



AFTER THE STORM: SEVERANCE PAY IN PORTUGAL AND SPAIN (II)

In our last newsletter we had examined the impact of the winds of reform on labor law in Portugal, specifically its effects on severance pay. And such impact was not insignificant: our examples in pre and post-reform showed compensation slashed by 20% to 37%.

What is the scenario on the Spanish side? If we look at objective dismissals (due to technical, economic or production reasons) things stay pretty much the same. The employee is entitled to 20 days' salary per year capped at 24 months. The real game changer has been Royal-Decree 3/2012, of February 10, which affected unfair dismissals in a big way.

On the one hand, compensation has been cut from 45 days' salary to 33 days' salary, now capped at

24 months instead of the former 42. However, this only applies to the period post-February 10. And there's another exception for agreements executed before the Royal-Decree: if the total number of days' salary calculated with the old rule for the period before the new legislation entered into force (February 11, 2012) exceeds the new rule's cap (24 months x 30 days = 720 days), the former will apply.

On the other, procedural salary (ie, salary accrued between the date of dismissal and the Labor Court's decision declaring the dismissal unfair) virtually disappears, since it is now only due when the employer must reinstate the employee.

We'll see how it works in practice with two simplified examples.

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Example 1: Indefinite term agreement

Duration: From January 1, 1990 till December 31, 2012.

Salary: € 1,500/ month (including 13th and 14th month payments).

The total duration of the agreement is 23 years, but the period we're interested in is from January 1, 1990 till February 11, 2012: 22 years and one month.

This gives us:

- P1: 45 days x 22 years = 990 days' salary;

- P2: 45 days x (1/12) = 3,75 (rounded off to a total of 4 days).

The sum of P1 and P2 is 994, which is greater than 720, so we'll take the 45 days' salary rule and we won't consider the remaining period from February 12, 2012 till December 31, 2012.

Daily salary amounts to € 1,500 x 12/365 = € 49.32

€ 49.32 x 994 days = € 49,024,08.

Example 2: Indefinite term agreement

Duration: From January 1, 2000 till December 31, 2012.

Salary: € 1,500/ month (including 13th and 14th month payments).

Daily salary amounts to € 1,500 x 12/365 = € 49.32

P1: from January 1, 2000 till February 11, 2012:

a) 12 years x 45 days = 540 days' salary.

b) One month from January 1, 2012 till February 11, 2012 = 4 days.

544 days x € 49.32 = € 26,830.08

P1 = 544 days, which is less than 720, so we'll also take into account the period from February 12, 2012 till December 31, 2012.

P2: From February 12, 2012 till December 31, 2012 = 33 days x 10 months/ 12 = 27,5, we round it off to 28 days.

28 days x € 49.32 = € 1,380.96

P1 + P2 = € 28,211.04

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