position with functions corresponding to a higher professional group. If this transfer lasts for longer than the time periods foreseen in the Spanish employment law, the transferred employee will be entitled to seek promotion.

Geographic Mobility

A crisis may mean that, within a company, there are workplaces that do not have enough employees and others where there are too many. In such circumstances, an alternative is to transfer employees from the workplace with an excess of employees to the workplace requiring workers. Therefore, this alternative is especially useful for companies with several different workplaces.

This possibility is especially flexible for the employer, especially in the event this transfer takes place within the same town, city or region, i.e., when it does not imply residing in a different location. In such circumstances the employer may adopt this decision whenever the company considers it necessary simply by communicating the measure to the affected employee.

If the transfer decision affects the number of employees established under the applicable law, it will be necessary

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to open a consultation process with the workers' representatives.

According to the two possibilities analysed, we can deduce that employers have alternatives in order to optimise the human resources within the company without extinguishing the employment contracts by either assigning different jobs to the employees or by transferring them to another work place belonging to the company.

Substantial Modification of Working Conditions

Employer's rights to modify working conditions are not limited to the above. On the contrary, the employer can change the great majority of the originally established working conditions at his own will.

The first circumstance any employer interested in this alternative should consider is whether the modification in question may be considered as substantial or not. According to case law, a modification of working conditions is substantial when it alters the main aspects of the labour relationship, replacing them with others that are manifestly different from the original.

If the modification of working conditions cannot be deemed substantial, the employer may adopt it without having to fulfil any legal requirement. On the other hand, Spanish employment law foresees a special procedure in order to adopt substantial modifications of the employees' working conditions.

This procedure will differ in relation to the origin of the working condition that is altered, i.e., it will be different if the modified working condition was established in an individual or a collective agreement. Of course, the procedure is more complicated in the latter scenario.

In the context of a dire financial situation for the company, it will probably be necessary to carry out substantial modifications to the originally assigned working conditions. When the condition to be altered is set forth in an individual agreement, the adoption of the measure will be fairly simple as it only requires notification. On the other hand, when the working condition that needs to be modified is established in a collective agreement, the procedure will undoubtedly be longer. Therefore, the employer must consider the urgency of adopting the measure.

Suspension of Labour Contracts Due to Economic, Technical, Organisational or Production Reasons

Sometimes a company faces a crisis situation that does not permit it to continue employing its employees. Although this is a worst case scenario, Spanish employment law establishes alternatives to the extinction of contracts when the company predicts this situation will not last long.

In fact, in such circumstances the law offers the possibility of suspending the labour contracts instead of terminating them definitively. Simply said, this means that the employees will stop rendering their services while the situation lasts, and accordingly the company will stop paying their salaries.

For example, within a company, there may be different businesses divided according to the prices of the products they offer or manufacture. In a crisis context, the business that create products with higher prices may become unnecessary. Under to Spanish employment law, the employer may suspend the employment contracts of the workers employed in this business when there are reasons to believe this situation will be overcome shortly.

However, according to the gravity of both the situation and the proposed measure, the procedure to be followed in this case is the same as the one applicable to the collective redundancies process.

Early Retirement and Partial Retirement

Generally, the highest salaries within a company correspond to the oldest employees, given their seniority.

Therefore, avoiding the payment of such salaries will usually imply a reduction in costs.

The regular age for retirement is 65 years old. Nevertheless, Spanish employment law includes other ways to shorten this period. However, any measure proposed by the company to make retirement possible before the age established by law will surely entail the need to arrange agreements. In fact, in order to reach a mutually acceptable agreement for both parties, the company may be obliged to assume some expenses.

An alternative for both the company and employees between 61 and 65 years old is that of early retirement.

There are different alternatives the company may offer to an employee in order to settle this agreement. For example, the company and the employee can sign an agreement in order to guarantee that the employee will not suffer any reduction in his pension, compared to the amount he could have obtained in the case of regular retirement at 65 years old. Another alternative will be offering to the employee an amount as compensation for the early retirement. However, there are several options apart from these that may help both the company and the affected employee to arrange a mutually beneficial agreement.

In conclusion, an employer must consider the high salaries he will have to go on paying against the cost of any agreements the company may be obliged to negotiate, which may also be fairly high.

Another option is the termination of the labour contract that will allow the employee to obtain unemployment compensation and, once the period established to receive this has elapsed, he may take early retirement. Of course, in this case, the company may guarantee the employee the same salary as before the period of unemployment during the period he receives unemployment compensation, as well as the best possible pension when he reaches the regular age for retirement.

Another alternative is partial retirement, which means that the employee would continue rendering his services but with reduced working hours. The company would pay a proportionally lower salary, calculated according to the new reduced work time. The company is obliged to hire a new employee in order to make up the hours which the partially retired employee would have worked before his partial retirement. However, this measure could be quite beneficial for the employer as the company is reducing one of its highest salaries and employing a person with less seniority.

In conclusion, there are several alternatives offered in Spanish employment law that can be adopted in a crisis context, thus avoiding the termination of employment contracts.

Some of these alternatives permit a better use of the existing resources. Other options allow for the introduction of changes in labour conditions in order to adapt them to the crisis situation, while others look to minimise some of the highest costs within the company. Finally, the employer can cease complying with his obligations and suspend the contracts for the duration of the crisis.

Due to the flexibility offered by Spanish employment law, we can conclude that the termination of employment contracts should be used as a last resort to overcome a difficult financial situation.

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