Ana Belén Muñoz Ruiz
Francisco Javier Gómez Abelleira
Pablo Gimeno Díaz de Atauri
Jesús R. Mercader Uguina
Lourdes Sánchez-Galindo Mas
Víctor Maneiro Hervella

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A. Overview, sociological framework of working time

The regulation of working time appears in Articles 34-38 of the Spanish Workers' Statute (WS)[1]. The main features of this regulation are: (1) the maximum working week consists of an average of 40 hours, on an annual basis (1826 hours); (2) the maximum working day is 9 hours, which may be extended by collective agreement or by agreement between the employer and the employee representatives; (3) the maximum number of overtime hours per year is 80; (4) the daily rest period between shifts is 12 hours; (5) the weekly rest period is 36 uninterrupted hours; (6) the paid annual leave is 30 calendar days per year; (7) employees are entitled to 14 public holidays per year; (8) night hours take place between 10:00 p.m. and 6:00 a.m.; (9) irregular working hour distribution is permitted; and (10) there are certain working time rights based on the employee's work-life balance needs, such as schedule adaptation, reduction of working hours, leaves of absence, etc.

The immense variety of sectors and companies justifies a lax regulation that can be specified by sectoral or company agreements. The specific schedule and days of work in the week are to be established at a company or work center level. In the case of office and factory work, the typical work week is Monday through Friday. In contrast, in other major Spanish sectors, such as restaurants, hotels, and retail trade, the work week is from Monday to Sunday. Regional variation exists with regard to opening hours, with some regions, such as the Autonomous Community of Madrid, offering more freedom to retailers (freedom to open on Sundays).

An important feature of the regulation is the irregular distribution of working hours throughout the year, which may be authorized by a collective bargaining agreement, company agreement (employer and employee representatives) or by the law itself. In the latter case, this may extend to up to a maximum of 10% of the total hours. The irregular distribution across the year permits companies to allocate more resources to certain periods when they are most needed. This may also be achieved in other ways, such as through the hiring of part-time employees during specific parts of the year. In practice, high seasonal work is so important that there is a specific legal concept targeting this reality: the permanent seasonal contract (*contrato fijo-discontinuo*). Under this contract, employees are summoned to work when the "high season" begins with their work contract ending at the end of the season. Some activities are not suited to this type of seasonal personnel, and for these cases the irregular distribution of hours is more appropriate.

For most employees, the maximum working time is established on an annual basis, by collective agreement. In most cases, the maximum number of annual working hours ranges from 1700 to 1800. The conversion of this annual figure to a weekly figure involves dividing the annual number of hours by 45.8571. This divisor comes from deducting vacation days (30) and holidays (14) from the number of days in the year (365), resulting in a figure which, when divided by 7, represents the effective work weeks in the year. For example, 1800 hours per year equals 39.25 hours per week, and 1700 hours per year equals 37.07 hours per week.

Work schedules are usually established at each work center. Naturally, schedules follow deeply rooted cultural and sociological patterns, which are difficult to change with a general law. In

[1] Real Decreto Legislativo 2/2015, de 23 octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores.

Spain, it is typical to work on a divided-day basis, meaning that there is a relatively long lunch break (approximately two hours or even longer in some cases). Since Spanish lunch takes place late in the afternoon, the long break usually takes place between 14:00 and 16:00 (even 17:00 in some cases). This results in a late departure from work (usually between 18:00 and 20:00), even though the work schedule begins early in the morning (usually between 8:00 and 10:00). The most common exception takes place on Fridays: on this specific weekday, it is common to have a continuous schedule, meaning that work ends by 14:00 or 15:00. It is very common for the divided schedule to be modified over the summer months, becoming a continuous schedule: such as, from 8:00 to 15:00, with a short 15-30-minute break in the middle. Continuous working hours are highly desirable for most workers with the summer schedule being considered an "entitlement" or a "benefit", usually established in collective agreements. Likewise, many workers with children request continuous working hours to help balance their work and family responsibilities. Thus, it is a common request of working parents to shorten the long lunch break in order to finish the daily working hours earlier.

In the public sector, the minimum working time tends to be a weekly average of 37 and a half hours on an annual basis (1642 hours). The mentioned rule is applicable to the public sector at a national, autonomous, and local level[2].

B. Legal regulation of working time flexibility (for the employer, for the employee)

Within the framework of Spanish employment regulations, there are several legal provisions that may facilitate a flexible use of working time either by the company, the employee, or both. Article 34.2 of the Workers' Statute refers to the possibility of establishing an irregular distribution of working time throughout the year, either through a collective bargaining agreement or an agreement between the company and the employees' representatives (ER). This would permit agreement regarding a distribution of working time adapted to the employers' and employees' variable preferences or needs during each period of the year; e.g., by establishing reduced working days during the summer period, and slightly longer workdays during the rest of the year. Furthermore, Article 34.2 WS enables companies to unilaterally apply an irregular distribution of working time of up to 10% of annual working time, at their discretion, as long as they comply with certain legally required conditions (proper respect of daily and weekly rest periods and prior notice of 5 days).

Compensation for any differences between the maximum working time and the time effectively worked shall be made according to the rules, if any, contained in the collective bargaining agreement or in an agreement between the company and the ER. In the absence of any agreement, these differences shall be compensated within a 12-month period.

Working time distribution shall respect certain limits such as legal minimum rest periods or a maximum work limit of 9 hours per day, although this daily limit may be overruled through collective bargaining or an agreement between the company and the ER.

[2] D.A. 144 Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018 and Resolución de 28 de febrero de 2019, de la Secretaría de Estado de Función Pública, por la que se dictan instrucciones sobre jornada y horarios de trabajo del personal al servicio de la Administración General del Estado y sus organismos públicos.

As a separate issue, Article 34.8 WS establishes employees' right to request adaptations to the duration, distribution, or organization of working time or on the way of rendering services (including remote work), for the purposes of the work and family-life balance. The law emphasizes this right in specific cases (employees with children under the age of 12, a spouse, or relatives having special care needs, etc.). The applicable collective bargaining agreement may establish the terms of the exercising of this right. In the absence of any regulation, by employee request to implement any adaptation of the above, the company shall initiate a negotiation process with the same, for a maximum period of 15 days. If the company disagrees with the request, it must offer an alternative proposal or communicate its refusal to the employee, justifying its decision on objective reasons. The employee may file a claim against the company's decision before the social courts, in accordance with the procedure established in Article 139 of Ley 36/2011, de 10 octubre, Reguladora de la Jurisdicción Social (LRJS)[3].

If the employee's request is accepted or the parties reach an agreement in any other way, the employee will be entitled to return to the previous situation upon conclusion of the agreed period or when the causes motivating the request cease to exist.

Any adaptations to the organization of working time may also be requested before the court, as precautionary measures, in legal proceedings related to harassment or initiated by an employee who is a victim of gender-based violence[4].

Another issue to be addressed is the regulation of work performed remotely. The Law on Remote Work (LRW)[5] is applicable when remote work is performed on a regular basis; i.e., at least 30% of working time (or the equivalent proportional percentage depending on the duration of the employment contract) within a reference period of three months.

According to the LRW, remote work is voluntary both for the company and the employee, and it requires a written agreement, in accordance with the terms and minimum content established in this law. Among other issues, this agreement shall specify the percentage and distribution between remote and non-remote work, if any, and the employee availability terms. Any modification of these terms shall be agreed in writing between the parties. The ER must receive a copy of these agreements and their updates from the company.

The decision to carry out remote work is reversible both for the company and the employee. The terms of this reversibility may be established in the collective bargaining agreement or, failing that, in the remote-work agreement.

The company shall pay for or compensate any expenses related to the equipment, tools, and means necessary for the execution of remote work. Collective bargaining agreements or other collective agreements may establish mechanisms to determine these expenses, along with their compensation or payment.

Remote employees are entitled to the same rights as non-remote employees, including those related to workday adaptation. For instance, they are entitled to a flexible work schedule, subject to the terms established individually or by means of collective bargaining. The Spanish regulation recognizes all employees' right to disconnect. However, the legal framework does not include a set of administrative penalties if the employer does not comply with this right.

[3] Ley 36/2011, de 10 octubre, Reguladora de la Jurisdicción Social.
[4] Article 180.4 of LRJS.
[5] Ley 10/2021, de 9 julio, de trabajo a distancia.

Collective bargaining or company collective agreements may establish the specific positions and functions that may be performed remotely, the conditions to develop remote services, the maximum duration of remote work, or other additional content related to remote work agreements, as well as any other relevant issues (a minimum non-remote working time for remote employees, the exercising of reversibility, etc.)[6].

This serves as a general description of the Spanish legal regulation of working time flexibility. In the case in which the interpretation of these regulations or company practices related to the above jeopardizes the interests of a group of employees, the ER may file a claim before the social courts, in accordance with the provisions on collective conflict established in the Spanish Regulatory Law on Corporate Jurisdiction (LRJS).

C. Main features of industrial relations in the country

The Spanish collective bargaining system may be considered a mixed system, with bargaining occurring at national, industrial, provincial, and company levels. This system has been criticized due to the "relative autarky" of the different bargaining units and its supposed "Canton syndrome" (Mercader, 2002, p. 127).

The basic principles of this system are regulated in the Spanish Workers' Statute: legitimacy to participate in bargaining and plurality of subjects legitimated to negotiate; principle of self-determination of the bargaining unit; automatic general applicability of any collective agreement above the company level; principle of non-affection or non-concurrence (*prior in tempore prior in iure*); and "ultra-activity" of collective agreements.

The first principle is the trade unions' legitimacy to bargain, which does not result from the number of affiliated workers. Rather, trade union representation in bargaining is based on electoral strength, i.e. from the votes received in trade union elections. The system of trade union workplace elections determines which trade union is the most representative and therefore can negotiate on behalf of the workforce at various levels. The general structure of the trade union movement is organized around a series of competing confederations, each of which has a specific political or social identity. Organic Law 11/1985, of 2 August on Freedom of Association, requires 10% at the state level or 15% and a minimum of 1500 representatives at the regional level.

The core of the Spanish industrial relations system is fundamentally dominated by the Workers Commission (CCOO, *Comisiones Obreras*) and the General Union of Workers (UGT, *Unión General de Trabajadores*). The dominance of these two main confederations has been consistent since the late 1970s (Fernández, Ibáñez & Martínez, 2023, p. 1016) and both exceed 30%. However, there are several regional exceptions, such as the Basque Country, where the dominant unions have included the Basque Workers' Solidarity (ELA, *Eusko Langileen Alkartasuna*) and the Nationalist Workers' Committees (LAB, *Langile Abertzaleen Batzordeak*), and Galicia, where the Galician Unions Confederacy (CIG, *Confederación Intersindical Galega*) has also played an important role.

Exceptions to this include the Workers' Trade Union (USO, *Unión Sindical Obrera*), which represents 4% of representatives, the Public Official's Independent Trade Union (CSIF, *Central*

Sindical Independiente y de Funcionarios), representing 3.7% of representatives, and the anarcho-syndicalist General Confederation of Labor (CGT, *Confederación General del Trabajo*) representing 2% (emerging from the original anarcho-syndicalist National Confederation of Labour – CNT, *Confederación Nacional De Trabajo*).

Furthermore, the principle of statutory extension establishes that any collective agreement above the company level must be applied to all companies and workers forming part of the geographical and industry levels in question, even though they may not have participated in the bargaining process. Moreover, the regulatory mechanism enforced to resolve conflicts between collective agreements concluded at different levels (*concurrencia*) notably limits the likelihood of lower-level collective agreements altering aspects that have already been included in higher-level agreements. Finally, the "ultra-activity" of an agreement refers to a principle whereby it remains valid after its expiry, unless it has been renewed (Izquierdo, et al, 2003).

Collective agreements can be negotiated between the representatives of workers and employers either at a de-centralized company level or at a more centralized industry level at the distinct geographical levels: local, provincial, regional, or national. In 2023, the collective bargaining coverage rate extended to 91.8% (14 million workers). The figure is higher in men (95%) than in women (88%) and it approaches 90% in all sectors, except for domestic work (5.8%) and public administration (62.4%). Most workers are covered by an agreement above the company level (88.47%)[7].

Recently, major modifications have been made with regard to the concurrence of agreements and ultra-activity. In 2021, the applicative priority of the enterprise collective agreement regarding pay was eliminated (Ballester, 2022; Cruz, 2022; Cabeza, 2002; Lahera, 2022; López-Terrada, 2022; Mercader, 2022) and indefinite ultra-activity was re-established (Gordo, 2022). The Spanish Workers' Statute (art. 84) establishes that the regulation of the conditions established in a company agreement, which may be negotiated at any time during the validity of higher-level collective agreements, will have application priority with respect to the state, regional, or lower-level sectoral agreement in the following matters: a) the payment or compensation of overtime and the specific remuneration for shift work; b) the schedule and distribution of working time, the shift work regime and annual vacation planning; c) the adaptation of the workers' professional classification system; d) the adaptation of the aspects of the contracting modalities that are attributed by this law to company agreements; e) measures to promote co-responsibility and balance of work, family, and personal life.

Regional collective agreements have also gained importance (Durán, 2024). As of 2024,[8] autonomous community collective agreements will have application priority over any other sectoral or state-level agreement, provided that their regulation is more favorable for workers. This is also the case for provincial agreements. However, the trial period, contracting modalities, professional classification, maximum annual working hours, disciplinary regime, minimum standards for occupational risk prevention, and geographical mobility will be considered non-negotiable areas.

[7] Ministerio de Trabajo y Economía Social, *Estadística de Convenios Colectivos de Trabajo*, 2024.

[8] Real Decreto-ley 2/2024, de 21 de mayo, por el que se adoptan medidas urgentes para la simplificación y mejora del nivel asistencial de la protección por desempleo, y para completar la transposición de la Directiva (UE) 2019/1158 del Parlamento Europeo y del Consejo, de 20 de junio de 2019, relativa a la conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores, y por la que se deroga la Directiva 2010/18/UE del Consejo.

D. The role of collective bargaining in working time

The regulation of maximum working time is the result of the collaboration of public regulation and collective agreements. The Workers' Statute has a strong role in negotiating the issue of working time in the collective agreements (Article 34 Workers' Statute). In practice, working time and wage are the main working conditions enforced in the collective agreements.

The Workers' Statute establishes an average of 40 hours per week as an annual adjustment and a 9-hour per day maximum. The sectoral collective agreement has the competence to determine the maximum working time in accordance with the law. Collective agreements at an enterprise level may improve the conditions established at a sectoral collective bargaining level. The main margin of flexibility for collective agreements at the enterprise level is the competence to negotiate working hours, working time distribution, the work shifts system, and the organization of annual holidays (Article 84 Workers' Statute).

There is currently a trend to reduce the maximum legal working time in sectoral collective agreements, especially at a national level. Negotiators have decided to apply the annual system to establish the working time. Overall, the working time duration ranges between 1700 and 1800 annual hours in the collective agreements.

Collective agreements may introduce different maximum working times among distinct groups of employees. For example, in the tire sector, the Michelin collective agreement has agreed to approximately 1712 hours for skilled technicians and 1580.4 hours for shift workers. This represents a reduction in working time. This measure is mainly intended to compensate for the differences in flexibility of the technicians (flexible work schedule and no weekend work) and the less favorable conditions of the shift workers (who work on Saturdays and Sundays).

Working time flexibility is regulated by the Workers' Statute. It may be regulated by agreement between the employer and the work council. A collective agreement may vary the maximum daily hours worked (9 hours). If agreement is not possible, the employer may apply an annual adjustment of working time flexibility of up to 10%. The employer shall inform employees of the day and the hours with at least five days advance notice. Collective agreements are not entitled to reduce the mentioned period (Judgment of the Supreme Court of 14 March 2024, Rº 96/2022) but they may increase it. For example, in the food sector, the Mercadona collective agreement has agreed at least 10 days. In practice, flexible working hours focus more on the employer's needs as opposed to improving the employee's personal life. However, there are numerous possibilities for collective agreements that can regulate flexible working hours and offer greater freedom for employees. For instance, the Mercadona collective agreement has included the issue of long weekends to recognize at least 8 long weekends (from Saturday to Monday) for employees who also work on Sundays.

In some cases, the flex model is the general rule. One example is the ING enterprise of the banking sector, which has a maximum working time of 1700 hours on an annual basis[9]. The flex model based on remote work is applied to 85% of its employees (only office staff are excluded, approximately 15%) as a result of an agreement with trade unions[10].

[9] XXIV Convenio colectivo del sector de la banca (see Article 26).

[10] Although it is true that the workers' representatives negotiate the flex model when the office was moved from a new building in Madrid (with greater difficulties in parking), ING was testing different types of flex model in order to change their model of work, and it was key for the smooth negotiation with the trade unions. Interviews

In some enterprises, the compressed four-day working time has been implemented. One successful case is the Good Rebels enterprise of the advertising industry whose flex model has increased productivity by approximately 8 to 9%[11].

Working hours are established by the employer with certain limitations. The employer shall comply with the maximum working time determined in the collective agreements and the legal framework (maximum 9 hours per day, 12 hours rest and break during the working time). However, working hours may be negotiated in the collective agreements.

The flexible working hours allow companies to apply different working hours for every employee. The flexible working hours are the competence of the collective agreements.

In Spain, it is mandatory to register for working time. The organization as well as the documentation of the working time registration may be determined by the collective agreements or by the company, upon consultation with the workers' representatives.

There are certain prohibited areas for the collective agreements. They are not entitled to modify the 12-hour daily rest period, the one and a half day weekly rest, or the 5-day advance notice period by employers to inform employees about the flexible working hours (the day and the hour).

E. Other issues regarding working time arrangements and overall conclusions

The Spanish legal framework has great power of innovation regarding the issue of working time thanks to collective agreements. At sectoral and enterprise levels, collective agreements tend to reduce the maximum working time. Collective agreements at the enterprise level are addressed to improve the sectoral regulation, reducing the maximum working time. One out of every two collective agreements at an enterprise level is between 1650 and 1700 hours annually.

In terms of flextime, the possibilities of collective agreements have not developed in a generalized manner. Working time flexibility in collective agreements reflects a traditional approach. For example, working time flexibility tends to be scheduled in condensed working hours during the summer. While the Covid pandemic clearly made it possible to experiment with certain types of flextime such as remote work, since the pandemic, the general trend has been to work on-site, with some exceptions.

Currently, social actors are negating labor market reform on working time in an attempt to reduce the maximum working time to 38.5 hours in 2024 and 37.5 hours in 2025. Furthermore, the most representative trade unions defend strengthening the working time register and the right to disconnect.

with Senior Technician in Occupational Risk Prevention in ING on 4 July 2024 and with FINE trade union (Federación Fuerza, Independencia y Empleo) on 12 July 2024.

[11] The sectoral collective agreement is applicable (Convenio Colectivo del sector de empresas de publicicidad that sets 37,5 hours per week from Monday to Friday). Interview with Juan Luis Polo (President of Good Rebels) on 23 July 2024.

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Links to relevant legislation, Collective Labor Agreements and other useful sources

- Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430
- Ley 10/2021 de 9 de julio, de trabajo a distancia, https://www.boe.es/buscar/doc.php?id=BOE-A-2021-11472
- Ley 6/2018, de 3 de julio, de Presupuestos Generales del Estado para el año 2018 (See DA 144) https://www.boe.es/buscar/act.php?id=BOE-A-2019-2861

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- XXIV Convenio Colectivo de la Banca https://www.boe.es/buscar/doc.php?id=BOE-A-2021-5003
- Convenio Colectivo de empresas del sector de publicidad (see Article 21) https://www.boe.es/buscar/doc.php?id=BOE-A-2016-1290
- III Convenio Colectivo del Grupo Renfe (see Article 13) https://www.boe.es/buscar/doc.php?id=BOE-A-2023-16706
- Convenio colectivo de Mercadona (see Article 16) https://www.boe.es/boe/dias/2024/02/28/pdfs/BOE-A-2024-3851.pdf
- Convenio Colectivo de Michelín España Portugal, SA (see Article 22) https://www.boe.es/buscar/doc.php?id=BOE-A-2023-22201