

Millions of Spanish employees may lose rights set out in collective agreements

In 2012 the Spanish Government introduced radical labour reforms, including new regulations providing that if the parties to a collective agreement were unable to agree on the terms of a new agreement then the old agreement would only remain in force for 12 months after its expiration date. Prior to this change, the provisions of the old collective agreement would remain in force indefinitely, thus providing little incentive for trade unions to negotiate new terms.

The full impact of this legislative change is about to be felt with Spanish trade unions estimating that up to 3.5 million employees may be affected by the expiry of over 1,700 collective agreements on 8 July 2013. Unless replacement agreements are reached before this date, there will be no binding collective agreements in place for those employees. This means that all of the rights contained in the old agreements will no longer be valid.

In light of this situation Spanish employers should review any collective agreements which apply to them, as they may have scope to remove any terms covered by such agreements which are left over from better times, such as generous holiday entitlements or other benefits, grievance and disciplinary procedures. Employees may also lose rights in connection with job classification groups or specific terms and conditions governing basic pay, seniority, payments linked to roles or qualifications, etc. The only valid terms and conditions will be those specifically agreed with individual employees or those set out in the general legislation.

Employers should not simply do nothing. As a minimum we would recommend, where there are collective agreements in place which are due to expire, that employers notify their staff that any rights or more favourable terms and conditions contained in such agreements are being continued (if that is the case) on a temporary basis only, so as to prevent employees from arguing that they have become entitled to such rights by custom and practice.

Negotiations are currently taking place between trade unions and employer associations. On 23 May 2013 the main Spanish trade unions and employer associations agreed to extend the duration of any collective agreements that were due to expire, pending the outcome of current negotiations between the parties as to the terms of new agreements. Doubts have been raised, however, as to whether such an agreement is enforceable against individual employers.