



PHARE TWINNING PROJECT BG-04-IB-JH-04  
(08-2005 -- 08-2007)

Improvement of the Magistrates' Legal Status and Strengthening the Capacity of the Supreme Judicial Council  
SUPREME JUDICIAL COUNCIL 9, Saborna Str 1000 SOFIA (Bulgaria)

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which approves the Revised Text of the Workers' Statute  
(*"Estatuto de los Trabajadores"* (ET))

**REVISED TEXT OF THE WORKERS' STATUTE**

**(TRANSLATION JULY 2007)**

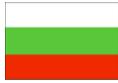
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## **TITLE I**

### **Individual work relationships**

#### **CHAPTER I**

##### **General provisions**

##### **Section 1. Scope and applicable law**

###### ***Article 1. Scope of application.***

1. The present Statute shall apply to all those workers who voluntarily provide remunerated services on account of a third party and as part of the structure and management of another individual or legal entity, referred to as an employer or business owner.

2. For the purposes of this Statute, business owners shall refer to any individuals or legal entities, or asset communities, that receive the services provided by the persons referred to in the foregoing section, including those persons hired for assignment to user companies by legally incorporated part-time agencies.

3. The scope of this act shall not include:

a) The service relationship of civil servants, to be regulated by the Statute of Civil Servants, including the staff at the service of the State, local Corporations and autonomous public Entities if, pursuant to an Act, said relationship is governed by administrative rules or internal regulations.

b) Mandatory individual services.

c) An activity that is purely and simply restricted to the mere holding of the post of director or member of the management bodies of an enterprise legally incorporated as a company, and provided that his/her activity in the enterprise only entails the execution of tasks inherent to such post.

d) All tasks carried out further to a friendship, charitable act or good neighbour relationship.

e) Family jobs, unless those who are executing the job are proven to hold employee status. To this effect and subject to living with the business owner, the following shall be considered relatives: the spouse, descendants, ascendants and other relatives by blood ties or affinity, up to the second degree, inclusive, and those adopted into the family, as the case may be.

f) The activity of individuals who participate in commercial transactions on account of one or more business owners, as long as they are personally liable for the successful outcome of the transaction, assuming the risks inherent thereto.

g) In general, any task executed further to a relationship other than as defined in section 1 above.

To this effect, the scope of an employment relationship shall not include the activity of those individuals providing transportation services pursuant to administrative permits they hold, provided at the corresponding price, with public service commercial vehicles that are owned or directly disposed of by such persons, even when this service is continuously carried out for the same carrier or distributor.

4. Spanish employment laws shall apply to any job executed by Spanish workers hired in Spain at the service of Spanish companies abroad, notwithstanding any public order rules applicable at the work place. Such workers shall at least hold the same economic rights they would hold if they were working in Spain.

5. For the purposes of this Statute, a work centre shall refer to the production unit with a specific structure that is registered as such before the labour authorities.

In the case of tasks carried out at sea, the work centre shall be the vessel, which shall be deemed as located in the province of its base port.

## ***Article 2. Special employment relations.***

1. The following parties shall be considered subject to a special employment relationship:

a) Senior executive staff not covered by Article 1.3 c) above.

b) Domestic staff.

c) Convicts who are serving a prison sentence.

d) Professional sports players.

e) Artists in public shows.

f) Individuals intervening in commercial transactions on account of one or more business owners without assuming the risks inherent thereto.

g) Handicapped workers providing their services at special employment centres.

h) Port stevedores who provide their services through state companies or individuals who carry out the same tasks as the latter at ports managed by Autonomous Communities.

i) Any other task that is expressly declared to be a special employment relationship pursuant to an Act.

2. In all the events indicated in the foregoing section, such employment relations shall be regulated further to the basic rights acknowledged in the Spanish Constitution (RCL 2978, 2836).

## ***Article 3. Laws applicable to an employment relationship.***

1. The rights and obligations inherent to an employment relationship shall be governed:

a) By legal and regulatory provisions issued by the State.

b) By Collective Bargaining Agreements (CBAs).

c) By the parties' intention expressed in an employment contract with a legal object, without it being possible in any case to establish conditions to the detriment of the worker that are less favourable than or contrary to the foregoing legal provisions and CBAs.

d) By local and professional use and customs.

2. All legal and regulatory provisions shall apply in strict compliance with the principle of legal hierarchy. Regulatory provisions shall implement the precepts established in rules of a higher rank, but may not establish employment conditions that differ from those established in the laws being implemented.

3. Any conflict derived from the precepts of two or more employment rules, whether state or contractual, which shall in any case uphold the mandatory legal minimum, shall be resolved by applying what is more favourable for the employee as a whole, based on annual calculations and in relation to quantifiable items.

4. Use and customs shall only apply in the absence of legal, voluntary or contractual provisions, unless subject to a provision or express reference.

5. Employees may not validly dispose of any rights that are acknowledged by provisions of mandatory law, before or after holding such rights. Neither may they validly dispose of any rights acknowledged as inalienable by a CBA.

## Section 2. **Basic employment rights and obligations**

### ***Article 4. Employment rights.***

1. The following basic rights shall be held by all employees, with the content and scope established for each one by specific regulations:

- a) A right to work and to freely choose a career or job.
- b) Trade union rights.
- c) A right to participate in collective negotiations.
- d) The adoption of collective dismissal measures.
- e) A right to strike.
- f) Freedom to hold meetings.
- g) A right to participate in the company.

2. In an employment relationship, all employees shall be entitled:

- a) To effectively occupy their post.
- b) To job promotions and professional training.
- c) To not be directly or indirectly discriminated when applying for a job, or once employed, on the grounds of sex, married status, age within the limits established herein, racial or ethnic origin, social status, religion or beliefs, political opinions, sexual preference, trade union membership, or on the grounds of a language within the state of Spain.

Neither may they be discriminated on the grounds of disability, provided that they are apt to hold the job or execute the task in question.

- d) To physical integrity and to an adequate safety and hygiene policy.
- e) To respect for their privacy and adequate acknowledgement of their dignity, including protection against harassment on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual preference, and against sexual harassment and chauvinism.
- f) To promptly receive the remuneration agreed upon or legally foreseen.
- g) To individually exercise the actions derived from their employment contract.

h) To any others specifically derived from their employment contract.

**Article 5 Employment obligations.**

All employees shall have the following basic obligations:

- a) To fulfil the specific obligations of their work post, pursuant to rules of good faith and diligence.
- b) To comply with any safety and hygiene measures adopted.
- c) To fulfil the business owner's orders and instructions in the ordinary exercise of its management duties.
- d) Not to compete with the company's activity, in the terms established herein.
- e) To contribute to improved productivity.
- f) Any that may be derived from their respective employment contracts.

**Section 3. Components and effectiveness of an employment contract**

**Article 6. Employment of minors.**

1. It is forbidden to hire persons less than sixteen years of age.
2. All employees under eighteen years of age may not carry out night jobs or any activities or work posts which the Government, at the proposal of the Ministry of Employment and Social Security, after consulting the most representative trade unions, declares to be insalubrious, burdensome, noxious or hazardous, both for the individual's health and professional/human development.
3. All persons under eighteen years of age may not work extra hours.
4. The participation of minors under sixteen in public shows shall only be authorised in exceptional cases by the employment authorities, provided that this does not endanger their physical health or professional/human development; said authorisation must be recorded in writing for specific acts.

**Article 7. Hiring capacity.**

The provision of employment services may be hired by:

- a) Those who have full legal capacity pursuant to the provisions of the Spanish Civil Code (LEG 1889, 27).
- b) Individuals under eighteen and older than sixteen, who are emancipated, with the consent of their parents or guardians, or who are authorised by the person or institution in charge of them.

If the legal representative of a person with limited capacity expressly or tacitly authorises such person to work, he/she shall also be authorised to exercise the rights and fulfil the obligations derived from the employment contract, including termination thereof.

- c) Foreigners, pursuant to the provisions established in specific laws on the matter.

**Article 8. Contractual form.**

1. An employment contract may be executed in writing or orally. It shall be deemed to exist between anybody who is providing a service on account of and within the structural

and management scope of another party and the party that is receiving such service in exchange for remuneration to the former.

2. All employment contracts shall be executed in writing if so required by law and, in any case, traineeship and training contracts, part-time contracts, permanent-discontinuous and replacement contracts, home-based employment contracts, contracts for the execution of works or a specific service, incorporation contracts (*“contratos de inserción”*), as well as the contracts of employees hired in Spain at the service of Spanish companies abroad, must be executed in writing. Furthermore, contracts for a specific term that exceeds four weeks must be recorded in writing. If this requirement is not met, the contract shall be presumed as executed for an indefinite term and full-time, unless evidence is provided to the contrary confirming its provisional term or the part-time nature of the services.

3.a) All employers shall provide the employees' legal representatives with a basic copy of all contracts to be executed in writing, except for contracts related to a special senior executive employment relationships which must be notified to the employees' legal representatives.

In order to ascertain that the content of the contract conforms to applicable law, this basic copy shall contain all contract details except for the Spanish identity card number, address, married status and any other information that could affect the employee's privacy further to Organic Act 1/1982, of 5 May (RCL 1982, 1197).

The basic copy shall be delivered by the employer, within a maximum of ten days following execution of the contract, to the employees' legal representatives, who shall sign it as acknowledgement of receipt.

Subsequently, this basic copy shall be delivered to the employment office. In the absence of employees' legal representatives, a basic copy must also be formalised and sent to the employment office.

b) All representatives of the Administration and of any trade unions and employer associations with access to a basic copy of the contract as a result of belonging to institutional participation bodies that are so entitled by regulatory provisions shall be subject to a duty of professional secrecy and may not use this documentation for another purpose than the one behind its delivery.

4. Either party may demand that the contract be formalised in writing, even during the course of the employment relationship.

5. If the term of the employment relationship exceeds four weeks, the employer must notify the employee in writing, in the terms and within the regulatory deadlines provided, of the essential components of the contract and of the main execution conditions of the employment services, provided that such components and conditions are not included in the written employment contract.

## **Article 9. Contractual effectiveness.**

1. If an employment contract were rendered partly null and void, the remainder shall continue in force and shall be deemed as completed with the necessary legal provisions, further to Article 3.1 above.

If the employee were assigned special conditions or remuneration by virtue of services foreseen in the invalid part of the contract, the competent courts that declared the nullity at the party's request must issue the necessary resolution on the survival or removal, in whole or in part, of such conditions or remuneration.

2. If the contract is rendered null and void, the employee may demand the remuneration applicable under a valid contract for the work already provided.

## Section 4. **Forms of employment contracts**

### **Article 10. Shared work and group contracts.**

1. If an employer were to assign shared work to a group of employees, the corresponding rights and obligations shall remain in relation to each one, individually.

2. If an employer executes a contract with a group of employees considered as a whole, the corresponding rights and obligations shall not apply vis-à-vis each group member. The group manager shall represent the members and shall be bound by the obligations inherent to such representation.

3. If an employee, pursuant to what is agreed in writing, were to assign an assistant to his/her work, his/her employer shall also be the employer of any such assistant.

### **Article 11. Training contracts.**

1. Traineeship employment contracts may be executed with whoever holds a university degree or professional qualifications of a medium or high degree, or official qualifications acknowledged as equivalent, to enable such persons to exercise a profession, within four or six years, if the contract is executed with a handicapped worker, following completion of the relevant studies, according to these rules:

a) The work post shall enable a professional traineeship that conforms to the level of studies executed. By virtue of a sector state CBA or, otherwise, by a lower sector CBA, the job posts, groups, levels or professional categories of this contract may be established.

b) The term of the contract must be at least six months and a maximum of two years. Within this term, any state sector CBA or, otherwise, a lower sector CBA, may determine the length of the contract in light of the sector characteristics and the corresponding traineeship.

c) No employee may be hired as a trainee in the same or other company for longer than two years by virtue of the same qualifications.

d) Except as provided in a CBA, a trial period may not exceed one month for traineeship contracts executed with workers who hold medium-degree qualifications, or two months for traineeship contracts executed with workers who hold high-degree qualifications.

e) The employee's remuneration shall be the one determined in the CBA for trainees and, otherwise, may not be less than 60 or 75%, during the first or second year of validity of the contract, respectively, of the salary established in a CBA for an employee who holds the same or equivalent work post.

f) If, upon termination of the contract, the worker were to continue in the company, a new trial period may not be established. The duration of the traineeship shall be taken into account to calculate the employee's seniority in the company.

2. The object of a training contract shall be to acquire the necessary theoretical and practical training to adequately exercise a job or work post demanding a certain level of qualifications, and shall be governed by the following rules:

a) It may be executed with workers over sixteen and under twenty-one years of age who lack the necessary qualifications to sign a traineeship contract.

The maximum age shall be twenty-four years whenever the contract is executed with unemployed persons who join the company as students/workers under workshop and training programmes.

This maximum age shall not apply whenever the contract is executed with unemployed persons who join the company as students/workers under employment workshop programmes or who are disabled.

b) By means of a state sector CBA or, otherwise, a lower sector CBA, depending on the size of the staff, a maximum number of contracts may be established, as well as the work posts subject to such contract.

Furthermore, company CBAs may establish a maximum number of contracts depending on the size of the staff in the event of a company training plan.

If the CBAs referred to in the foregoing paragraphs do not specify the maximum number of contracts each company may execute according to its staff, this number shall be one established in applicable regulations.

c) The minimum term of a contract shall be six months and the maximum term shall be two years. By means of a state sector CBA or, otherwise, in a lower sector CBA, a different term may be established in light of the characteristics of the job or work post in question and its training requirements. However, the minimum term may never be less than six months and the maximum term may not exceed three years, or four years in the case of a handicapped employee, taking into account the type or degree of disability and the characteristics of the training to be pursued.

d) Upon expiration of the maximum term of the training contract, the employee may not be hired under this type of contract by the same or other company.

No training contracts may be executed of which the object is to provide qualifications for a work post that was previously held by the employee in the same company for longer than twelve months.

e) The time involved in theoretical training shall depend on the characteristics of the job or work post in question and on the number of hours foreseen for the training module applicable to such job or work post. In any case, it may never be less than 15% of the maximum working schedule foreseen in the CBA or, otherwise, of the maximum working schedule established by law.

Within the foregoing limits, CBAs may establish the time assigned to theoretical training and its allocation, providing, if necessary, the fragmentation or concentration of this time with respect to the time effectively worked.

If the employee hired for the training has not completed the educational courses covered by obligatory education, any theoretical training must be immediately used to complete such education.

The theoretical training requirement shall be deemed as met whenever the employee confirms, by means of a certificate issued by the competent Public Administration, that he/she has completed an occupational/professional training course adjusted to the job or work post covered by the contract, in which case the employee's remuneration shall be proportionally increased by the time not spent on theoretical training.

Whenever an employee hired for training is mentally handicapped, the theoretical training may be replaced, in whole or in part, following a report from the relevant assessment/multi-professional teams, by rehabilitation procedures or personal/social adjustment programmes in a psychological/social centre or social/employment rehabilitation centre.

f) The work effectively provided by an employee in the company must be related to the tasks inherent to the occupational level, job or work post covered by the contract.

g) Upon termination of the contract, the employer must provide the employee with a certificate recording the duration of the theoretical training received and the level of practical training acquired. The employee may apply for the corresponding professional certificate from the competent Public Administration, subject to completing the necessary tests.

h) The remuneration of an employee hired as a trainee shall be the one determined in the CBA. Otherwise, such remuneration may not be less than the minimum legal salary in proportion to the time effectively worked.

i) The Social Security protection provided to an employee hired as a trainee shall include, as contingencies, situations that are able to be protected and benefits, those derived from occupational accidents and illness, health care in the event of an ordinary illness, non-occupational accident and maternity, economic benefits for provisional disability derived from ordinary risks and maternity, and pensions. Furthermore, the employee shall be entitled to receive coverage from the Salary Guarantee Fund.

j) In the event that the employee remains in the company once the contract has expired, the provisions established in section 1, paragraph f), of this article, shall apply.

k) A training contract shall be presumed to be a common or ordinary contract whenever the employer fully breaches its obligations in theoretical training matters.

3. In CBA negotiations, obligations may be established to convert training contracts into contracts for an indefinite term.

### ***Article 12. Part-time contracts and replacement contracts.***

1. An employment contract shall be deemed as executed part-time whenever it is agreed to provide services during a certain number of hours a day, a week, a month or year, that are less than the working schedule of a comparable full-time employee.

For the purposes of the foregoing paragraph, the term “comparable full-time employee” shall refer to a full-time employee of the same company and work centre, with the same type of employment contract, who is carrying out an identical or similar task. In the absence of a comparable full-time employee in the company, the full-time working schedule foreseen in the applicable CBA shall apply or, otherwise, the maximum working schedule established by law.

2. A part-time employment contract may be executed for an indefinite or specific term in those cases where the law allows such type of contract to be used, except training contracts.

3. Notwithstanding the provisions of the foregoing section, a part-time contract shall be deemed as executed for an indefinite term whenever it is executed to carry out fixed and periodic tasks within the ordinary volume of the company’s activity.

4. Part-time contracts shall be governed by the following rules:

a) Further to the provisions established in Article 8.2 herein, the contract must necessarily be executed in writing, in the form established. The contract must include the number of ordinary working hours a day, a week, a month or a year that are hired and how they are allocated.

If these requirements are not met, the contract shall be deemed as executed full-time, unless there is evidence to the contrary proving the part-time nature of the services.

b) A daily working day in a part-time job may be carried out continuously or in stages. Whenever a part-time contract entails the execution of a daily working day that is less than that executed by full-time workers and is provided in stages, it will only be possible to interrupt such daily working day once, unless otherwise provided in a sector CBA or CBA of a lower scope, as the case may be.

c) Part-time workers may not work extra hours, except for the cases provided in Article 35.3 below. The execution of extra hours shall be governed by the provisions established in section 5 of this article.

d) Part-time workers shall have the same rights as full-time workers. Whenever applicable depending on the nature of such rights, these shall be acknowledged in legal and regulatory provisions and in CBAs in a proportional manner, depending on the time worked.

e) The conversion of a full-time job into a part-time job and vice versa shall always be voluntary for the worker and may not be unilaterally imposed or the result of a substantial modification in his/her working conditions, pursuant to the provisions established in Article 41.1.a) below. The worker may not be dismissed or subject to any other type of sanction or detrimental effect as a result of rejecting this conversion, notwithstanding the measures that may be adopted, pursuant to the provisions of Articles 51 and 52.c) herein, for economic, technical, structural or production reasons.

In order to enable a voluntary transfer in part-time employment, the employer must notify the company workers of any vacancies available, in such a way that the workers may apply for the voluntary conversion of a full-time job into a part-time job and vice versa, or in order to increase the working hours of part-time workers, pursuant to the procedures established in sector CBAs or in CBAs of a lower scope, as the case may be.

Any workers who have agreed to the voluntary conversion of a full-time employment contract into a part-time one or vice versa and who apply for a return to their former situation, further to the information referred to in the preceding paragraph, shall have preference when applying for a vacancy of this kind existing in the company that belongs to their same professional group or equivalent category, further to the requirements and procedures established in sector CBAs or in CBAs of a lower scope, as the case may be. This same preference shall be enjoyed by those workers who were initially hired part-time and who provided their services as such in the company for three or more years, in relation to the occupation of full-time vacancies corresponding to their same professional group or equivalent category in the company.

In general, the applications referred to in the foregoing paragraphs shall be taken into account by the employer, to the extent possible. The rejection of an application shall be notified by the employer to the worker in writing in a justified manner.

f) CBAs shall establish measures to enable the effective access of part-time workers to continuous professional training, in order to encourage their professional career and mobility.

g) Sector CBAs and, otherwise, CBAs of a lower scope, may establish the necessary requirements and specialties for the conversion of full-time contracts into part-time contracts, if this is mainly due to family or training reasons.

5. Extra hours shall refer to those that may be executed as agreed, in addition to the ordinary hours established in the part-time contract, pursuant to the legal system foreseen in this section and, if applicable, in the sector CBAs or, otherwise, in CBAs of a lower scope.

The working of extra hours is subject to the following rules:

a) The employer may only demand the execution of extra hours if this is expressly agreed with the employee. An agreement on extra hours may be agreed upon execution of the part-time contract or thereafter but, in any case, will act as a specific agreement with respect to the contract. The agreement must necessarily be formalised in writing, in the official form established for this purpose.

b) An agreement on extra hours may only be formalised in the case of part-time contracts for an indefinite term.

c) The agreement on extra hours shall establish the number of extra hours that may be demanded by the employer.

The total extra hours may not exceed 15% of the ordinary working hours established in the contract. Sector CBAs or, if applicable, CBAs of a lower scope may establish another maximum percentage which in no case may exceed 60% of the ordinary hours contracted. In any case, the sum of ordinary hours and extra hours may not exceed the legal limit for part-time work defined in section 1 above.

d) The allocation and execution of the extra hours agreed upon shall follow the provisions established in this regard in the applicable CBA and in the agreement on extra hours. Unless

otherwise provided in the CBA, the employee must be informed seven days in advance of the day and time when the extra hours are to be provided.

e) The execution of extra hours shall in any case uphold the limits as to working schedules and rest periods established in Article 34, sections 3 and 4, Article 36.1 and Article 37.1 herein.

f) All extra hours effectively worked shall be paid as ordinary hours and shall be taken into account for the purpose of calculating Social Security contribution bases, exemption periods and regulatory grounds for benefits. To this effect, the number and payment of any extra hours worked shall be indicated in each individual payslip and in Social Security contribution documents.

g) The agreement on extra hours may be rendered null and void due to a waiver on the part of the employee, providing fifteen days' prior notice, after one year has passed since the signature date, in the following circumstances:

Due to a need to cover the family responsibilities listed in Article 37.5 below.

For training needs, in the manner established in applicable regulations, provided that schedule incompatibility is ascertained.

Due to incompatibility with another part-time contract.

h) The agreement on extra hours and the conditions in which to provide them shall be subject to meeting the requirements established in the foregoing letters and, as the case may be, to the provisions established in applicable CBAs. In the event of a breach of such requirements and provisions, the employee's refusal to work the extra hours, notwithstanding their contractual nature, will not amount to employment behaviour subject to sanction.

6. Furthermore, a part-time contract shall exist in the case of an agreement between the employee and his/her company, in the conditions established in this article, to reduce his/her working schedule and salary by between a minimum of 25% and a maximum of 85%, if the general conditions are met to be entitled to a contribution-based Social Security retirement pension. The foregoing shall be subject to an exception based on age: it must be less than five years, maximum, of the age required or, if said general conditions are met, this age is already met. The execution and remuneration of this part-time employment contract shall be compatible with the Social Security pension acknowledged in favour of the worker as partial retirement, and the employment relationship shall be terminated upon full retirement.

In the case of employees who have not yet reached retirement age, the company must simultaneously execute an employment contract with an unemployed worker or with an employee hired by the company for a specific term, in order to cover the working hour left vacant by the partly-retired employee. This employment contract, which may also be executed to replace employees who are partly retired after reaching retirement age, shall be referred to as a replacement contract ("*contrato de relevo*"), subject to the following particularities:

a) The term of the contract shall be indefinite or equal to the time left in order for the replaced worker to reach the retirement age referred to in section one above. If, upon reaching this age, the partly-retired employee were to continue in the company, the replacement contract executed for a specific term may be extended by virtue of an agreement between the parties for annual periods and shall in any case expire at the end of the period corresponding to the year of full retirement of the replaced worker.

In the case of a partly-retired worker who has already reached retirement age, the term of any replacement contract that may be signed by the company to replace the part of the working schedule left vacant may be indefinite or annual. In the latter case, the contract shall be automatically extended for annual periods and shall expire in the manner foreseen in the foregoing paragraph.

b) A replacement contract may be executed full-time or part-time. In any case, the length of the working schedule shall be at least equal to the reduced working schedule agreed by the replaced employee. The working schedule of the replacement worker may complete that of the replaced worker or be carried out simultaneously.

c) The work post of the replacement worker may be the same as that of the replaced worker or a similar one that involves the execution of tasks corresponding to the same professional group or equivalent category.

d) In CBA negotiations, measures may be foreseen to encourage the execution of replacement contracts.

### ***Article 13. Home-based employment contracts.***

1. A home-based employment contract shall refer to one in which the labour activity is carried out in the worker's home or at the place freely determined by the worker, without the employer's control.

2. The contract shall be formalised in writing and approved by the employment office, where a copy shall be deposited, indicating the place where the employment services are provided, in order to enforce the necessary safety and hygiene measures that are determined.

3. Regardless of how it is established, the minimum salary shall be equal to that of an employee in an equivalent professional category within the corresponding economic sector.

4. Any employer who hires home-based employees must provide them with a document to control their labour activity, which shall record the employee's name, type and volume of work, amount of raw materials delivered, rates agreed to determine the salary, delivery and receipt of manufactured items, and any other aspects of the employment relationship of interest to the parties.

5. All home-based workers may exercise the right of collective representation pursuant to the provisions herein, except in the case of a family group.

## **CHAPTER II Content of an employment contract**

### **Section 1. Term of the contract**

#### ***Article 14. Trial period.***

1. A trial period may be agreed in writing, subject to the time limits established in a CBA. In the absence of a CBA provision, the length of a trial period may not exceed six months for qualified technicians or two months for other workers. In companies with less than twenty-five workers, a trial period may not exceed three months for all workers who are not qualified technicians.

The employer and employee, respectively, are obliged to provide the experience required by the trial period.

A trial period agreement shall be null and void if the employee has already executed the same tasks in the company, under any form of contract.

2. During the trial period, the employee shall hold the rights and obligations inherent to the work post he/she would hold if on staff, except for those derived from termination of the employment relationship, which may take place at the request of either party during the course of said relationship.

3. Once the trial period has elapsed without either party abandoning the contract, the contract shall be rendered fully effective and the length of the services provided shall be taken into account to calculate the worker's seniority in the company.

All situations involving provisional disability, maternity, adoption or fostering, that affect the employee during the trial period, shall interrupt the calculation of such period subject to agreement between both parties.

**Article 15. Term of the contract.**

1. An employment contract may be executed for an indefinite or specific term.

A contract for a specific term may be executed in the following cases:

a) If the employee is hired to execute a specific set of works or service, with independence and individual significance within the company's activity, the execution of which, though limited in time, is in principle of uncertain duration. State sector CBAs and those of a lower scope, including company CBAs, may indicate those work posts or tasks that have individual significance within the company's ordinary activity and which may be covered with contracts of this kind.

b) If so required by market circumstances, accumulated tasks or excess orders, even if part of the company's ordinary activity. In these cases, contracts may be executed for a maximum of six months, within a twelve-month period, as of the date of any of these causes. By virtue of a state sector CBA or, otherwise, a sector CBA of a lower scope, the maximum term of these contracts may be modified, including the period of contractual execution based on the seasonal nature of the activity in which these circumstances may arise. In this case, the maximum time in which the contract may be executed shall be eighteen months, and the term of the contract may not exceed three quarters of the reference period established or twelve months at the most.

In the event that a contract is established for a shorter term than the maximum one established by law or in a CBA, it may be extended by agreement between the parties, only once, without the total length of the contract being able to exceed this maximum term.

A CBA may establish the activities in which occasional workers may be hired, and may determine general criteria regarding the adequate ratio between the number of contracts of this type and the total company staff.

c) If the aim is to replace employees with a right to a reserved work post, provided that the employment contract specifies the name of the replaced party and the reason for such replacement.

*d) If the aim is to hire an unemployed worker, registered at an employment office, on the part of a public Administration or non-profit organisation, and the object of such provisional incorporation contract ("contrato de inserción") is to execute works or services of a general or social interest, as a way of acquiring work experience and improving the occupational capacity of the participating unemployed person, within the scope of public programmes that are specified in the corresponding regulations. Any employees who are party to these contracts may not participate again until three years have elapsed since the end of the previous contract of this nature, provided that the employee has been hired under this form of contract for longer than nine months over the last three years.*

*The competent employment public services shall finance the salary and Social Security costs derived from these contracts through the corresponding expense items and shall subsidize, for salary purposes, the amount equivalent to the minimum contribution basis applicable to the employee's professional category as well as the salary residence bonuses established in the corresponding regulations and, for Social Security purposes, the rates*

*derived from such salaries, regardless of the final remuneration paid to the employee. Each quarter, the Ministry of Employment and Social Affairs shall inform the Government's Delegate Committee of the subsidies granted and paid in this period, including their control and supervision.*

*The remuneration paid to the employees participating in these programmes shall be the one agreed between the parties. Such remuneration may not be less than the one established, if any, for these incorporation contracts in the applicable CBA.*

*The incorporation of unemployed persons under this type of contract shall follow the priorities laid down by the State to meet any guidelines established in European employment policy matters.*

2. The status of permanent employee shall be acquired, regardless of the type of contract executed, by those who were not registered with the Social Security system upon expiration of the period equal to the one that would have been established by law for a trial period, unless the very nature of the activities or services hired clearly indicates their provisional nature, notwithstanding any other responsibilities that may apply in law.

3. Any provisional contracts executed in fraud of law shall be deemed as executed for an indefinite term.

4. Employers must notify all employee legal representatives in the company of the contracts executed according to the contractual forms for a specific term foreseen in this article, if not legally obliged to deliver a basic copy thereof.

5. Notwithstanding the provisions established in sections 2 and 3 above, any employees hired for a term exceeding twenty-four months over a thirty-month period, with or without interruption, for the same work post in the same company, under two or more provisional contracts, whether directly or through assignment by part-time employment agencies, under the same or other form of contract for a specific term, shall acquire permanent employee status.

In light of the particularities of each activity and the characteristics of each work post, the CBAs shall establish requirements to prevent the abusive use of contracts for a specific term executed with various workers to hold the same work post, previously covered with contracts of this type, with or without interruption, including assignment contracts signed with part-time employment agencies.

The provisions of this section shall not apply to the use of training, replacement or provisional contracts.

6. Workers with part-time contracts for a specific term shall have the same rights as workers with contracts for an indefinite term, notwithstanding the specific particularities of each contractual form as regards termination of the contract and those expressly foreseen by law in relation to training contracts and *incorporation contracts*. If applicable depending on their nature, these rights shall be recognised in legal and regulatory provisions and in CBAs in a proportional manner, according to the time worked.

Whenever a certain right or working condition is granted by legal or regulatory provisions and CBAs based on the worker's prior seniority, such seniority shall be calculated according to the same criteria for all workers, regardless of the form of their contract.

7. The employer shall inform all company workers subject to a contract for a specific term or a part-time contract, including traineeship contracts, of any vacancies, in order to guarantee the same opportunities of access to permanent posts as other workers. This information may be provided through a public announcement at an adequate place within the company or work centre, or by other means foreseen in a CBA that ensure the provision of information.

CBAs may establish objective criteria and obligations to convert contracts for a specific term or part-time contracts into indefinite contracts.

CBA shall foresee measures to enable the effective access of these workers to continuous professional training, in order to improve their qualifications and encourage their professional career and mobility.

8. A contract for an indefinite term executed with permanent-discontinuous workers shall be used for tasks that are permanent-discontinuous which do not arise again on certain dates, within the volume of the company's ordinary activity. In the event of discontinuous tasks that arise again on certain dates, the provisions established for a part-time contract executed for an indefinite term shall apply. All permanent-discontinuous workers shall be hired in the order and manner determined in the applicable CBA and, in the event of breach, the worker may bring a claim in dismissal proceedings before the competent courts, the term of which shall begin to run as of the time he/she becomes aware that the hiring was not made.

This contract must be necessarily formalised in writing in the form established and shall indicate the estimated length of activity, as well as the manner and order of hiring established in the applicable CBA. Furthermore, as a mere example, the estimated working schedule and its distribution in hours shall also be indicated.

Sector CBAs, whenever so required by the peculiarities of the sector activity, may foresee the use in permanent-discontinuous contracts of a part-time contract, as well as the requirements and specifications to convert part-time contracts into permanent-discontinuous contracts.

9. The Government is hereby authorised to implement the provisions of this article through the corresponding regulations.

Section 1 d) repealed by single repealing provision 1 a) of Royal Decree-Law 5/2006, of 9 June (RCL 2006, 1208).

Section 1 d) repealed by single repealing provision 1 a) of Act 43/2006, of 29 December (RCL 2006, 2338).

Section 5 amended by Art. 12.2 of Act 43/2006, of 29 December (RCL 2006, 2338).

Section 6, words in italics ("incorporation contract"), repealed by single repealing provision 1 a).2 of Act 43/2006, of 29 December (RCL 2006, 2338).

### ***Article 16. Incorporation.***

1. Employers must notify the public employment office, within ten days following the execution date and in the terms established in applicable regulations, of the content of any employment contracts signed or extensions thereof, whether or not subject to an obligation to be formalised in writing.

2. Placement agencies that act for a profit are forbidden. The public employment service may authorise, in the conditions determined in the corresponding CBA and further to a report issued by the General Council of the National Employment Institute, the existence of non-profit placement agencies, as long as the remuneration received from the employer or worker is exclusively restricted to the expenses incurred for the services provided. These agencies, within their scope of action, must guarantee the principle of equal treatment in access to employment and may not establish any discrimination whatsoever on the grounds of racial/ethnic origin or other, sex, age, married status, religion or beliefs, political opinion, sexual preference, trade union membership, social status, language within the State of Spain and disability, provided that the worker is fit to carry out the task or work entrusted.

## **Section 2. Rights and obligations derived from a contract**

***Article 17. Non-discrimination in employment relations.***

1. Any regulatory provisions, CBAs, individual agreements and unilateral employer decisions that are directly or indirectly discriminatory and unfavourable, on the grounds of age or disability, or favourable or adverse to employment, including any related to remuneration, working schedule and other employment conditions, on the grounds of sex, origin, racial/ethnic origin, married status, social status, religion or beliefs, political ideas, sexual preference, trade union membership and adhesion to trade union agreements, family links with other workers in the company and language within the State of Spain, shall be null and void.

Likewise, any orders to discriminate and employer decisions that entail an unfavourable treatment to workers as a reaction against a claim filed within the company or against an administrative or court action to uphold the principle of equal treatment and non-discrimination, shall be null and void.

2. The law may establish the corresponding exclusions, reservations and preferences for freelance employment.

3. Notwithstanding the provisions of the foregoing section, the Government may establish measures of employment reservation, duration or preference in order to enable the placement of job applicants.

Furthermore, the Government may grant subsidies, tax breaks and other measures to encourage the employment of specific groups of workers who encounter particular difficulties in their access to employment. The foregoing shall be regulated further to a consultation with the most representative trade unions and employer associations.

The measures referred to in the foregoing sections shall be principally aimed at encouraging the stable employment of unemployed persons and the conversion of part-time contracts into contracts for an indefinite term.

4. Notwithstanding the provisions of the foregoing sections, CBAs may establish positive action measures to encourage the access of women to the job market. To this effect, reservations and preferences may be established in contractual conditions so that, in the same suitability conditions, those persons belonging to the less represented sex within the corresponding group or professional category enjoy a preference when applying for the job.

Likewise, CBAs may foresee this type of measure in conditions affecting professional classification, promotion and training so that, in the same suitability conditions, the persons belonging to the less represented sex enjoy a preference in order to encourage their access to the group, professional category or work post in question.

5. Any corporate equal-treatment plans must comply with the provisions herein and with the Organic Act regarding the effective equal treatment of men and women.

***Article 18. Protection of the worker as a person.***

The worker himself/herself, his/her lockers and personal effects may only be registered if necessary to protect the employer's assets and those of the other company employees, within the work centre and during working hours. When so doing, the worker's dignity and privacy shall be upheld to the utmost and the act will require the assistance of one of the employees' legal representatives or, if not available at the work centre, of another company employee, to the extent possible.

***Article 19. Safety and hygiene.***

1. When providing his/her services, an employee will be entitled to be effectively protected in safety and hygiene terms.

2. An employee must observe all legal and regulatory measures in safety and hygiene matters when executing his/her job.

3. In the case of an inspection and control of any such measures that are obligatorily imposed on the employer, the worker shall be entitled to participate through his/her legal representatives at the work centre, in the absence of specialised bodies or centres that are competent in the matter under current law.

4. All employers must provide practical and adequate training in safety and hygiene matters to any workers hired, or in the case of a change of work post or the need to apply a new technique that could entail a serious risk to the employee himself/herself or to his/her colleagues or third parties, whether using its own services or with the intervention of the corresponding official services. All employees must apply this knowledge and complete any practical work if executed within the working schedule or at another time, deducting the time invested from the working schedule.

5. The company's internal bodies entrusted with safety matters and, otherwise, the employees' legal representatives at the work centre who determine the likelihood of a serious accident due to non-compliance with applicable laws in the matter, shall send a written request to the employer demanding the adoption of the necessary measures to remove this risk; if the request is not handled within four days, the competent authority will be addressed; if the authority agrees with the circumstances alleged and issues a reasoned decision, it shall demand that the employer adopt the necessary safety measures or suspend its activity in the area or work premises or endangered material. It may also order, subject to the necessary technical reports, that the work immediately stop if there is a serious risk of an accident.

If the risk of an accident is imminent, the cessation of activities may be agreed by the competent corporate bodies in safety matters, if decided by 75% of the employees' representatives in companies with discontinuous processes or 100% in continuous-process companies; this agreement shall be immediately notified to the company and to the labour authority which, within a term of twenty-four hours, shall cancel or ratify the cessation agreed.

#### ***Article 20. Management and control of an employment activity.***

1. An employee shall be obliged to carry out the work agreed under the management of the employer or person empowered by the same.

2. When fulfilling the obligation to work assumed in the contract, the worker shall be obliged to provide the employer with the diligence and collaboration in the job that are established by law, CBAs and any orders/instructions adopted by the employer in the ordinary exercise of its management duties and, otherwise, according to use and custom. In any case, the worker and the employer must follow the principle of good faith in their reciprocal obligations.

3. The employer may adopt the measures it deems most appropriate for surveillance and control, in order to ascertain that the employee fulfils his/her employment obligations and duties. When adopting and applying these measures, the employer shall uphold due respect to the employee's human dignity and shall take into consideration the actual capacity of any disabled workers, as the case may be.

4. The employer may ascertain the illness or accident suffered by an employee that is alleged by the same to justify his/her non-attendance at work, through a medical check-up. The employee's refusal to follow any such check-up may entail the suspension of any economic rights held on account of the employer in these situations.

#### ***Article 21. Non-compete obligation and duty of permanence***

***in the company.***

1. An employee may not provide employment services to various employers in the event of unfair competition or if full dedication is established through express economic compensation, in the terms established to this effect.

2. A non-compete obligation after termination of the employment contract, which may not last longer than two years for technicians and six months for other workers, will only be valid if the following requirements are met:

a) The employer has an effective industrial or commercial interest in such non-compete obligation, and

b) The employee is paid adequate economic compensation.

3. In the event of economic compensation in exchange for full dedication, the employee may terminate the agreement and recover his/her freedom to work in another job, notifying the employer in writing thirty days in advance, in which case he/she will lose any economic compensation or other rights inherent to full dedication.

4. Whenever the employee has received specialised training on account of the employer to start up specific projects or execute a certain task, both parties may agree on permanence within the company for a certain period of time. Such agreement may not be executed for longer than two years and must always be formalised in writing. If the employee abandons the job before expiration of the term, the employer shall be entitled to losses and damages.

**Section 3. Professional classification and promotion at work**

***Article 22. Professional classification system.***

1. By means of a CBA or, otherwise, an agreement between the company and the employees' representatives, a system shall be established for the professional classification of employees by categories or professional groups.

2. A professional group shall refer to one that groups into a unit the professional abilities, qualifications and general content of the services, and may include both various professional categories and various tasks or professional specialties.

3. A professional category shall be deemed equivalent to another whenever the necessary professional aptitude to carry out the tasks inherent to the first category allows the execution of the basic employment services inherent to the second, further to completing, if necessary, simple training or adaptation processes.

4. The criteria used to define categories and groups shall adjust to common rules applicable to workers of both sex.

5. By means of an agreement between the worker and employer, the content of the employment service covered by the employment contract shall be established, as well as its equivalence to the category, professional group or remuneration level foreseen in the CBA or that is applicable in the company, in relation to such service.

If functional multi-tasking is agreed or the execution of tasks inherent to two or more categories, groups or levels, this equivalence shall be based on the tasks deemed prevalent.

***Article 23. Promotion and professional training at work.***

1. An employee shall be entitled to:

a) Enjoy the necessary permits in order to sit exams and preference when choosing a work rota, if such is the system established in the company, whenever he/she is regularly following courses to obtain academic or professional qualifications.

b) Adjust his/her ordinary working schedule in order to attend professional training courses or to be granted the necessary permit for training or professional recycling with a right to a reserved work post.

2. CBAs shall establish the terms in which to exercise these rights.

**Article 24.  
Promotions.**

1. Promotions within the professional classification system shall take place further to the provisions of a CBA or, otherwise, of an agreement reached between the company and employee representatives.

In any case, promotions shall take into account the training, merits, employee seniority and organisational duties of the employer.

2. The criteria applied to company promotions shall adjust to common rules for workers of both sex.

**Article 25. Economic raises.**

1. Depending on the work executed, an employee may be entitled to an economic raise in the terms established in a CBA or individual contract.

2. The provisions of the foregoing section shall be understood notwithstanding any rights acquired or in the course of being acquired within the corresponding time period.

**Section 4. Salary and salary guarantees**

**Article 26. Salary.**

1. Salary shall refer to all economic payments made to workers, in money or in kind, for the professional provision of employment services on account of third parties, whether as remuneration for effective work, regardless of the form of remuneration, or for rest periods calculated as working time. In no event may salary in kind exceed 30% of the worker's salary payments.

2. The term "salary" shall not include any amounts received by the employee as indemnification or extras for the expenses incurred as a result of his/her employment activity, Social Security benefits and indemnification, and other indemnification paid for transfers, suspensions or dismissals.

3. Through a CBA or, otherwise, in each individual contract, the salary structure shall be determined, to include the base salary, as the remuneration established per unit of time or work and, if applicable, salary bonuses established according to the circumstances surrounding the worker's personal situation, the work executed or the company's situation and results, which shall be calculated further to the criteria agreed to this effect. Likewise, it will be decided whether or not such salary bonuses are cumulative; unless otherwise agreed, any rights inherent to the work post or company situation and results shall not be cumulative.

4. All tax and Social Security obligations on account of the worker shall be paid by the same, and any agreement to the contrary shall be null and void.

5. Offsetting and absorption shall apply whenever the salaries actually paid, as a whole and as a yearly amount, are more favourable to the employees than those established in the regulations or CBA of reference.

**Article 27. Minimum legal salary.**

1. After making a consultation with the most representative trade unions and employer associations, the Government shall establish the minimum legal salary each year, taking into account:

- a) The Retail Price Index.
- b) The average national productivity reached.
- c) Increased share of employment in national revenues.
- d) The general economic scenario.

Likewise, a six-monthly review shall be established in the event that the RPI forecasts are not met.

The adjustment of this minimum legal salary shall not affect the structure or amount of any professional salaries which, as a whole and as a yearly total, exceed such minimum legal salary.

2. The minimum legal salary, as an amount, may not be subject to embargo.

### ***Article 28. Equal remuneration on the grounds of sex.***

An employer shall be obliged to directly or indirectly pay the same remuneration, for employment services of the same value, regardless of whether the remuneration is or is not part of the salary, and no discrimination may be made on the grounds of sex in any remuneration items or conditions.

### ***Article 29. Settlement and payment.***

1. Salary settlement and payment shall be carried out promptly in the corresponding documents on the date and at the place agreed, or further to use and custom. The period of time for payment of periodic and regular remuneration may not exceed one month.

The worker and his/her legal representatives, if so authorised, shall be entitled to receive advance payments on account of work already provided, before the payment deadline.

The salary shall be documented by providing the worker with an individual receipt certifying payment thereof. Salary receipts shall follow the standard form approved by the Ministry of Employment and Social Security, unless a CBA or, otherwise, by means of an agreement between the company and the employee representatives, a different standard form is provided which clearly separates the various payments made to the workers, including any deductions that apply by law.

Salaries will be settled in favour of those providing services as discontinuous-permanent employees upon expiration of each period of activity, subject to the steps and guarantees established in Article 49.2 herein.

2. The right to a salary on commission shall be born upon the execution and payment of the business, placement or sale in which the worker intervenes; it shall be settled and paid, unless otherwise agreed, at the end of the year.

An employee and his/her legal representatives may at any time request communication of that part of the accounts related to such accruals.

3. Default interest in salary payments shall be 10% of the debt.

4. The salary, as well as the delegated payment of Social Security contributions, may be made by the employer in legal currency or by cheque or similar form of payment through a credit entity, after informing the works council or staff representatives.

**Article 30. Impossible provision of services.**

If an employee is unable to provide his/her services once the contract is in force, because the employer delays in providing him/her with work for reasons attributable thereto and not to the worker, the employee will still be entitled to his/her salary and the salary lost may not be offset with other tasks carried out at another time.

**Article 31. Extraordinary bonuses.**

An employee shall be entitled to two extraordinary bonuses a year, one for Christmas and another in the month established in the CBA or by virtue of an agreement between the employer and the workers' legal representatives. A CBA shall also establish the amount of such bonuses.

Nevertheless, a CBA may establish the prorating of extraordinary bonuses amongst the twelve monthly payments.

**Article 32. Salary guarantees.**

1. Salary credits for the last thirty days' work, in an amount not exceeding twice the minimum legal salary, shall enjoy preference over any other credit, even if secured by means of a pledge or mortgage.

2. Salary credits shall enjoy preference over any other credit related to the objects manufactured by the employees, whilst they remain the property or are in the hands of the employer.

3. Any salary credits not covered by the foregoing sections shall hold specific privileged status in the amount resulting from multiplying by three the minimum legal salary by the number of days' salary outstanding; they shall prevail over any other credit, except credits secured with *in rem* rights, whenever these enjoy preference by law. The foregoing shall also apply to indemnification for dismissal in the amount corresponding to the legal minimum, calculated according to no more than three times the minimum salary.

4. The term in which to exercise the rights to a preferential salary credit shall be one year, as of the date when the salary was due, after which said rights shall expire.

5. The preferential status acknowledged in the foregoing section shall apply in any events where the corresponding credits co-exist with others over the employer's assets, provided that the employer is not declared to be in a bankruptcy situation. In the event of a bankruptcy, the provisions established in the Bankruptcy Act shall apply as regards credit marshalling, enforcement and enforced collection proceedings.

**Article 33. The Salary Guarantee Fund.**

1. The Salary Guarantee Fund, an autonomous body pertaining to the Ministry of Employment and Labour Matters, with legal status and capacity to execute its purposes, shall pay employees the amount of any outstanding salaries resulting from an insolvency, temporary receivership, bankruptcy or arrangement of the employer's creditors.

To these effects, salary shall refer to the amount recognised as such in the conciliation act or court decision for all the items referred to in Article 26.1 herein, as well as salary accrued during court proceedings ("*salarios de tramitación*") in the events foreseen by law; the Fund may not pay, for one or another item, jointly or separately, an amount exceeding the one resulting from multiplying by three the minimum daily legal salary, including the proportional part of extraordinary payments, by the number of days' salary outstanding, up to a maximum of one hundred and fifty days.

2. In the foregoing cases, the Salary Guarantee Fund shall pay all indemnification acknowledged in a judgment, court order, in-court conciliation act or administrative resolution in favour of the workers, as a result of a dismissal or contractual termination further to Articles 50, 51 and 52 below, and contractual termination further to Article 64 of Bankruptcy Act 22/2003, of 9 July, including any indemnification for the termination of part-time contracts or contracts executed for a specific term, in the cases foreseen by law. In all these cases, the maximum shall be one annuity without the daily salary, used as a calculation basis, exceeding three times the minimum legal salary, including the proportional part of any extraordinary payments.

For the sole purposes of payment by the Salary Guarantee Fund in the event of dismissal or contractual termination further to Article 50 herein, indemnification shall be calculated on a basis of thirty days per year of service, up to the maximum established in the foregoing paragraph.

3. In bankruptcy proceedings, as soon as there is knowledge of the existence of labour credits or their possible existence is presumed, the Court, *ex officio* or at a party's request, shall summon the Salary Guarantee Fund, this being a requirement for the Fund to assume the obligations foreseen in the foregoing sections. The Fund shall intervene in the proceedings as a party vicariously liable for payment of said credits, and may present any allegations it may be legally entitled to, notwithstanding its continuation as a creditor in the proceedings once payment is made.

4. The Fund shall assume the obligations foreseen above after proceedings are brought to check the applicability thereof.

In order to be reimbursed for the payments made, the Salary Guarantee Fund must subrogate the employees' rights and actions, maintaining the privileged credit status conferred by Article 32 herein. If these credits co-exist with others held by the employees over the part not paid by the Fund, they both shall be settled in proportion to their respective amounts.

5. The Salary Guarantee Fund shall be funded through the contributions made by all employers, referred to in Article 1.2 herein, whether public or private.

The contribution rate shall be established by the Government over the salaries used to calculate contributions to cover contingencies derived from occupational accidents, professional illness and unemployment under the Social Security System.

6. For the purposes of this article, the employer shall be deemed insolvent whenever, further to enforcement proceedings as per the Labour Procedure Act (RCL 1990, 922 and 1049), employment credits are not satisfied. The resolution declaring the insolvency shall be issued after hearing the Salary Guarantee Fund.

7. The right to demand payment from the Salary Guarantee Fund of the benefits resulting from the foregoing sections shall prescribe one year after the date of the conciliation act, judgment, order or resolution of the Labour Authority that acknowledges the salary debt or establishes the indemnification.

This term shall be interrupted if enforcement actions are brought, or actions to acknowledge a credit in bankruptcy proceedings, as well as the other legal forms of interruption of the statute of limitations.

8. In companies with less than twenty-five employees, the Salary Guarantee Fund will pay 40% of the legal indemnification to which employees are entitled whose employment relationship was terminated as a result of the proceedings brought further to Article 51 herein or for the reason foreseen in Article 52.c) herein, or pursuant to Article 64 of Bankruptcy Act 22/2003, of 9 July.

The amount payable shall be calculated according to the indemnification adjusted to the limits foreseen in section 2 above.

9. The Salary Guarantee Fund will be treated as a party in the procedure or any arbitration proceedings, in order to assume the obligations foreseen in this article.

## **Section 5. Work time**

### ***Article 34. Working schedule.***

1. The length of a working schedule shall be the one agreed in CBAs or employment contracts.

The maximum length of an ordinary working schedule shall be forty hours/week of effective work on average, on a yearly basis.

2. By means of a CBA or, otherwise, by virtue of an agreement between the company and the employees' representatives, the working schedule may be distributed irregularly throughout the year. This distribution shall in any case uphold the minimum daily and weekly rest periods foreseen herein.

3. Between the end of one working day and the beginning of the next, at least twelve hours must elapse.

The number of ordinary hours of effective work may not exceed nine hours per day, unless a CBA or, otherwise, an agreement between the company and the employee representatives were to establish another distribution of the daily work time, upholding in any case the rest period between working days.

All workers under eighteen may not execute more than eight daily hours of effective work including, as the case may be, the time dedicated to training and, if work is provided to various employers, the hours provided to each one.

4. Provided that the length of a continuous daily working schedule exceeds six hours, a rest period must be foreseen of at least fifteen minutes. This rest period shall be treated as effective working time, if so established or foreseen in a CBA or employment contract.

In the case of workers under eighteen, the rest period must at least last thirty minutes and must be foreseen if the length of a continuous daily working schedule exceeds four and a half hours.

5. The working time shall be calculated in such a way that, both at the beginning and at the end of the daily working day, the employee is at his/her work post.

6. Each year, the company shall draw up the work calendar and shall exhibit a copy thereof in a visible place at each work centre.

7. The Government, at the request of the Ministry of Employment and Social Security and after consulting the most representative Trade Unions and Employer Associations, may extend or limit the arrangement and length of a working schedule and rest periods, in those sectors and jobs that so require due to their characteristics.

8. An employee shall be entitled to adjust the length and distribution of his/her working schedule in order to uphold the right to conciliation between his/her personal time, family and career, in the terms established in a CBA or in the agreement reached with his/her employer, always upholding any CBA provisions.

### ***Article 35. Extra hours.***

1. Any working hours provided outside the maximum term of an ordinary working schedule, determined according to the foregoing article, shall be considered extra hours. By means of a CBA or, otherwise, an individual contract, it shall be decided whether to pay any extra hours in the amount established, which may never be less than the price of an ordinary hour, or to offset them against equivalent remunerated rest periods. In the absence of an

agreement in this regard, it shall be understood that any extra hours worked must be offset with rest periods during the next four months following the execution thereof.

2. The number of extra hours may not exceed eight a year, except for the provisions of section 3 below. In the case of employees who, as a result of the form or term of their contract, serve a working schedule on a yearly basis that is less than the company's general working schedule, the maximum number of extra hours per year shall be reduced in the same proportion existing between said schedules.

For the purposes of the foregoing paragraph, any extra hours offset with rest periods within four months following the execution thereof will not be taken into account.

The Government may remove or reduce the maximum number of extra hours for a specific length of time, in general or for certain branches of activity or territorial scopes, in order to increase the job opportunities available to workers in a mandatory unemployment situation.

3. For the purposes of the maximum length of an ordinary working schedule, or to calculate the maximum number of extra hours allowed, the excess hours worked to prevent or repair accidents and other extraordinary and urgent damage shall not be taken into account, notwithstanding their compensation as extra hours.

4. The provision of services as extra hours shall be voluntary, unless otherwise agreed in a CBA or individual employment contract, within the limits of section 2 above.

5. For the purposes of calculating extra hours, each employee's working schedule shall be registered each day and totalled within the period established for payment of remuneration; a copy of the summary shall be delivered to each employee in the corresponding receipt.

### ***Article 36. Night work, shift work and work speed.***

1. For the purposes of this Act, night work shall refer to any provided between 10 p.m. and 6 a.m. Any employer who regularly demands the execution of night work must inform the labour authority.

The working schedule of any night workers may not exceed eight hours per day on average, within a reference period of fifteen days. These employees may not work extra hours.

In order to apply the provisions of the foregoing paragraph, a night worker shall refer to one who usually provides work at night amounting to at least three hours of his/her daily working schedule, as well as any employee who is expected to possibly work at night in an amount of at least one third of his/her annual working schedule.

The provisions of Article 34.7 herein will apply to the provisions of paragraph two above. Furthermore, the Government may establish limits and guarantees in addition to those foreseen in this article for the execution of night work in certain activities or by a certain category of employees, according to the risk to their health and safety.

2. Night work shall enjoy a specific remuneration to be determined in a CBA, unless the salary is established based on the fact that the work is executed at night due to its very nature or compensation for this work is agreed through rest periods.

3. Shift work shall refer to any type of team work arrangement whereby employees successively hold the same work posts following a certain continuous or discontinuous schedule, as a result of which an employee has not provided his/her services at different times during a certain period of days or weeks.

In companies with continuous 24-hours production processes, work arrangements by shifts shall take into account shift rotation and the fact that no employee will work the night shift for more than two consecutive weeks, unless this is voluntarily undertaken.

Any companies which, due to the nature of their activity, carry out work in shifts, including Sundays and holidays, may either work through employee teams that carry out their activity by full weeks, or may hire staff to complete the necessary teams one or more days a week.

4. Night workers and other employees working in shifts must enjoy at all times a level of protection in health and safety matters that conforms to the nature of their work, including appropriate protection and prevention services, equivalent to those of other workers in the company.

The employer must ensure that all night workers employed enjoy a cost-free medical check-up before they are assigned to night work and, subsequently, at regular intervals, in the terms established in specific regulations on the matter. Night workers who are found to have health problems connected to their night work shall be entitled to be assigned to a day-time work post available in the company, for which they are professionally qualified. The change of work post shall be carried out pursuant to the provisions established in Articles 39 and 41 herein, as applicable.

5. An employer who arranges work in the company according to a certain speed must take into account the general principle of individual adjustment to work, particularly in order to mitigate a monotonous and repetitive task according to the type of activity and requirements in employee safety and health matters. These requirements shall be particularly taken into account when determining the rest periods enjoyed during the working schedule.

### ***Article 37. Weekly rest period, holidays and permits.***

1. All workers shall be entitled to a minimum weekly rest period, cumulative by periods of up to fourteen days, of one and a half continuous days which, as a general rule, shall include Saturday afternoon or, as the case may be, Monday morning and all of Sunday. The length of this weekly rest period for individuals under eighteen shall be at least two continuous days.

The provisions established in Article 34.7 above shall apply to weekly rest periods as regards extensions and reductions, as well as to determine alternative rest periods for specific activities.

2. Working holidays, remunerated and not recoverable, may not exceed fourteen a year, of which two shall be local holidays. In any case, national holidays shall include Christmas Day, New Year's Day, 1 May (Labour Day) and 12 October (national Spanish holiday).

Subject to the aforementioned holidays, the Government may change to Monday all national holidays between Monday-Friday; in any case, the employment rest period corresponding to holidays falling on a Sunday shall be moved to the immediately following Monday.

All Autonomous Communities, within the yearly limit of fourteen holidays, may indicate other traditional and regional holidays, thereby replacing the national holidays foreseen by law and, in any case, those moved to a Monday. Furthermore, they may use the power to move a holiday to a Monday foreseen in the foregoing paragraph.

If any Autonomous Community is unable to establish one of its traditional holidays because an insufficient number of national holidays falls on a Sunday it may, during the corresponding year, add a further recoverable holiday, up to a maximum of fourteen.

3. An employee, further to justified notification, may leave his/her work post, with a right to remuneration, for any of the following reasons and length:

a) Fifteen calendar days in the event of marriage.

b) Two days upon the birth of a child and due to death, a serious accident or illness, hospitalisation or surgery without hospitalisation that requires home rest, of relatives up to

the second degree of blood ties or affinity. If the employee needs to travel for this purpose, the term shall be extended to four days.

c) One day in the event of a change of home address.

d) For the indispensable time required to fulfil an inexcusable duty of a public and personal nature, including the exercise of active suffrage. If a certain period is established by law or in a CBA, this shall be upheld with respect to the length of absence and its economic compensation.

If fulfilment of the foregoing duty entails the impossibility of providing the services contracted in an amount exceeding 20% of the working hours over a three-month period, the company may assign the affected worker to an extended leave of absence, further to Article 46.1 below.

In the event that an employee is indemnified due to fulfilment of his/her duty or exercise of his/her post, the amount shall be deducted from the salary payable in the company.

e) In order to carry out trade union duties or representation of the staff in the terms established by law or in a CBA.

f) For the indispensable time required to sit ante-natal examinations and courses to be completed during the working schedule.

4. All female workers, in the event of breast-feeding a child under nine months, shall be entitled to an hour's absence from work, which may be divided into two fractions. The length of this permit shall be increased proportionally in the case of a multiple birth.

A woman may freely replace this right with a half-hour reduction in her working schedule for the same purpose, or may aggregate the right into full working days in the terms foreseen in the CBA or in the agreement reached with her employer, always upholding any CBA provisions.

This permit may be indistinctly enjoyed by the mother or father if they both work.

4.bis) In the event of a birth of a premature child or who, for any reason, needs to be hospitalised after birth, the mother or father shall be entitled to leave the company for one hour. Furthermore, they shall be entitled to reduce their working schedule up to a maximum of two hours, with the proportional reduction in salary. In order to enjoy this permit, the provisions of section 6 below shall apply.

5. Anybody who acts as a legal guardian and is assigned the direct care of any minor under eight years of age or a person with a physical, mental or other disability, who does not carry out any remunerated activity, shall be entitled to a reduced working schedule with the corresponding reduction in salary of at least one eighth and a maximum of half the length of his/her working schedule.

This same right shall be held by anybody entrusted with the direct care of a relative, up to the second degree of blood ties or affinity who, due to old age, an accident or illness is dependant and does not carry out any remunerated activity.

The reduced working schedule foreseen in this section is an individual right held by all workers, male or female. Nevertheless, if two or more workers in the same company were to generate this right in relation to the same subject, the employer may limit the simultaneous exercise thereof based on justified reasons related to the company's operation.

6. The specification of the time and period of enjoyment of a breast-feeding permit and reduced working schedule, foreseen in sections 4 and 5 above, shall be carried out by the employer, within his/her ordinary working schedule. The worker must notify the employer fifteen days before the date he/she will return to his/her ordinary working schedule.

Any differences that arise between the employer and a worker regarding the specific time and periods of leave foreseen in sections 4 and 5 above shall be resolved by the competent courts through the procedure established in Article 138 bis) of the Labour Procedure Act (RCL 1995, 1144, 1563).

7. A female worker who is the victim of male abuse shall be entitled, in order to obtain protection or a right to full social assistance, to a reduction in her working schedule with a proportional reduction in salary or to rearrange her working hours, by adjusting her schedule, following a flexible working schedule or other forms of work arrangement that are used in the company.

These rights may be exercised in the terms foreseen for these specific situations in CBAs or in agreements reached between the company and employee representatives, or further to an agreement between the company and the affected female worker. Otherwise, these rights shall be specified by the female worker in question, further to the rules established in the foregoing section, including those related to the resolution of disputes.

### ***Article 38. Annual vacation.***

1. The annual remunerated vacation period, not economically replaceable, shall be the one established in the CBA or individual contract. In no event may it be shorter than thirty calendar days.

2. The period(s) of enjoyment shall be established by mutual agreement between the employer and worker, pursuant to any provisions established in a CBA regarding the annual planning of vacation time.

In the event of disagreement between the parties, the competent courts shall establish the date of enjoyment and the court decision shall be final. The issue shall be processed through summary and preferential proceedings.

3. The holiday calendar shall be established in each company. Workers will be informed of the dates assigned at least two months before the vacation is enjoyed.

Whenever the vacation time established in the company's vacation calendar, referred to in the preceding paragraph, coincides in time with a provisional disability derived from a pregnancy, birth or natural breast-feeding, or with the period of suspension of an employment contract foreseen in Article 48.4 herein, the worker shall be entitled to enjoy his/her vacation at a time outside the provisional disability or permit granted further to said article, at the end of the suspension period, even if the calendar year applicable has ended.

## **CHAPTER III**

### **Modification, suspension and termination of an employment contract**

#### **Section 1. Functional and geographical mobility**

### ***Article 39. Functional mobility.***

1. Functional mobility within the company shall only be subject to the limitations established in academic or professional qualifications required to provide the employment services and inherent to a specific professional group. In the absence of any defined professional groups, functional mobility may be carried out between equivalent professional categories.

2. Functional mobility to execute tasks not corresponding to any equivalent professional group or category will only be possible if there are technical or structural reasons that justify the same, for the indispensable time required. In the event that lower tasks are entrusted, this must be justified by urgent or unexpected needs inherent to the production activity. The employer must notify this situation to the employee representatives.

3. All functional mobility shall not negatively affect the employee's dignity or his/her training and professional career; the worker shall be entitled to remuneration corresponding to the tasks effectively executed, except in the case that lower tasks are entrusted, for which

the original remuneration shall apply. It shall not be possible to allege causes for objective dismissal, based on subsequent ineptitude or non-adjustment in the event that different tasks from the ordinary ones are carried out as a result of functional mobility.

4. If, as a result of functional mobility, higher tasks are carried out than those inherent to the professional group or equivalent categories, for a term longer than six months in one year or eight months over two years, an employee may claim a promotion, if this is not prevented by the provisions of the CBA or, in any case, coverage of the vacancy corresponding to the tasks performed further to the company's rules on promotion, notwithstanding the possibility of claiming the corresponding difference in salary. The foregoing actions are cumulative. An employee may bring a claim before the competent courts if the company refuses to acknowledge this right, further to a report from the Works Council or staff representatives.

CBA negotiations may establish different periods than the ones indicated in this article for the purposes of claiming coverage of a vacancy.

5. A change in tasks other than those agreed and not included in the events foreseen in this article will require the parties' agreement or, otherwise, fulfilment of the rules foreseen in the case of material modifications of working conditions or those established in this regard in a CBA.

#### ***Article 40. Geographical mobility.***

1. The transfer of any employees who have not been specifically hired to provide their services in companies with mobile or travelling work centres, to another work centre of the same company, entailing a change of residence, shall require the existence of economic, technical, structural or production reasons to justify the same, or employment contracts related to the company's activity.

The foregoing causes shall be deemed to exist whenever the adoption of the measures proposed contributes to improving the company's situation by providing a more adequate arrangement of its resources, to strengthen its competitive position on the market or to better satisfy the demand.

The transfer decision must be notified by the employer to the worker, and to his/her legal representative, at least thirty days before its effective date.

Once the decision to transfer is notified, the worker shall be entitled to choose between the transfer, receiving compensation for expenses, or to terminate his/her employment contract, subject to indemnification of twenty days' salary per year of service, with a monthly prorating of any periods of time shorter than a year and up to a maximum of twelve monthly payments. The compensation referred to in the first case shall include both the worker's own expenses and those incurred by relatives under his/her care, in the terms established between the parties, which may never be less than the minimum established in CBAs.

Notwithstanding the enforceability of the transfer within the aforementioned term, a worker who has not decided to terminate his/her employment contract and who disagrees with the employer's decision may challenge it before the competent courts. The court decision shall declare whether the transfer is justified or unjustified and, in this latter case, shall recognise the worker's right to be reinstated into his/her original work centre.

If the company, in order to evade the provisions contained in the following section, were to make transfers in successive ninety-day periods in an amount less than the thresholds established therein, without there being any new cause to justify this conduct, these new transfers shall be considered as made in fraud of law and shall be declared null and void.

2. The transfer referred to in the foregoing section shall be preceded by a consultation period with the employees' legal representatives of at least fifteen days, if it affects the entire work centre, provided that more than five workers are employed or, if the entire work centre

is not affected, at least the following number of workers are affected within a ninety-day term:

a) Ten workers, in companies employing less than one hundred workers.

b) 10% of the number of company workers, if the company employs between one hundred and three hundred workers.

c) Thirty workers in companies that employ three hundred or more workers.

Said consultation period shall cover the causes leading to the employer's decision and the possibility of avoiding or reducing its effects, as well as the necessary measures to mitigate its consequences for the workers affected.

The beginning of the consultation period and the parties' positions once it has ended must be notified to the labour authority for information purposes. During the consultation period the parties shall negotiate in good faith with the aim of reaching an agreement.

This agreement shall require the consent of the majority members of the Works Council(s), staff representatives, if any, or trade union representatives, should these exist, which, as a whole, represent the majority members.

At the end of the consultation period, the employer shall notify the workers of its decision regarding the transfer, which shall be governed to all intents and purposes by the provisions established in section 1 above.

Notwithstanding the provisions of the foregoing paragraph, the labour authority, in light of the parties' positions and provided that this is justified by the economic or social consequences of the measure adopted, may order an extension of the term referred to in section 1 above and consequently paralyse the effectiveness of the transfer for a period of time which, in no event, may be longer than six months.

The decisions adopted further to this section may be challenged in collective dismissal proceedings, notwithstanding the individual action foreseen in section 1 above. The filing of collective dismissal proceedings will stop the proceedings of any individual actions initiated, until these are resolved.

The agreement reached with the workers' legal representatives in the consultation period shall apply notwithstanding the right of the workers affected to exercise the option foreseen in paragraph 4 of section 1 above.

3. If, due to a transfer, one of the spouses were to change his/her residence, the other spouse, if a worker of the same company, shall be entitled to be transferred to the same city, if a work post is available.

3 bis) Any female employee who is the victim of male violence and is obliged to abandon her work post in the city where she was providing her services, in order to obtain effective protection or her right to full social assistance, shall have a preferential right to occupy another work post within the same professional group or equivalent category, which is vacant in the company at another work centre.

In this event, the company must inform the female worker of any vacancies available at the time or that may arise in the future.

A transfer or change of work centre shall have an initial term of six months, during which the company shall be obliged to reserve the work post previously held by the female worker.

At the end of this term, the female worker may choose between returning to her former work post or to continue in her new job. In this latter case, the foregoing obligation to reserve a work post shall no longer exist.

4. For economic, technical, structural or production reasons, or as a result of employment contracts related to the company's activity, the company may provisionally transfer its workers, entailing a change of residence from their ordinary home, and shall pay all travelling expenses and allowances apart from salary.

The worker must be notified of the transfer with sufficient advance notice before the effective date, which may not be less than five business days in the case of transfers lasting longer than three months; in this last case, the worker shall be entitled to a permit of four business days in his/her original residence for every three months of transfer, without including any days spent travelling, the expenses of which shall be borne by the employer.

The worker may appeal against the transfer order, notwithstanding its enforceability, in the same terms foreseen in section 1 above in the case of transfers.

Any transfers that last longer than twelve months over a period of three years shall be treated, to all intents and purposes, according to the provisions established herein for transfers.

5. The workers' legal representatives shall hold a priority right of permanence in the work posts referred to in this article.

#### ***Article 41. Material modifications of working conditions.***

1. The company's management, if there are proven economic, technical, structural or production reasons, may agree to execute material modifications in the working conditions. A material modification of working conditions shall include, amongst others, any that affects the following matters:

- a) Working schedule.
- b) Working hours.
- c) Provisions applied to shift work.
- d) Remuneration system.
- e) Work and performance system.
- f) Duties, when they exceed the limits foreseen in Article 39 above for the case of functional mobility.

The causes referred to in this article shall be deemed to exist whenever the adoption of the measures proposed contributes to improving the company's situation by providing a more adequate arrangement of its resources, strengthens its competitive position on the market or better satisfies the demand.

2. Any material modifications of working conditions may be individual or collective.

Individual modifications shall refer to those affecting working conditions enjoyed by each individual worker.

Collective modifications shall refer to those affecting conditions acknowledged in favour of workers by virtue of an agreement or CBA or enjoyed by virtue of a unilateral decision on the part of the employer with collective effects. A modification of the conditions established in CBAs governed by Title III herein may only take place if there is an agreement between the company and the workers' representatives and only in relation to the matters referred to in paragraphs b), c), d) and e) of the foregoing section.

Notwithstanding the provisions of the foregoing paragraph, any material modifications or modifications of a working schedule shall not be considered collective, for the purposes of section 4 above, if they affect a number of workers within a ninety-day term that is less than the number indicated below:

- a) Ten workers, in companies employing less than one hundred workers.
- b) 10% of the number of company workers, if the company employs between one hundred and three hundred workers.
- c) Thirty workers in companies that employ three hundred or more workers.

3. A decision notifying a material modification of individual working conditions must be provided by the employer to the worker affected and to his/her legal representatives at least thirty days before its effective date.

In the events foreseen in paragraphs a), b) and c) of section 1 above, notwithstanding the provisions of Article 50.1.a) below, if the worker were harmed by a material modification he/she shall be entitled to terminate his/her contract and to receive indemnification of twenty days' salary per year of service, with a monthly prorating of any periods shorter than a year up to a maximum of nine months.

Without prejudice to the enforceability of a modification within the aforementioned effective term, a worker who has not decided to terminate his/her contract and who disagrees with the employer's decision may challenge it before the competent courts. The court decision shall declare whether the modification is justified or unjustified and, in this latter case, shall acknowledge the worker's right to return to his/her previous conditions.

If the company, in order to evade the provisions contained in the following section, were to make material modifications in working conditions in successive ninety-day periods in an amount less than the thresholds referred to in the last paragraph of section 2 above, without there being any new cause to justify this conduct, these new modifications shall be considered as made in fraud of law and shall be declared null and void.

4. Any decision to carry out a material modification of collective working conditions must be preceded by a consultation period with the workers' legal representatives of at least fifteen days. This consultation period shall cover the reasons leading to the employer's decision and the possibility of avoiding or reducing its effects, as well as the necessary measures to mitigate its consequences for the workers affected.

During the consultation period the parties shall negotiate in good faith with the aim of reaching an agreement.

This agreement shall require the consent of the majority members of the Works Council(s), staff representatives, if any, or trade union representatives, should these exist, which, as a whole, represent the majority members.

At the end of the consultation period the employer shall notify the workers of its decision regarding the modification, which shall be effective upon expiration of the term referred to in section 3 above.

The decisions adopted further to this section may be challenged in collective dismissal proceedings, notwithstanding the individual action foreseen in section 3 above. The filing of collective dismissal proceedings will stop the proceedings of any individual actions initiated, until these are resolved.

The agreement reached with the workers' legal representatives in the consultation period shall apply notwithstanding the right of the workers affected to exercise the option foreseen in the second paragraph of section 3 above.

5. In any matters regarding transfers, the specific rules foreseen in Article 40 above shall apply.

## **Section 2. Guarantees in the event of a change of employer**

### ***Article 42. Sub-contracting of works and services.***

1. Any employers who contract or sub-contract with others the execution of works or services inherent to the employer's own activity must ascertain that the contracting companies are up to date in payment of Social Security rates. To this effect, they shall obtain in writing, identifying the company affected, a negative overdraft certificate from the General Treasury of the Social Security, which shall inexcusably issue this certificate within a

non-extendable term of thirty days, in the terms established in the regulations. Upon expiration of this term, the applicant employer shall be released from liability.

2. The main employer, except for expiration of the aforementioned term regarding Social Security and for the year following completion of the tasks entrusted, shall be jointly and severally liable for any salary obligations undertaken by the contractors and sub-contractors vis-à-vis its workers and for any Social Security obligations during the term of the contracted services.

There will be no liability for the contractor's acts whenever the activity contracted exclusively refers to the construction or repair that may be hired by the head of a family in relation to the home, as well as when the owner of the works or industry does not contract the execution thereof based on a company activity.

3. All workers of the contractor or sub-contractor must be informed in writing by their employer of the identity of the main company for which they are providing their services at all times. This information shall be provided before commencement of the corresponding services and shall include the individual or company name of the main employer, its registered address and fiscal identification number. Furthermore, the contractor or sub-contractor shall provide the identity of the main company to the General Treasury of the Social Security in the terms established in the regulations.

4. Notwithstanding the information on provisions in sub-contracting matters referred to in Article 64 herein, if the company executes a contract for the provision of works or services with a contractor or sub-contractor company, it shall notify the workers' legal representatives of the following:

a) Individual or company name, registered address and fiscal identification number of the contractor or sub-contractor company.

b) Object and term of the contracted services.

c) Place of execution of the contracted services.

d) If applicable, the number of workers to be employed by the contractor or sub-contractor at the work centre of the main company.

e) Measures foreseen to coordinate activities from the point of view of occupational risk prevention.

If the main company, contractor or sub-contractor were to continuously share the same work centre, the former must hold a ledger in which to record the foregoing details on all of said companies. This ledger shall be made available to the workers' legal representatives.

5. The contractor or subcontractor company shall also provide its workers' legal representatives, before commencement of execution of the contracted services, with the same details referred to in section 3 and in letters b) to e) of section 4 above.

6. All workers of contractor and sub-contractor companies, in the absence of legal representatives, shall be entitled to present to the representatives of the workers of the main company any issues regarding the executing conditions of their employment activity, during the time that they are sharing a work centre and do not have any representatives.

The provisions of the foregoing paragraph shall not apply to any claims brought by the worker against the company it belongs to.

7. The legal representatives of the workers of the main company and of the contractor and sub-contractor companies, if they continuously share a work centre, may meet in order to mutually coordinate their activities and the executing conditions of their employment activity in the terms foreseen in Article 81 herein.

The representation capacity and scope of activity of the workers' representatives, including their hourly credit, shall be established in current law and, as the case may be, in applicable CBAs.

### ***Article 43. Assignment of workers.***

1. The hiring of workers in order to temporarily assign them to another company may only be carried out through part-time employment agencies that are duly authorised in the terms established by law.

2. In any case, the illegal assignment of workers contemplated in this article shall be deemed to exist in any of the following events: the object of the services contracts between the companies is limited to a mere provision of the assignor's workers to the assignee company, or the assignor company lacks an activity or its own stable structure, or does not have the necessary means to develop its activity, or does not exercise the duties inherent to its employer status.

3. Any employers, whether assignor or assignee, that breach the provisions indicated in the foregoing sections shall be jointly and severally liable for the obligations undertaken with their workers and with the Social Security, notwithstanding any other responsibilities, including criminal liability, that may arise from these acts.

4. Any workers who are subjected to forbidden assignments shall be entitled to acquire permanent employee status, at their own choice, in the assignor or assignee enterprise. The rights and obligations of the worker in the assignee company shall be the ones held by an employee in ordinary conditions who provides his/her services in the same or equivalent work post, although seniority shall be calculated from the beginning of the illegal assignment.

### ***Article 44. Transfer of undertaking.***

1. The change of ownership of a company, work centre or autonomous production unit will not in itself terminate an employment relationship, and the new employer shall subrogate the former's employment and Social Security rights and obligations, including pension commitments, in the terms provided in specific regulations including, in general, as many obligations in additional social protection matters are undertaken by the assignor.

2. For the purposes of this article, a transfer of undertaking shall be deemed to exist whenever the transfer affects an economic activity that maintains its identity, understood as all the resources arranged to carry out an essential or accessory economic activity.

3. Notwithstanding the provisions established in Social Security legislation, the assignor and assignee, in any transfers arising from "inter vivos" acts, shall be jointly and severally liable during three years for the employment obligations born prior to the transfer and not yet settled.

The assignor and assignee shall also be jointly and severally liable for the obligations born after the transfer, if the assignment is declared to amount to an offence.

4. Unless otherwise provided, once the transfer is consummated by means of a company agreement between the assignee and the workers' representatives, the employment relations of the workers affected by the transfer shall continue to be governed by the CBA that at the time of the transfer was applicable in the company, work centre or autonomous production unit transferred.

These provisions shall continue to apply until the expiration of the original CBA or the entry into force of another new CBA that is applicable to the economic entity transferred.

5. Whenever the company, work centre or production unit being transferred continues to hold independent status, the change of employer will not in itself terminate the mandate of the workers' legal representatives, who will continue to exercise their duties in the same terms and under the same conditions that previously applied.

6. The assignor and assignee shall inform the legal representatives of their respective workers affected by the change of the following:

- a) The scheduled transfer date;
- b) Reasons for the transfer;
- c) Legal, economic and social consequences for the workers of the transfer; and
- d) Measures foreseen with respect to the workers.

7. In the absence of legal representatives of the workers, the assignor and assignee shall provide the information indicated in the foregoing section to those workers who may be affected by the transfer.

8. The assignor shall be obliged to provide the information indicated in the foregoing sections sufficiently in advance, before the transfer is carried out. The assignee shall be obliged to provide this information sufficiently in advance and, in any case, before its workers are affected in their employment and work conditions by the transfer.

In the event of a company merger and spin-off, the assignor and assignee must provide the foregoing information, in any case, at the time the announcement is published to convene the general meetings in order to adopt the respective resolutions.

9. The assignor or assignee that expects to adopt employment measures in relation to its workers, as a result of the transfer, shall be obliged to hold a consultation period with the workers' legal representatives on the measures foreseen and their consequences for the workers. This consultation period shall be held sufficiently in advance, before the measures are put into practice. During the consultation period, the parties shall negotiate in good faith with a view to reaching an agreement. Whenever the measures foreseen consist of collective transfers or material modifications of collective working conditions, the procedure of the consultation period referred to in the preceding paragraph shall comply with the provisions established in Articles 40.1 and 41.4 herein.

10. The obligations to inform and hold a consultation period, established in this article, shall apply regardless of whether the decision regarding the transfer was adopted by the assignor and assignee employers or by the companies that control them. Any justification provided by such parties based on the fact that the company that adopted the decision did not provide the necessary information will not be taken into account for this purpose.

### **Section 3. Suspension of a contract**

#### ***Article 45. Causes and effects of a suspension.***

1. An employment contract may be suspended for the following reasons:

- a) By mutual agreement between the parties.
- b) For the reasons validly recorded in the contract.
- c) Due to the worker's temporary disability.

d) In the event of maternity, paternity, high-risk pregnancy, risk during the natural breast-feeding of a minor under nine months; adoption or fostering, whether as part of pre-adoption proceedings or permanent/ordinary, pursuant to the Civil Code or to the civil laws of the Autonomous Community that regulate the matter, as long as the situation lasts for at least one year, of minors under six or underage individuals who are older than six in the case of handicapped minors or children who, due to their personal circumstances and experience or foreign origin encounter particular adaptation difficulties in social and family terms, duly accredited by the competent social services.

e) Obligatory military service or the social services that replace it ("*prestación social sustitutoria*");

- f) The holding of a representative public post;

- g) If the worker is imprisoned, in the absence of punishment declared by the court;
  - h) Suspension of the right to wages and employment, for disciplinary reasons;
  - i) Temporary force majeure;
  - j) Economic, technical, structural or production reasons;
  - k) A forced extended leave of absence;
  - l) The exercise of the right to strike;
  - m) Legal closure of the company;
  - n) If a female worker is obliged to abandon her work post as a result of suffering male violence;
2. A suspension shall release any reciprocal obligations to work and to remunerate the work provided.

**Article 46. Extended leave of absence.**

1. An extended leave of absence may be voluntary or mandatory. A mandatory extended leave of absence, entailing a right to maintain a work post and to take its term into account for seniority calculations, shall be granted due to an appointment or election to a public post that prevents attendance at work. Reinstatement must be requested during the month following completion of the public post.

2. A worker holding at least one year's seniority in the company shall be entitled to be acknowledged the possibility of entering a voluntary extended leave of absence for at least four months and no more than five years. This right may only be exercised again by the same worker if four years have elapsed since the end of the previous extended leave of absence.

3. Workers shall be entitled to an extended leave of absence of a maximum of three years to care for each child, if this is a natural consequence, is derived from adoption or fostering, whether permanent or part of a pre-adoption process, even if provisional, as of the date of birth or of the court or administrative resolution.

A right to an extended leave of absence, not exceeding two years, unless a longer term is established in CBA negotiations, shall be held by workers to care for a relative up to the second degree of blood ties or affinity who, due to old age, an accident, illness or disability is dependant and does not carry out any remunerated activity.

The extended leave of absence foreseen in this section, which may be enjoyed by fractions, is an individual right of all workers, male or female. Nevertheless, if two or more workers in the same company were to generate this right in relation to the same subject, the employer may limit the simultaneous exercise thereof for justified reasons based on the company's operation.

If a new subject were to give rise to a new extended leave of absence, the beginning of this period shall end any period being enjoyed until then.

The period during which the worker remains in a situation of extended leave of absence further to the provisions of this article shall be taken into account for seniority calculations and the worker shall be entitled to attend professional training courses, to which the worker shall be summoned by the employer, particularly upon his/her reinstatement. During the first year, the worker shall be entitled to reservation of his/her work post. Upon expiration of this term, the reservation shall cover a work post belonging to the same professional group or equivalent category.

Nevertheless, if the worker's family is officially acknowledged as a "large family", the reservation of his/her work post shall be extended up to a maximum of 15 months in the case of an ordinary large family, and up to a maximum of 18 months if the large family belongs to a special category.

4. Furthermore, any workers who exercise trade union duties within the province or outside may apply for an extended leave of absence from the company for the term of their representative post.

5. A worker on extended leave of absence shall only continue to hold a preferential right to be reinstated in vacancies of the same or similar category held that exist or arise in the company.

6. An extended leave of absence may be extended to other situations collectively agreed upon, subject to the provisions and effects foreseen.

***Article 47. Suspension of a contract for economic, technical, structural or production reasons, or in the event of force majeure.***

1. An employment contract may be suspended at the employer's request, for economic, technical, structural or production reasons, further to the procedure established in Article 51 below and implementing regulations, except as regards indemnification, which shall not apply.

This measure shall be authorised whenever the documentation held in the records is able to reasonably indicate that such provisional measure is necessary in order to overcome a specific situation suffered by the company's activity.

In this case, the term referred to in Article 51.4 below, regarding the length of a consultation period, shall be reduced by half and any justifying documentation shall be the one that is strictly necessary in the terms established in the regulations.

2. Likewise, an employment contract may be suspended for reasons derived from an event of force majeure further to the procedure foreseen in Article 51.12 below and implementing regulations.

***Article 48. Suspension with reservation of a work post.***

1. Once the legal reasons for suspension disappear, the worker shall be entitled to be reinstated into the reserved work post, in all the events referred to in Article 45.1 herein, except in the cases foreseen in paragraphs a) and b) thereof, where the provisions agreed shall apply.

2. In the event of temporary disability that eventually disappears with a declaration of permanent disability, of a total and permanent disability for an ordinary job, absolute disability for any job, or huge disability when, in the opinion of the examining body, the worker's disability is expected to be the object of review as to improvement, enabling his/her return to work, the suspension of the employment relationship shall continue, with reservation of the work post, for a term of two years as of the resolution date declaring such permanent disability.

3. In the event of suspension due to obligatory military service or social services replacing the same, the holding of a representative public post or trade union duties within the province or outside, the worker shall be reinstated within a maximum of thirty calendar days following cessation of the service, post or duties.

4. In the event of a birth, this suspension shall last for sixteen non-interrupted weeks, extendable in the case of a multiple birth by two more weeks for each child after the second. The suspension period shall be distributed as the female worker decides, as long as six weeks are immediately enjoyed after the birth. In the event of death of the mother, regardless of whether or not she was employed, the other parent may make use of all or the remaining part of the suspension period, calculated as of the date of birth, without deducting any part that the mother may have enjoyed before the birth. In the event of death of the child, the

suspension period shall not be shortened unless, at the end of the six weeks' obligatory rest period, the mother were to request reinstatement in her work post.

Notwithstanding the foregoing and without prejudice to the six weeks immediately following the birth of obligatory rest for the mother, in the event that both parents work, the mother, at the beginning of the maternity rest period, may decide that the other parent enjoy a specific and non-interrupted part of the rest period following the birth, either simultaneously or successively with the mother. The other parent may continue to make use of the suspension period in the event of maternity initially granted, even if at the time foreseen for the mother's reinstatement she were to incur a situation of temporary disability.

In the event that the mother is not entitled to suspend her professional activity with a right to benefits, further to the rules governing this activity, the other parent shall be entitled to suspend his employment contract for the time applicable to the mother, which shall be compatible with the right acknowledged in the following article.

In the event of a premature birth and when, for any other reason, the newborn must remain in hospital after the birth, the suspension period may be calculated, at the mother's request or, otherwise, at the request of the other parent, as of the date of release from the hospital. These calculations shall not include the six weeks after birth, amounting to an obligatory suspension of the mother's contract.

In the event of a premature birth where the baby is underweight, and other situations where the newborn requires hospitalisation following the birth due to some clinical condition for a term exceeding seven days, the suspension period shall be extended by the number of days of hospitalisation, up to a maximum of thirteen further weeks, in the terms established in the regulations.

In the event of adoption and fostering, according to Article 45.1.d) herein, the suspension shall last for sixteen non-interrupted weeks, extendable in the case of a multiple adoption or fostering by two weeks for each minor after the second child. This suspension shall be effective, at the worker's choice, either following the court resolution establishing the adoption or after the administrative or court decision on the provisional or final fostering; in no case may the same minor generate a right to several suspension periods.

In the event that both parents are employed, the suspension period shall be distributed as decided by the interested parties, who may enjoy it simultaneously or successively, in non-interrupted periods and with the limits provided.

If rest periods are simultaneously enjoyed, the total may not exceed the sixteen weeks foreseen above or the weeks applicable in the case of a multiple birth, adoption or fostering.

In the event of disability of the child or adopted/fostered minor, the suspension of the contract referred to in this section shall last for another two weeks. In the event that both parents are employed, this additional period shall be distributed as decided by the interested parties, who may enjoy it simultaneously or successively and always in a non-interrupted manner.

The periods referred to in this section may be enjoyed as a full or part-time employee, further to an agreement between the employers and affected workers, in the terms established in the regulations.

In the case of an international adoption requiring a prior transfer of the parents to the country of origin of the adopted child, the suspension period foreseen for each case in this section may begin up to four weeks before the resolution confirming the adoption.

Workers shall benefit from any improvement in their working conditions to which they may have been entitled during suspension of their contract in the events referred to in this section, including those foreseen in the following section and in Article 48 bis) herein.

5. In the event of a high-risk pregnancy or risk during natural breast-feeding, in the terms foreseen in Article 26 of Act 31/1995, of 8 November, on Occupational Risk Prevention, suspension of the contract shall end on the date of commencement of suspension due to

biological maternity or when the weaning child is nine months old, respectively, or, in either case, when the worker is no longer prevented from returning to her previous work post or to another one compatible with her new situation.

6. In the event foreseen in Article 45.1.n) herein, the suspension period shall have an initial term of a maximum of six months, unless the protection measures adopted by the court indicate that the victim's right to protection requires a continued suspension in order to be effective. In this case, the judge may extend the suspension for three-month periods, up to a maximum of eighteen months.

***Article 48.bis). Suspension of an employment contract due to paternity.***

In the event of birth of a child, adoption or fostering according to Article 45.1.d) herein, the worker shall be entitled to suspend the contract for thirteen non-interrupted days, extendable in the case of a multiple birth, adoption or fostering by two more days per child after the second one. This suspension shall not be affected by the shared enjoyment of maternity rest periods governed in Article 48.4.

In the event of birth, the suspension shall exclusively be enjoyed by the other parent. In the events of adoption or fostering, this right shall only be held by one of the parents, as decided by the interested parties; nevertheless, when the rest period foreseen in Article 48.4 is fully enjoyed by one parent, the right to suspension due to paternity may only be exercised by the other.

The worker who exercises this right may do so during the period between the end of the permit for birth of a child, foreseen by law or in a CBA, or the court resolution declaring the adoption or administrative or court decision in relation to the fostering, and the end of the contractual suspension foreseen in Article 48.4 or immediately after the end of this suspension.

The contractual suspension referred to in this article may be enjoyed as a full or part-time worker for a minimum of 50%, further to an agreement between the employer and worker and pursuant to the regulations.

The worker must duly notify the employer in advance of the exercise of this right in the terms that are established in the CBAs.

#### **Section 4. Termination of a contract**

***Article 49. Termination of a contract.***

1. An employment contract may be terminated:

a) By mutual agreement between the parties.

b) For the reasons that are validly recorded in the contract, unless they amount to a manifest abuse of law on the part of the employer.

c) Due to expiration of the term agreed or execution of the works or services covered by the contract. At the end of the contract, except in the case of a provisional contract, incorporation contract ("*contrato de inserción*") and training contracts, the worker shall be entitled to receive indemnification equivalent to the proportional part of the amount that would result from paying eight days' salary per year of service or the one established in specific applicable regulations.

Contracts for a specific time that have established a maximum term, including traineeship and training contracts, executed for a term less than the maximum legal term, shall be deemed as automatically extended up to this term in the absence of repudiation or express renewal and if the worker continues to provide his/her services.

Upon expiration of this maximum term or upon completion of the works or services covered by the contract, in the absence of repudiation and continuation of the labour services, the contract shall be deemed as tacitly renewed for an indefinite term, unless there is evidence to the contrary proving the provisional nature of the services.

If the employment contract for a specific term is longer than a year, the party repudiating the contract shall be obliged to notify the other of contractual termination at least fifteen days in advance.

d) Upon the worker's dismissal, subject to the prior notice foreseen in CBAs or local practice.

e) Due to death, huge disability or total/absolute permanent disability of the worker, notwithstanding the provisions of Article 48.2 herein.

f) Upon the worker's retirement.

g) Due to death, retirement in the cases foreseen in the applicable Social Security system, or disability of the employer, notwithstanding the provisions of Article 44 herein, or due to termination of the hiring party's legal status.

In the event of death, retirement or disability of the employer, the worker shall be entitled to be paid an amount equivalent to one month's salary.

In the event of termination of the hiring party's legal status, the steps foreseen in Article 51 herein shall be followed.

h) In the event of force majeure, definitively impeding the provision of work, provided that this situation is duly ascertained pursuant to the provisions established in Article 51.12 below.

i) Due to collective dismissal proceedings based on economic, technical, structural or production reasons, as long as the dismissal was duly authorised further to the provisions herein.

j) At the worker's request, based on the employer's contractual breach.

k) Due to the worker's dismissal.

l) For objective reasons applicable by law.

m) If decided by a female worker who is obliged to definitively abandon her work post as a result of being the victim of male violence.

2. Upon termination of the contract and when informing the workers of its repudiation or providing prior notice of contractual termination, the employer must include a proposed settlement of any outstanding amounts.

The worker may request the presence of a legal representative of the workers at the time of signing the receipt of final settlement, in which case it will be recorded that signature was provided in the presence of one of the workers' legal representatives, or else that the worker did not uphold this right. If the employer were to prevent the presence of a representative at the signature date, the worker may duly record this in the receipt for the necessary purposes.

### ***Article 50. Termination at the worker's will.***

1. The following shall be fair reasons for a worker to apply for contractual termination:

a) A material modification of his/her working conditions that is detrimental to his/her professional training or dignity.

b) Non-payment or continued delay in payment of the salary agreed upon.

c) Any other serious breach of the employer's obligations, except in the event of force majeure, including the employer's refusal to reinstate the worker into his/her previous

working conditions in the terms foreseen in Articles 40 and 41 herein, when a court decision has declared them unjustified.

2. In these cases, the worker shall be entitled to the indemnification foreseen for unfair dismissals.

**Article 51. Collective dismissal.**

1. For the purpose of this Act, a collective dismissal shall refer to the termination of employment contracts based on economic, technical, structural or production reasons, if at least the following number of workers are affected over a ninety-day period:

- a) Ten workers in companies employing less than one hundred workers.
- b) 10% of the company's workers if the company employs between one hundred and three hundred workers.
- c) Thirty workers in companies employing three hundred or more workers.

The causes referred to in this article shall be deemed to exist whenever the adoption of the measures proposed, if these are economic, contribute to overcoming the company's negative financial situation or, if the reasons are technical, structural or production-related, if they guarantee the company's future viability and employment through a more adequate arrangement of resources.

Collective dismissals shall also cover the termination of employment contracts that affect all of the company's staff, provided that the number of workers affected exceeds five, if the dismissal arises from the total cessation of the company's activity also based on the aforementioned reasons.

In order to calculate the number of contractual terminations referred to in paragraph one above, any other termination that has taken place during this period at the employer's request for other reasons not inherent to the individual worker shall also be taken into account, except for the reasons foreseen in Article 49.1.c) herein, amounting to at least five.

If, in successive ninety-day periods and in order to evade the provisions of this article, the company were to terminate employment contracts further to Article 52.c) herein in a number less than the thresholds indicated, without there being any new reason to justify this conduct, these new terminations shall be deemed as made in fraud of law and shall be rendered null and void.

2. An employer who intends to carry out a collective dismissal must apply for authorisation to terminate the employment contracts further to collective dismissal proceedings foreseen in this Act and implementing regulations. The proceedings shall begin with an application to the competent labour authority and the simultaneous commencement of a consultation period with the workers' legal representatives.

Notification to the labour authority and to the workers' legal representatives shall include all the necessary documentation to accredit the causes behind the dismissal and to justify the measures to be adopted, in the terms established in the regulations.

Notification of the beginning of the consultation period shall be made in a writ addressed by the employer to the workers' legal representatives, a copy of which shall be forwarded to the labour authority, together with the application.

3. Upon receipt of the application, the labour authority shall check that it meets the necessary requirements and, otherwise, shall demand that it be rectified by the employer within ten days, advising the employer that, otherwise, it will be deemed as having waived the petition and the proceedings will be shelved.

The labour authority shall notify commencement of the proceedings to the management entity in charge of unemployment benefits and must obtain a report from the Labour and

Social Security Inspection on the reasons for the dismissal, including any others that are necessary to provide a reasoned resolution. These reports must be issued within a non-extendable term of ten days and shall be held by the labour authority before the end of the consultation period referred to in sections 2 and 4 of this article; the labour authority shall include them in the records once the period has ended.

If, during the processing of the dismissal, the labour authority were informed that the employer is adopting measures that could render ineffective the outcome of any decision, the authority may address the employer and the competent authorities in order to immediately stop the measures.

If the termination affects more than 50% of the workers, the employer shall give account of the sale of the company assets, excluding those that represent its ordinary business, to the workers' legal representatives and to the competent authority.

4. Consultation with the workers' legal representatives, who will act as an interested party in the processing of collective dismissal proceedings, shall at least last thirty calendar days or fifteen in the case of companies with less than fifty workers, and shall cover the reasons for the dismissal and the possibility of avoiding or reducing its effect, as well as the necessary measures to mitigate its consequences for the affected workers and to enable the continuity and viability of the company.

In any case, in companies with fifty or more workers, the documentation initiating the proceedings shall include a plan with the aforementioned measures.

During the consultation period, the parties shall negotiate in good faith with a view to reaching an agreement.

This agreement shall require the approval of the majority members of the Works Council(s), of any staff representatives or trade union representatives, if any, which as a whole represent the majority members.

At the end of the consultation period, the employer shall notify the outcome thereof to the labour authority.

5. If the consultation period ends with an agreement between the parties, the labour authority shall issue a resolution within fifteen calendar days, authorising termination of the employment relations. If, at the end of this term, no express decision has been delivered, the termination measure shall be deemed as authorised in the terms foreseen in the agreement.

Notwithstanding the provisions of the preceding paragraph, if the labour authority were to reveal the existence, either *ex officio* or at a party's request, of fraud, wilful intent, undue influence or *ultra vires* conduct in reaching the agreement, it shall send it to the courts, suspending the term in which to deliver judgment, for the purposes of a possible declaration of nullity. The foregoing shall also apply if, *ex officio* or at the request of the management entity in charge of unemployment benefits, the labour authority considers that the agreement could be aimed at unduly obtaining benefits on the part of the workers affected due to the absence of a reason giving rise to legal unemployment.

6. If the consultation period ends without an agreement, the labour authority shall issue a resolution upholding or rejecting, in whole or in part, the employer's request. The resolution shall be issued within fifteen calendar days following notification to the labour authority of the end of the consultation period; if, upon expiration of this term, no express decision has been issued, the termination measure shall be deemed as authorised in the terms of the application.

The resolution issued by the labour authority shall be reasoned and congruent with the employer's application. Authorisation shall be granted if the documentation held in the records reasonably indicates that the measures proposed by the company are necessary for the purposes foreseen in section 1 above.

7. The workers' legal representatives shall have a priority right to remain in the company in the events foreseen in this article.

8. Any workers whose contracts are terminated pursuant to the provisions of this article shall be entitled to indemnification of twenty days' salary per year of service, with a monthly prorating of any periods of time shorter than one year, up to a maximum of twelve monthly payments.

9. The workers, through their representatives, may also apply for initiation of the proceedings referred to in this article if they reasonably believe that the employer's non-initiation could cause them damage that is impossible or difficult to repair.

In this case, the competent labour authority shall indicate the steps and reports that are necessary to resolve the proceedings, upholding the deadlines foreseen in this article.

10.

11. In the event of a court sale of all or part of the company, the provisions of Article 44 herein shall only apply whenever the assets sold include the components that are necessary and sufficient in themselves to continue the company's activity.

If, notwithstanding the existence of the foregoing situation, the new employer decides not to continue or to suspend the former's activity, it must provide explanations in the collective dismissal proceedings initiated to this effect.

12. The existence of force majeure, as a reason for termination of the employment contracts, must be ascertained by the labour authority, regardless of the number of workers affected, further to proceedings filed pursuant to this section.

The proceedings shall begin with the company's application, attaching the means of evidence that are deemed necessary and simultaneously notifying the workers' legal representatives, who will act as an interested party throughout the proceedings.

The labour authority's resolution shall be issued, after any indispensable steps and reports, within five days following the application, and shall be effective as of the date of the event of force majeure.

The labour authority verifying the situation of force majeure may agree that all or part of the indemnification payable to the workers affected by termination of their contracts be paid by the Salary Guarantee Fund, notwithstanding its right to be reimbursed by the employer.

13. In any matter not foreseen in this article, the provisions established in Act 30/1992, of 26 November (RCL 1992, 2512, 2775 and RCL 1993, 246), on the Legal System applied by the Public Administration and Common Administrative Procedure, shall apply, particularly regarding the issue of appeals.

All steps to be followed and notifications to be made to the workers shall be carried out through their legal representatives.

14. The information and documentation obligations foreseen in this article shall apply regardless of whether the decision on collective dismissal was taken by the employer or by its controlling company. Any justification provided by the employer and based on the fact that the company adopting the decision did not provide it with the necessary information may not be taken into account for this purpose.

15. In the case of collective dismissal proceedings affecting companies not involved in any bankruptcy proceedings, including workers who are fifty-five years of age or older without mutuality member status on 1 January 1967, there will be an obligation to pay the rates used to finance a special CBA in relation to the foregoing workers in the terms foreseen in the General Social Security Act.

**Article 52. Contractual termination for objective reasons.**

An employment contract may be terminated:

a) Due to the worker's ineptitude, known or subsequently produced after his/her effective incorporation into the company. Any ineptitude existing prior to completing a trial period may not be alleged after it is completed.

b) Due to the worker's non-adjustment to technical modifications made to his/her work post, when these changes are reasonable and at least two months have elapsed since the modification was made. The contract shall be suspended for the necessary time up to a maximum of three months whenever the company provides a readjustment or professional recycling course on account of the competent official or company body, in order to render the worker qualified for the necessary adjustment. During the course the worker shall be paid an amount equivalent to the average salary being paid.

c) In the event of an objectively ascertained need to downsize for any of the reasons foreseen in Article 51.1 herein, for a number less than established therein. To this effect, the employer shall justify its decision to terminate on economic reasons, in order to help overcome a negative financial situation, or on technical, structural or production grounds, to overcome any difficulties preventing the company's good operation, whether due to its competitive position on the market or the needs of demand, through a better arrangement of its resources.

The workers' representatives shall have a priority right to remain in the company in the event referred to in this section.

d) Due to non-attendance at work, albeit justified but intermittent, amounting to 20% of the business working days over two consecutive months, or 25% over four discontinuous months within a twelve-month period, provided that the total staff absenteeism in the work centre exceeds 5% in the same periods of time.

For the purposes of the foregoing paragraph, any absence due to a legal strike shall not be taken into account as non-attendance; the exercise of activities inherent to the workers' legal representation; an occupational accident; maternity, high-risk pregnancy, illnesses derived from a pregnancy, birth or breast-feeding; permits and holidays; non-occupational illness or accidents, whenever leave has been agreed by the official health authorities and lasts longer than twenty consecutive days; also excluded shall be those periods of leave derived from a physical or psychological situation caused by male violence, accredited by the social assistance services or health services, as the case may be.

e) In the case of contracts for an indefinite term that are directly executed by the Public Administration or by non-profit entities in order to execute specific public plans and programmes, without any stable economic provision and funded through budgetary or non-budgetary consignments each year derived from external income for a specific purpose, due to an insufficient consignment to maintain the employment contract in question.

Whenever termination affects a number of workers that is equal to or higher than the number established in Article 51.1 herein, the procedure foreseen in said article shall be followed.

### ***Article 53. Form and effects of termination for objective reasons.***

1. The adoption of a termination decision further to the provisions established in the foregoing article must meet the following requirements:

a) Written notification to the worker, indicating the cause.

b) To make available to the worker, at the same time as written notification is provided, indemnification of twenty days per year of service, with a monthly prorating of any periods of time shorter than a year and up to a maximum of twelve monthly payments.

Whenever a decision to terminate is based on Article 52.c) herein, alleging an economic cause, and the indemnification referred to in the foregoing paragraph cannot be provided to the worker as a result of such financial situation, the employer must state this in the written

notification and not provide the indemnification, notwithstanding the worker's right to demand payment thereof after the termination decision becomes effective.

c) The granting of thirty days' prior notice, calculated as of delivery of the personal notification to the worker and until termination of the employment contract. In the event foreseen in Article 52.c) herein, a copy of the prior notice shall be provided to the workers' legal representatives for information purposes.

2. During the period of prior notice the worker, or his/her legal representative in the case of a handicapped worker who is represented, shall be entitled, without losing remuneration, to a permit of six weekly hours to find a new job.

3. A decision to terminate may be appealed as in the case of a disciplinary dismissal.

4. If the employer does not meet the requirements foreseen in section 1 above or the employer's decision to terminate were derived from any discrimination event foreseen in the Spanish Constitution or by law, or was adopted in breach of the worker's basic human rights and public freedoms, the decision to terminate shall be null and void and the courts must issue an official declaration in this regard. Non-provision of prior notice shall not cancel the termination, although the employer, regardless of any other effects, must pay the salaries corresponding to this period of time. The subsequent compliance by the employer of the breached requirements will in no event remedy the original termination act but will represent a new decision to terminate with effect as of the date thereof.

A decision to terminate shall also be null and void in the following cases:

a) If it affects workers during a period of suspension of their employment contract due to maternity, a high-risk pregnancy, risk during natural breast-feeding, illnesses caused by a pregnancy, birth or natural breast-feeding, adoption, fostering or paternity referred to in Article 45.1.d), or if the termination is notified on a date such that the prior notice term granted ends during said period.

b) In the case of pregnant workers, since the date of commencement of the pregnancy until the beginning of the suspension referred to in a) above, including any workers who have applied for one of the permits referred to in sections 4, 4 bis) and 5 of Article 37 or are enjoying such permits, or have applied for or are enjoying the extended leave of absence foreseen in Article 46.3; any female workers who are the victims of male violence, due to the exercise of their rights to shorten or rearrange their working hours, to geographical mobility, to a change of work centre or to suspension of their employment relationship in the terms and conditions established herein.

c) If it affects workers after they have returned to work upon expiration of a suspension period due to maternity, adoption, fostering or paternity, as long as more than nine months have not elapsed since the date of birth, adoption or fostering of the child.

The provisions of the foregoing sections shall apply unless, in these cases, the termination decision is upheld for reasons not related to a pregnancy or to the exercise of the right to the foregoing permits and extended leave of absence.

5. The declaration by the court of the nullity, applicability or inapplicability of a decision to terminate shall have the same effects as those indicated for disciplinary dismissals, subject to the following differences:

a) If the decision is upheld, the worker shall be entitled to the indemnification foreseen in section 1 above, or shall consolidate the indemnification if received, and shall be deemed as unemployed for a reason not attributable to him/her.

b) If the decision is not upheld and the employer proceeds to reinstate the worker, any indemnification received must be returned. If reinstatement is replaced with economic compensation, the amount of such indemnification shall be deducted.

#### ***Article 54. Disciplinary dismissal.***

1. An employment contract may be terminated by an employer's decision, through dismissal based on a serious and wilful breach on the part of the worker.

2. The following shall amount to a contractual breach:

a) Repeated and unjustified non-attendance or unpunctuality at work.

b) Lack of discipline or disobedience at work.

c) Verbal or physical abuse against the employer, persons working in the company or relatives living with these.

d) A breach of contractual good faith or an abuse of trust when exercising the job.

e) A continued and voluntary decrease in the ordinary or agreed work performance.

f) Drunkenness or drug addiction if they have a negative effect on work.

g) Harassment on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual preference, and sexual or sex-based harassment against the employer or persons working in the company.

### ***Article 55. Form and effects of disciplinary dismissal.***

1. The dismissal must be notified in writing to the worker, indicating all the facts justifying the same and the effective date thereof.

A CBA may establish other formal requirements for dismissal.

If the worker is one of the workers' legal representatives or trade union representatives, contradictory proceedings shall begin, at which the interested party and any other representatives of the body to whom he/she belongs, if any, shall be heard.

If the worker belongs to a trade union and the employer is aware of this, the trade union representatives of the trade union section corresponding to said trade union must be previously heard.

2. If a dismissal is carried out in breach of the provisions of the foregoing section, the employer may carry out a new dismissal that meets the requirements omitted in the previous one. This new dismissal, only effective as of its date, must be carried out within twenty days following the day after the first dismissal. Upon the dismissal, the employer shall provide the worker with the salary accrued in any intermediate days and shall continue paying Social Security contributions during this time.

3. A dismissal shall be classified as fair, unfair or null and void.

4. A dismissal shall be considered fair whenever the breach alleged by the employer in its notification is accredited. It shall be unfair in all other cases or when its form does not adjust to the provisions established in section 1 above.

5. A dismissal shall be null and void if based on any of the discrimination events forbidden in the Spanish Constitution or by law, or is a result of a breach of the worker's basic human rights and public freedoms.

A dismissal shall also be null and void in the following events:

a) If it affects workers during a period of suspension of their employment contract due to maternity, a high-risk pregnancy, risk during natural breast-feeding, illnesses caused by a pregnancy, birth or natural breast-feeding, adoption, fostering or paternity referred to in Article 45.1.d), or if the termination is notified on a date such that the prior notice term granted ends during said period.

b) In the case of pregnant workers, since the date of commencement of the pregnancy until the beginning of the suspension referred to in a) above, including any workers who have applied for one of the permits referred to in sections 4, 4 bis) and 5 of Article 37 or are enjoying such permits, or have applied for or are enjoying the extended leave of absence

foreseen in Article 46.3; any female workers who are the victims of male violence, due to the exercise of their rights to shorten or rearrange their working hours, to geographical mobility, to a change of work centre or to suspension of their employment relationship in the terms and conditions established herein.

c) If it affects workers after they have returned to work upon expiration of a suspension period due to maternity, adoption, fostering or paternity, as long as more than nine months have not elapsed since the date of birth, adoption or fostering of the child.

The provisions of the foregoing sections shall apply unless, in these cases, the dismissal is declared as fair for reasons not related to a pregnancy or to the exercise of the right to the foregoing permits and extended leave of absence.

6. As a result of a null and void dismissal, the worker shall be immediately reinstated and paid any outstanding salary.

7. A fair dismissal shall confirm the termination of the related employment contract, without a right to indemnification or to salary accrued during court proceedings.

### ***Article 56. Unfair dismissal.***

1. If the dismissal is declared unfair, the employer, within five days following notification of the judgment, may choose between reinstating the worker and paying the salary accrued during the court proceedings, foreseen in section b) below, or paying the following economic items to be determined in the judgment:

a) Indemnification of forty-five days' salary per year of service, with a monthly prorating of any periods of time shorter than one year up to a maximum of forty-two monthly payments.

b) An amount equal to the total salary not paid between the dismissal date and notification of the judgment declaring the unfair dismissal, or until another job is found, if this occurs prior to the judgment and the employer proves the corresponding payments in order to be deducted from the salary accrued during court proceedings.

2. In the event that it is the employer who decides between reinstatement or indemnification, the employment contract shall be deemed as terminated on the dismissal date, if the employer is aware of its unfairness and offers the indemnification foreseen in section a) above, depositing it before a Labour Court to make it available to the worker, notifying him/her of the situation.

If the worker accepts the indemnification or does not accept it and the dismissal is declared unfair, the amount referred to in section b) above shall be restricted to the salary accrued since the dismissal date until the deposit date, unless the deposit is made within forty-eight hours following the dismissal, in which case no amount whatsoever shall accrue.

To this effect, the employer may acknowledge the unfairness between the dismissal date and the conciliation date.

3. In the event that the employer does not choose between reinstatement or indemnification, the first option shall be deemed to apply.

4. If the worker dismissed is one of the workers' legal representatives or a trade union representative, the worker must always exercise the choice. If no choice is made, he/she shall be deemed to choose reinstatement. If the express or implicit choice is in favour of reinstatement, this shall be mandatory.

### ***Article 57. Payment by the State.***

1. Whenever the judgment declaring the unfair dismissal is issued after more than sixty business days have elapsed since the claim was filed, the employer may claim

reimbursement from the State of the economic item referred to in Article 56.1.b) above and paid to the worker, corresponding to the time exceeding this sixty-day term.

2. In dismissal cases where, further to this article, the State bears all salaries accrued during court proceedings, the State shall also pay the Social Security rates corresponding to these salaries.

## **Section 5. Bankruptcy proceedings**

### ***Article 57.bis) Bankruptcy proceedings.***

In a bankruptcy situation, the special provisions foreseen in the Bankruptcy Act shall apply to any events of collective modification, suspension and termination of employment contracts and transfers of undertaking.

## **CHAPTER IV**

### **Offences and sanctions related to workers**

#### ***Article 58. Offences and sanctions related to workers.***

1. Workers may be sanctioned by the company management by virtue of an employment breach, further to the classification of offences and sanctions provided by law or in applicable CBAs.

2. The appraisal of offences and the corresponding sanctions imposed by the company management may always be reviewed before the competent courts. The sanctioning of serious and very serious offences shall require written notification to the worker, stating the date and events giving rise to the sanction.

3. Sanctions may not consist of a shortening of the length of a holiday period or any other decrease of a worker's rights to rest, or a fine based on debt.

## **CHAPTER V**

### **Statutes of limitation**

#### **Section 1. Prescription of actions derived from a contract**

#### ***Article 59. Prescription and expiration.***

1. Any actions derived from an employment contract without a specific term shall be subject to a one-year statute of limitations as of the termination date.

To these effects, the contract shall be deemed as terminated:

- a) On the day of expiration of the term agreed or established by law or a CBA.
- b) On the final day of the provision of continuous services, if this continuity is granted by virtue of an express or tacit extension.

2. If an action is brought to demand economic items or to fulfil obligations related to a single title, which are not applicable after termination of the contract, the one-year term shall be calculated as of the day on which the action may be brought.

3. The bringing of an action against dismissal or the termination of temporary contracts shall expire twenty days after the date of the event. These days shall be business days and the statute of limitations shall apply to all intents and purposes.

The statute of limitations shall be interrupted with an application for conciliation filed before the public body in charge of mediation, arbitration and conciliation.

4. The provisions of the foregoing section shall apply to any actions brought against employer decisions as regards geographical mobility and a material breach of working conditions. The term shall begin to run from the day following notification of the employer's decision, after expiration of the consultation period, if applicable.

## **Section 2. Prescription of infringements and offences**

### ***Article 60. Prescription***

1. Any infringements on the part of the employer shall be subject to a three-year statute of limitations, except in Social Security matters.

2. With respect to workers, minor offences shall expire within ten days; serious offences within twenty days; and very serious offences sixty days after the date when the company became aware of the offence and, in any case, six months after it is committed.

## **TITLE II**

### **Workers' rights of collective representation and to hold meetings**

#### **CHAPTER I**

#### **The right of collective representation**

### ***Article 61. Participation.***

Pursuant to the provisions established in Article 4 above and notwithstanding any other forms of participation, all workers shall be entitled to participate in the company through the representation bodies regulated in this Title.

#### **Section 1. Representation bodies**

### ***Article 62. Staff representatives.***

1. Representation of the workers in a company or work centre with less than fifty and more than ten workers shall be entrusted to the staff representatives. There may also be a staff representative in companies or centres that employ between six and ten workers, if so decided by the majority workers.

Through a free, individual, secret and direct suffrage, the workers shall choose their staff representatives as follows: up to thirty workers: one; between thirty-one and forty-nine: three.

2. The staff representatives shall jointly exercise vis-à-vis the employer the representation to which they were elected, and shall hold the same powers established for the works councils.

All staff representatives shall uphold the rules on professional secrecy that are established for members of works councils in Article 65 below.

**Article 63. Works councils.**

1. The works council is the representative and collegiate body of all the workers employed by the company or work centre in charge of defending their interests; it shall be established in each work centre with a register of fifty or more workers.

2. A company that holds two or more work centres in the same province or neighbouring municipalities, which register less than fifty workers but which, overall, total this amount, shall have a joint works council. If certain centres have fifty workers and others in the same province do not, the former shall have their own works councils and another council shall be established with the remainder.

3. A CBA must establish the incorporation and operation of a Joint Council (“*Comité Intercentros*”) up to a maximum of thirteen members, to be appointed from amongst the members of the various councils.

When incorporating a Joint Council, the trade union proportionality according to the election results taken as a whole shall be maintained.

Such Joint Councils may not take on other duties than those expressly granted in the CBA whereby their incorporation is agreed.

**Article 64. Powers.**

1. A works council shall have the following powers:

1) To receive information, provided at least on a quarterly basis, on the general performance of the economic sector to which the company belongs, on the current production and sales situation of the company, on the production and performance forecasts for company employment, including the employer’s forecasts on the execution of new contracts, indicating their number and the forms and types of contracts to be used, including part-time contracts, the working of extra hours by part-time workers and sub-contracting.

It shall also be entitled to receive information, at least each year, on the company’s application of the right of equal treatment and opportunities between men and women, to include data on the ratio of women and men in the various professional categories and, if applicable, any measures adopted to encourage the equal treatment of men and women in the company and the application of any equal treatment plan.

2) To receive a basic copy of the contracts referred to in Article 8.3.a) above and the notification of any renewals and contractual repudiations, within a term of ten days following the event.

3) To be informed of the balance sheet, profit and loss account, annual report and, if the company is a corporation based on shares or participations, of any other documents provided to the members, in the same conditions applicable thereto.

4) To issue a report before the employer executes any decisions taken on the following matters:

a) Staff restructuring and total or partial, final or provisional removals of staff.

b) A reduction in the working schedule, as well as a total or partial transfer of the premises.

c) Plans for professional training provided by the company.

d) Implementation or review of work arrangement and control systems.

e) A study of working hours, a premium or incentives plan and the appraisal of work posts.

5) To issue a report whenever the merger, absorption or modification of the company's legal status were to entail any incident that affects the employment volume.

6) To be aware of the forms of written employment contracts that are used in the company, as well as any documents related to termination of an employment relationship.

7) To be informed of any sanctions imposed for very serious offences.

8) To receive information, at least on a quarterly basis, on statistics regarding the rate of absenteeism and causes thereof, occupational accidents and professional illness and the consequences thereof, accident rates, periodic or special studies of the working environment and the prevention measures used.

9) To carry out the following tasks:

a) To ensure the fulfilment of current labour, Social Security and employment rules, including any other agreements, conditions and use currently applied by the company, filing any legal actions that are necessary before the employer and the competent bodies or Courts.

b) To supervise and control all safety and hygiene conditions in the execution of work at the company, with the particularities foreseen in this regard by Article 19 herein.

c) To ensure that the principle of equal treatment and opportunities between men and women is upheld and applied.

10. To participate, as determined in a CBA, in the management of any social projects established in the company to the benefit of the workers or their relatives.

11. To cooperate with the company management to procure the necessary measures to ensure the maintenance and increase in productivity levels, according to what is agreed in the CBAs.

12. To inform the represented workers of all the issues and matters described in this section 1, if they directly or indirectly affect employment relations.

13. To collaborate with the company's management in establishing and starting up conciliation measures.

2. Any reports to be issued by the Council further to the powers recognised in sections 4 and 5 of number 1 above must be drawn up within a term of fifteen days.

### ***Article 65. Capacity and professional secrecy.***

1. As a collegiate body, the works council shall be deemed capable to exercise any administrative or court actions in any matter within the scope of its powers, by means of a majority decision of its members.

2. All members of a works council, and the council as a unit, shall be bound by a duty of professional secrecy in everything related to paragraphs 1, 2, 3, 4 and 5 of section 1 of the foregoing article, even if no longer a member of the works council, particularly those matters which the management expressly declares to be of a reserved nature. In any case, no type of document delivered by the company to the council may be used outside the company's scope and for any other purposes than those behind the delivery.

### ***Article 66. Composition.***

1. The number of members of the works council shall be determined according to the following scale:

a) Between fifty and one hundred workers: five.

b) Between one hundred and one and two hundred and fifty workers: nine.

- c) Between two hundred and fifty-one and five hundred workers: thirteen.
- d) Between five hundred and one and seven hundred and fifty workers: seventeen.
- e) Between seven hundred and fifty-one and one thousand workers: twenty-one.

f) One thousand and above: two per each thousand or fraction, up to a maximum of seventy-five.

2. The works councils or work centre shall choose from amongst their members a chairman and secretary of the council, and shall draw up their own procedural regulations, which must comply with the law, a copy of which shall be sent to the labour authority, for its records, and to the company.

All councils shall meet every two months or whenever this is requested by a third of its members or a third of the workers represented.

### ***Article 67. Holding of elections and electoral mandate.***

1. Elections may be held to choose staff representatives and members of the works councils by the most representative trade unions, with a minimum number of representatives of ten per cent in the company, or by the workers of the work centre by majority decision. All trade unions that are able to hold elections shall be entitled to access the registries of the Public Administration that contain information on company registrations and registered employees, to the extent necessary to hold such elections within their respective scope.

The election applicants shall notify the company and the public office dependant on the labour authority of their wish to hold elections with a minimum notice of at least one month before the beginning of the election process. In this notification, the applicants shall accurately identify the company and its work centre at which the election process will be held and the date of commencement thereof, which shall be the incorporation date of the election board and which, in any case, may not begin before one month or after three months following the registration of the notification at the public office dependant on the labour authority. Within the following business day, the public office shall display the prior notifications filed on the notice board, providing a copy thereof to any trade unions that so request.

Only if a majority agreement is reached between the most representative or representative trade unions further to Organic Act 11/1985, of 2 August (RCL 1985, 1980), on Trade Union Rights, may elections be held in a generalised manner in one or more functional or territorial scopes. These agreements must be notified to the public office dependant on the labour authority for deposit and advertising purposes.

If elections are held to renew a representation upon expiration of the mandate, these elections may only be held as of the date when three months remain for expiration of the mandate.

Partial elections may be held as a result of dismissals, revocations or adjustments in the representatives resulting from a staff increase. CBAs may establish the necessary provisions to adjust the workers' representatives to any significant staff reductions that may take place in the company. Otherwise, this adjustment shall be made through an agreement between the company and the workers' representatives.

2. A breach of any of the requirements established in this article for the holding of elections shall entail the invalidity of the corresponding election process; this notwithstanding, non-notification to the company may be remedied by delivering to the company a copy of the notification presented at the public office dependant on the labour authority, as long as this takes place at least twenty days prior to the commencement date of the election process foreseen in the application.

A waiver to the election after notification of the public office dependant on the labour authority shall not prevent the exercise of the election process, as long as all requirements are met to ensure its validity.

In the event that there is more than one applicant of the elections in a company or work centre, for the purposes of initiating the election process, the first application recorded shall be deemed valid, except in the event that the majority trade unions at the company or work centre with a works council have proposed another date, in which case the latter shall prevail, as long as these applications fulfil the requirements foreseen. In this last case, the application must include an authentic notification thereof to any other parties who applied for one or more elections beforehand.

3. The term of the mandate held by staff representatives and the members of the works council shall be four years; they shall be deemed to provisionally continue to exercise their powers and guarantees until new elections are requested and held.

Staff representatives and council members may only be revoked during their mandate as decided by the workers who elected them, through a meeting held for this purpose at the request of at least one third of the voters and by absolute majority thereof, through individual, free, direct and secret suffrage. Nevertheless, this revocation may not be carried out during the processing of a CBA and may not be re-examined until at least six months have elapsed.

4. If a vacancy should arise for any reason in the works councils or work centres, the vacancy shall be automatically covered by the next worker on the list to which the replaced worker belongs. If the vacancy affects staff representatives, it shall be automatically covered by the worker who has obtained in the voting a number of votes immediately below the one held by the last person elected. The new representative shall hold the post for the time remaining.

5. Any replacements, revocations, resignations and terminations of a mandate shall be notified to the public office dependant on the labour authority and to the employer, and shall also be displayed on the notice board.

## **Article 68.** **Guarantees.**

Members of the works council and staff representatives, as the workers' legal representatives, shall enjoy the following guarantees, subject to the provisions established in the CBAs:

a) The initiation of contradictory proceedings in the event of a sanction for a serious or very serious offence, including a hearing of the works council or other staff representatives, apart from the interested party.

b) A priority right to remain in the company or work centre with respect to the other workers, in the event of suspension or termination based on technological or economic reasons.

c) A right not to be dismissed or sanctioned during the exercise of their duties or during the year following expiration of their mandate, unless this expiration is a result of revocation or resignation, provided that the dismissal or sanction is based on the worker's conduct in the exercise of his representation duties and, therefore, without prejudice to the provisions of Article 54 herein. Furthermore, there may be no discriminatory treatment in economic or professional promotions that is precisely based on the execution of these representation tasks.

d) To freely express, in a collegiate manner in the case of a council, any opinions on the matters related to their scope of representation, with the power to publish and distribute, without disturbing the ordinary activity at work, publications of a labour or social interest, duly notifying the company.

e) To have a credit of remunerated monthly hours for each member of the council or staff representative at each work centre, in order to carry out their representation tasks, according to the following scale: staff representatives or members of the works council:

- 1) Up to one hundred workers: fifteen hours.
- 2) Between one hundred and one and two hundred and fifty workers: twenty hours.
- 3) Between two hundred and fifty-one and five hundred workers: thirty hours.
- 4) Between five hundred and one and seven hundred and fifty workers: thirty-five hours.
- 5) Seven hundred and fifty-one on up: forty hours.

A CBA may foresee the accumulation of hours held by various members of the works council or staff representatives, as the case may be, in one or several items, up to the total maximum, and said individuals may be released from their post without this affecting their remuneration.

## **Section 2. Election process**

### ***Article 69. Election.***

1. The staff representatives and members of the works council shall be elected by all the workers by individual, direct, free and secret suffrage, which may be issued by mail in the form established in any implementing provisions of this Act.

2. The voters shall be all the workers of the company or work centre over sixteen holding seniority in the company of at least one month; eligible candidates shall be any workers of eighteen years of age holding seniority in the company of at least six months, except for those activities in which, due to staff mobility, a CBA establishes a shorter term, with a minimum of three months' seniority.

All foreign workers may vote and be elected if they meet the conditions established in the foregoing paragraph.

3. Candidates may be presented for the election of staff representatives and members of the works council by any workers' trade unions that are legally incorporated or by coalitions formed by two or more trade unions, with a specific name and subject to their results being assigned to the coalition. Likewise, any workers confirming their candidature with a number of voter signatures at their centre and polling station, as the case may be, equivalent to at least three times the number of posts to be covered, may be candidates at the election.

### ***Article 70. Voting of representatives.***

When electing staff representatives, each voter may assign his/her vote to a maximum number of candidates equivalent to the number of posts to be covered among the candidates presented. The candidates elected shall be the ones with the largest number of votes. In the case of a draw, the worker holding the longest seniority in the company shall be elected.

### ***Article 71. Election of the works council.***

1. In companies with over fifty workers, the register of voters and candidates shall be distributed amongst two polling stations, one consisting of technicians and administrative assistants and another representing specialised and unqualified workers.

By means of a CBA, depending on the professional composition of the production or company sector, a new polling station may be established that adjusts to this composition. In this case, the election rules of this Title shall be adjusted to this number of polling

stations. The council posts shall be proportionally distributed in each company according to the number of workers belonging to said polling stations. If the division gives rise to fraction quotients, the fraction shall be assigned to the group entitled to the highest fraction; if equal, the assignment shall be decided by drawing lots.

2. In any elections of works council members, the election shall follow these rules:

a) Each voter may give his/her vote to only one of the lists presented for the council corresponding to his/her polling station. These lists shall at least contain as many names as posts to be covered. Nevertheless, the waiver of any candidate presented in any election list before the voting date shall not suspend the election process or cancel this candidature, albeit incomplete, provided that the affected list continues to have a number of candidates of at least sixty per cent of the posts to be covered. Each list shall include the acronym of the trade union or workers' group presenting it.

b) Any lists that have not obtained at least 5% of the votes for each polling station shall not be entitled to be assigned representatives on the works council.

Through the proportional representation system, each list shall be assigned the number of posts applicable, further to the quotient that results from dividing the number of valid votes by the number of posts to be covered. In the event of any excess post(s), these shall be assigned to the list(s) with the greatest number of remaining votes.

c) In each list the candidates shall be elected according to the order in which they appear in the candidature.

3. Non-compliance with any of the foregoing rules shall entail the voidability of the election of the affected candidate(s).

***Article 72. Representatives of those who provide services in permanent-discontinuous tasks and non-permanent workers.***

1. Individuals who provide services in permanent-discontinuous tasks and workers subject to a contract for a specific term shall be represented by the bodies foreseen in this Title together with the staff's permanent workers.

2. Consequently, in order to determine the number of representatives, the following shall apply:

a) Any individuals providing services in permanent-discontinuous tasks and any workers subject to a contract executed for a specific term longer than one year shall be treated as permanent staff.

b) Any employees hired for a term of up to a year shall be taken into account according to the number of days worked during the one year prior to the holding of the election. Every two hundred days worked or fraction thereof shall be taken into account as one more worker.

***Article 73. Polling board.***

1. Each company or work centre shall have a polling board for each polling station of 250 voting workers or fraction thereof.

2. The polling board shall be in charge of supervising the entire election process, presiding the voting, counting the votes, issuing the corresponding certificate and resolving any claim that may be brought.

3. The polling board shall consist of the chairman (the worker holding the longest seniority in the company) and two members (the oldest and youngest voters). This last voter shall act as secretary. Those workers who follow the board members according to the seniority or age indicated shall act as replacements.

4. None of the board members may be a candidate; otherwise, he/she shall be correspondingly replaced.

5. Each candidate or candidature, as the case may be, may appoint a controller for each board. Likewise, the employer may appoint his own representative to attend the voting and counting of votes.

**Article 74. Duties of the board.**

1. Once the company is notified of the wish to hold elections, the company, within a term of seven days, shall forward the notification to the workers that establish the board, as well as to the workers' representatives, simultaneously notifying the voting applicants.

The election board shall be formally incorporated, by means of a certificate executed for this purpose, on the date established by the applicants in their notification of intended elections, which shall be the date of commencement of the election process.

2. In the case of elections of staff representatives, the employer, within the same term, shall send the employment register to the members of the election board, following a standard form foreseen for this purpose.

The election board shall carry out the following:

a) The distribution of the employment register amongst the workers, indicating the voters.

b) Establishing the number of representatives and the deadline for presenting candidatures.

c) To receive and announce any candidatures presented.

d) Indication of the voting date.

e) Drafting of the certificate recording the counting of votes, within a maximum of three calendar days.

The deadlines for each one of these acts shall be established by the board on reasonable grounds and according to the circumstances but, in any case, between the event and the date of the elections no more than ten days shall elapse.

In the case of elections in work centres of up to thirty workers where a single staff representative is elected, twenty-four hours must elapse between the incorporation of the board and the voting/announcement of the elected candidates; in any case, the board must announce the time when the voting will be held sufficiently in advance. If any claim is brought, this shall be recorded in the certificate, as well as the resolution adopted by the board.

3. In the case of elections of members of the works council, once the election board is established the employer shall be requested to provide the employment register and the board shall draw up the list of voters based on the data provided by the employer. The list shall be exhibited on the notice boards for at least seventy-two hours.

The board shall resolve any incident or claim regarding inclusions, exclusions or corrections presented up to twenty-four hours after expiration of the term of announcement of the list. It shall publish the final list within the next twenty-four hours. Next, the board(s) shall determine the number of council members to be elected further to the provisions of Article 66 herein.

Candidatures shall be presented during the nine days following publication of the final list of voters. The announcement shall be made in the next two business days after expiration of this term, and will be exhibited on the notice boards. A challenge may be brought against the announcement during the next business day, and the board shall resolve the issue on the following business day.

At least five days must elapse between the announcement of candidates and the voting.

***Article 75. Voting of representatives and works councils.***

1. The voting shall be carried out at the centre or work place during working hours, subject to the rules governing votes by mail.

The employer shall provide the necessary resources to ensure the ordinary execution of the voting and of the entire election process.

2. Voting shall be free, secret, individual and direct; the voting slips shall be the same as regards size, colour, printing and quality of paper and shall be deposited in closed urns.

3. Immediately after the voting is held, the election board shall publicly count the votes with the Chairman reading the voting slips out loud.

4. The results shall be recorded in a certificate according to a standard form, to include any incidents and protests made. Once the certificate is issued, it shall be signed by the board members, controllers and employer's representative, if any. Next, the election boards of the same company or centre, at a joint meeting, shall issue a certificate of the global voting results.

5. The chairman of the board shall send copies of the voting certificate to the employer and candidature controllers, as well as to the elected representatives.

The voting results shall be published on the notice boards.

6. The original certificate, together with any slips of null and void votes or subject to challenge by the controllers and the certificate of incorporation of the board shall be presented within a term of three days to the public office dependant on the labour authority by the Chairman of the board, who may confer this task by written proxy to another board member. The public office dependant on the labour authority shall proceed on the immediate business day to publish a copy of the certificate on the notice boards, providing a copy to the trade unions who so request, and shall inform the company of the filing at said public office of the certificate of the election process held in the company, indicating the term in which to bring a challenge, maintaining the deposited voting slips until this term has expired. The public office dependant on the labour authority, after ten business days have elapsed since the publication, shall decide whether or not to register the election certificates.

7. The public office dependant on the labour authority shall register the certificates and issue any authentic copies thereof including, at the request of the interested trade union, a copy of the certificates confirming its representation capacity for the purposes of Articles 6 and 7 of Organic Act 11/1985, of 2 August (RCL 1985, 1980), on Trade Union Rights. These certificates shall indicate whether or not the trade union is the most representative or representative, unless the exercise of the corresponding duties requires a specification of the exact representation held. Furthermore and for the necessary purposes, the public office dependant on the labour authority may issue certificates of the election results for any trade unions that so request.

The public office dependant on the labour authority may only refuse to register a certificate if it is not issued on the official standard form, the public office is not notified of the requested elections, the signature of the Chairman of the election board is missing, or data in the certificates are omitted or illegible and prevent calculation of the votes.

In these cases, the public office dependant on the labour authority shall request, within the following business day, that the Chairman of the election board carry out the necessary rectification within a term of ten business days. This request shall be notified to the trade unions that have obtained representation and to the remaining candidatures. Once the rectification is made, the public office shall register the corresponding election certificate. If this term elapses without the rectification being made or if it is unduly made, the public office dependant on the labour authority, within a term of ten business days, shall refuse to register the certificate and shall notify the trade unions that have obtained representation

and the chairman of the board. If refusal to register is due to the non-notification of the requested election to the public office dependant on the labour authority, a request to rectify shall not apply; consequently, once the error is ascertained by the public office, it shall proceed to refuse to register with no further step being taken, notifying the Chairman of the election board, the trade unions that have obtained representation and the remaining candidatures.

The decision refusing to register may be challenged before the labour courts.

**Article 76. Claims in election matters.**

1. Any challenges in election matters shall be processed further to the arbitration procedure foreseen in this article, except for any refusal to register, which may be directly challenged before the competent courts.

2. Any party with a legitimate interest, including the company if it holds such interest, may challenge the election, the decisions adopted by the board, and any other step taken by the board throughout the election process, based on the existence of serious defects that could affect the guarantees of the election process and could alter its results, the lack of capacity or legitimacy of the candidates elected, a discrepancy between the certificate and the execution of the election process, and the incompatibility between the number of workers indicated in the elections certificate and the number of representatives elected. In order to challenge the acts of the election board it shall be necessary to have brought a claim within the business day following the act; the challenge shall be resolved by the board on the next business day, except as provided in the last paragraph of Article 74.2 herein.

3. The arbitrators shall be appointed according to the procedure foreseen in this section, unless the parties in an arbitration process were to agree to appoint a different arbitrator.

The arbitrator(s) shall be appointed further to the principles of impartiality and professionalism, from amongst Law graduates, social graduates and other equivalent degreed persons, by virtue of a unanimous agreement of the most representative trade unions, at a state level or within the Autonomous Communities, as the case may be, and of those holding ten per cent or more of the representatives and members of the works council within the province, activity or company in question. If no unanimous agreement is reached by the aforementioned trade unions, the competent labour authority shall establish the method of appointment, in light of the principle of impartiality of the arbitrators, the possibility of them being removed, and the participation of the trade unions in their appointment.

The post of arbitrator shall be subject to a five-year renewable term.

The labour Administration shall allow the arbitrators to use its human and material resources to the extent necessary to execute their tasks.

4. Arbitrators shall abstain or otherwise be removed in the following cases:

a) If they have a personal interest in the matter in question.

b) If they are directors of the interested company or entity or are involved in a lawsuit against one of the parties.

c) If they are related by blood ties within the fourth degree or by affinity within the second degree to any of the interested parties, the directors of interested entities or companies, including their advisors, legal representatives or agents participating in the arbitration proceedings, or share a firm or are associated to such individuals in relation to such advice, representation or mandate.

d) If they are a close friend or clear enemy of any of the persons indicated in the foregoing section.

e) If they are subject to a services relationship with an individual or legal entity who is directly involved in the matter, or has provided professional services of any kind over the last two years in any circumstance or place.

5. The arbitration process shall begin with a writ addressed to the public office dependant on the labour authority that requested the elections and, if applicable, to those who presented candidates to the elections being challenged. This writ shall include the events to be challenged and must be presented within a term of three business days as of the day following that on which the events took place or the claim was resolved by the board; in the case of challenges brought by trade unions that did not present candidatures at the work centre where the election was held, the three-day term shall be calculated as of the day the challenged event was known. If the challenge is against acts taken on the voting day or thereafter, the term shall be of ten business days as of entry of the certificates at the public office dependant on the labour authority.

Until completion of the arbitration process and any subsequent challenge before the courts, the processing of a new arbitration process may not take place. The initiation of arbitration proceedings shall interrupt any statute of limitations.

6. The public office dependant on the labour authority shall notify the arbitrator of the writ on the next business day following receipt thereof, and shall provide a copy of the administrative election records. If election certificates were presented for registration, the processing thereof shall be suspended.

Twenty-four hours later, the arbitrator shall summon the interested parties to appear before him/her, within the next three business days. If the parties, before appearing before the arbitrator appointed further to the provisions of section three above, were to agree to appoint a different arbitrator, they shall notify the public office dependant on the labour authority so that it may provide this arbitrator with the administrative election records, and the remaining process shall continue with the same arbitrator.

The arbitrator, within the next three business days after the hearing and prior filing of the relevant or legal evidence, which may include a visit to the work centre and a request for the necessary collaboration from the employer and Public Administration, shall deliver an award. This award shall be written and reasoned, resolving in law on the challenge of the election process and registration of the certificate, if necessary, and shall be notified to the interested parties and to the public office dependant on the labour authority. If the voting has been challenged, the office shall proceed to register or reject the certificate, depending on the content of the award.

The arbitration award may be challenged before the Labour Courts through the applicable procedural steps.

## **CHAPTER II**

### **The right to hold a meeting**

#### ***Article 77. Workers' meetings.***

1. Pursuant to the provisions established in Article 4 herein, all workers of the same company or work centre shall be entitled to hold a meeting.

The meeting may be summoned by the staff representatives, works council or work centre, or by a number of workers representing at least 33% of the staff. The meeting shall in any case be chaired by the works council or staff representatives in a joint manner, who shall also be responsible for the adequate development of the meeting and for the attendance at the meeting of persons not belonging to the company. The meeting may only discuss the

matters that are previously included in the agenda. The chairman shall notify the employer of the meeting and shall identify the persons not belonging to the company who will attend the meeting, establishing the necessary measures with the employer to avoid any detriment to the company's ordinary activity.

2. If due to shift work, insufficient premises or any other reason, the entire staff cannot meet simultaneously without affecting or altering the ordinary production process, the various partial meetings to be held shall be considered a single meeting and shall be dated according to the first meeting held.

***Article 78. Meeting place.***

1. The meeting place shall be the work centre, if the conditions thereof so allow, and the meeting shall take place outside working hours, unless otherwise agreed with the employer.

2. The employer must make the work centre available for the holding of the meeting, except in the following cases:

- a) If the provisions of this Act are not fulfilled.
- b) If less than two months have elapsed since the last meeting.
- c) If the damage caused by alterations that arose at another prior meeting were still not remedied or definitively remedied.
- d) If the company is legally shut down.

Meetings to inform on applicable CBAs shall not be subject to paragraph b) above.

***Article 79. Summons.***

The summons of the meeting, indicating the agenda proposed by the individuals summoning the meeting, shall be notified to the employer at least forty-eight hours in advance, and the employer must provide acknowledgement of receipt.

***Article 80. Voting.***

If the summoning parties were to present to the meeting the adoption of resolutions affecting all the workers, in order to be valid the resolutions must be backed up by an individual, free, direct and secret vote, including votes by mail, of half plus one of the workers of the company or work centre.

***Article 81. Premises and notice board.***

All companies or work centres, as long as this is possible, shall make available to the staff representatives or works council some adequate premises where they may carry out their activities and communicate with the workers, as well as one or several notice boards. The workers' legal representatives in contractor and sub-contractor companies that continuously share the work centre may use said premises in the terms agreed with the company. Any potential disputes shall be resolved by the labour authority, further to a report from the Labour Inspection.

**TITLE III**

**Collective negotiations and CBAs**

**CHAPTER I**

## **General provisions**

### **Section 1. Nature and effects of CBAs**

#### ***Article 82. Definition and validity.***

1. Any CBAs derived from negotiations between the workers' and employers' representatives shall represent the voluntary intention freely adopted by the same by virtue of their collective independence.

2. By means of a CBA and in each applicable scope, the workers and employer shall regulate all working and productivity conditions; they may also regulate employment peace through the obligations agreed.

3. Any CBA governed by this Act shall bind all employers and workers included within its scope of application and throughout its validity.

Notwithstanding the foregoing, CBAs with a scope exceeding that of the company shall establish the conditions and procedures that may exclude the application of the salary system to companies with a weak financial situation that could be damaged by such application.

If these CBAs do not contain this non-application clause, it may only exist by virtue of an agreement between the employer and workers' representatives when this is so required by the company's financial situation. In the absence of an agreement, any difference shall be resolved by the CBA Committee with an equal number of members of both sides ("*Comisión Paritaria*"). The new salary conditions shall be established in an agreement between the company and the workers' representatives and, otherwise, may be entrusted to the CBA Committee.

4. A CBA that replaces a previous one may dispose of the rights acknowledged in the former. In this event what is regulated in the new CBA shall apply in full.

#### ***Article 83. Negotiation units.***

1. All CBAs shall have the scope of application agreed by the parties.

2. By means of inter-professional agreements or CBAs, the most representative trade unions and employer associations, at a state or Autonomous Community level, may establish the structure of collective negotiations and determine the rules to resolve any conflicts between co-existing CBAs of a different scope and the principle of complementary application of the various contracting units, provided that in this last case certain matters are specified as not subject to negotiation in lower scopes.

3. These worker and employer organisations may also draw up agreements on specific matters. These agreements, together with the inter-professional agreements referred to in section 2 above, shall be treated as CBAs for the purpose of this Act.

#### ***Article 84. Conflicting CBAs.***

A CBA, throughout its term, may not be affected by the provisions of CBAs of a different scope, unless otherwise agreed, pursuant to the provisions of Article 83.2 above and subject to the provisions of the following section.

In any case, notwithstanding the provisions of the previous article, any trade unions and employer associations that meet the legitimization requirements of Articles 87 and 88 herein, within a specific scope outside the company, may negotiate agreements or CBAs that affect the provisions of those of a higher scope, provided that such decision is backed up by the

majority required to establish a negotiating committee in the corresponding negotiation unit.

In the case foreseen in the foregoing paragraph, the following matters may not be negotiated in lower scopes: the trial period, contractual forms, except regarding adjustment to the company's scope, professional groups, disciplinary provisions and minimum rules in occupational safety and hygiene and geographical mobility.

### ***Article 85. Content.***

1. Further to the law, CBAs may regulate matters of an economic, employment and trade union nature and, in general, any others that affect employment conditions and the scope of workers' relations and their representatives vis-à-vis the employer and employer associations, including any procedures to resolve the differences that may arise during the consultation periods foreseen in Articles 40, 41, 47 and 51 herein; any arbitration awards that may be delivered in this regard shall have the same effect and be processed in the same way as agreements during the consultation period, and may be challenged in the same terms as awards delivered for the resolution of differences arising from the application of CBAs.

Notwithstanding the parties' freedom to determine the content of a CBA, during negotiations there will be in any case a duty to negotiate measures aimed at encouraging equal treatment and opportunities between men and women at work or, as the case may be, equal treatment plans with the scope and content foreseen in Chapter III, Title IV, of the Organic Act for the effective equal treatment of men and women.

2. Collective negotiations may be used to articulate procedures to inform and supervise objective dismissals, within the applicable scope.

Furthermore and without prejudice to the contractual freedom held by the parties, collective negotiations shall articulate the duty to negotiate equal treatment plans in companies with more than two hundred and fifty workers, as follows:

a) In CBAs of a company scope, the duty to negotiate shall be formalised as part of the negotiation of these CBAs.

b) In CBAs with a scope exceeding that of the company, the duty to negotiate shall be formalised through the collective negotiations held in the company in the terms and conditions established in said CBAs to enforce this duty to negotiate through the applicable rules of complementary treatment.

3. Notwithstanding the freedom to enter into contracts referred to in the foregoing paragraph, CBAs shall contain at least the following:

a) Specification of the executing parties.

b) Its personal, functional, territorial and time scope.

c) The conditions and procedures to not apply the salary system provided in the CBA in relation to the companies included within the scope of the CBA, when it exceeds that of the company, pursuant to the provisions established in Article 82.3.

d) The form and conditions of repudiation of the CBA, as well as the prior notice required for such repudiation.

e) Appointment of a committee with an equal number of members of both sides to represent the negotiating parties, in order to handle any issues entrusted, and specification of the procedures used to resolve any discrepancies that may arise within the committee.

### ***Article 86. Term.***

1. The negotiating parties shall establish the term of any CBA and may eventually agree on different terms for each matter or homogenous group of matters within the same CBA.

2. Unless otherwise agreed, CBAs shall be extended from year to year in the absence of an express repudiation from the parties.

3. If a CBA is repudiated and until an express agreement is reached, all obligations shall expire.

The application of the regulatory content of a CBA, at the end of the term agreed, shall take place in the terms established in the CBA itself. In the absence of an agreement, the regulatory content of the CBA shall remain in force.

4. Any CBA replacing a previous one shall fully repeal the former CBA, except for those issues that are expressly maintained.

## **Section 2. Legitimation**

### ***Article 87. Legitimation.***

The following parties shall be authorised to negotiate:

1. In company CBAs or of a lower scope: the works council, staff representatives or any trade union representatives.

In CBAs affecting all the workers of a company, these trade union representatives must represent overall the majority council members. In all other CBAs, the workers included within its scope must adopt an express agreement, subject to the requirements of Article 80 herein, to appoint, for negotiation purposes, the trade union representatives present in such scope.

In all cases it will be necessary for both parties to mutually acknowledge their representative status.

2. In CBAs with a higher scope than the foregoing:

a) Trade unions that are the most representative at a state level, as well as any trade unions, within their respective scopes, that are affiliated, federated or confederated with the same.

b) Trade unions that are the most representative within the Autonomous Community with respect to CBAs within this territorial scope, as well as trade unions, within their respective scopes, that are affiliated, federated or confederated with the same.

c) Trade unions with at least 10% of the members of the works councils or staff representatives present in the geographical or functional scope referred to in the CBA.

3. In the CBAs referred to in the foregoing number, any employer associations which, in the geographical and functional scope of the CBA, count on 10% of the employers, as per Article 1.2 above, and provided that the associations employ an equal percentage of affected workers.

4. Likewise, the following shall be authorised to negotiate state CBAs: trade unions of an Autonomous Community that are the most representative further to the provisions of Article 7.1 of the Organic Act on Trade Union Rights (RCL 1985, 1980), and the employer associations within the Autonomous Community that meet the requirements indicated in the Sixth Additional Provision below.

5. Any trade union or trade union federation/confederation, and any employer association that is authorised to negotiate, shall be entitled to belong to the negotiating committee.

### ***Article 88. Negotiating committee.***

1. In CBAs of a company or lower scope, the negotiating committee shall be established by the employer or its representatives, on the one hand, and by the workers' representatives on the other, further to the provisions of Article 87.1.

In CBAs of a higher scope than that of the company, the negotiating committee shall be validly established, notwithstanding the right of all the parties authorised to belong to the same in proportion to their representation, whenever the trade unions, federations or confederations and employer associations referred to in the foregoing article at least represent, respectively, the absolute majority of the members of the works councils and staff representatives, as the case may be, and the employers that employ most of the workers affected by the CBA.

2. The committee members shall be appointed by the negotiating parties which, by mutual agreement, may appoint a chairman and count on the assistance during negotiations of advisors, who will participate with a right to speak but not to vote.

3. In all company CBAs, neither party may have more than twelve members; in CBAs of a larger scope, each party may not have more than fifteen representatives.

4. The negotiating committee may have a chairman with a right to speak but not to vote, freely appointed by the committee. If no chairman is elected, the parties must record in the minutes of the meeting that founds the committee the procedures to follow to direct the meetings and to sign the corresponding minutes by a representative of each party, together with the secretary.

## **CHAPTER II**

### **Procedure**

#### **Section 1. Processing, application and interpretation**

##### ***Article 89. Processing.***

1. The representatives of the workers or employers who initiate negotiations must notify the other party, providing details in the written notification of the legitimation held pursuant to the foregoing articles, the scopes of the CBA and the matters subject to negotiation. A copy of this notification shall be sent for registration purposes to the corresponding labour authority, according to the territorial scope of the CBA.

The recipient of the notification may only refuse to initiate negotiations based on a cause established by law or in a CBA, or if it is not a case of reviewing an expired CBA, notwithstanding the provisions of Articles 83 and 84 above; in any case, a reply must be provided in writing with the necessary reasons.

Both parties shall be obligated to negotiate in good faith.

In the event of violence, whether personal or material, ascertained by both parties, the ongoing negotiations shall be immediately suspended until all violence disappears.

2. Within a maximum of one month following receipt of the notification, the negotiating committee shall be established; the recipient of the notification shall reply to the proposed negotiations and both parties may establish a calendar or negotiation schedule.

3. All committee resolutions shall in any case require the favourable vote of the majority of each side.

4. At any time during the negotiations, the parties may agree on the participation of a mediator appointed by the same.

**Article 90.**  
**Validity.**

1. The CBAs referred to in this Act must be executed in writing, and shall otherwise be declared null and void.

2. The CBAs must be presented to the competent labour authority for purely registration purposes within fifteen days as of the signature date of the negotiating parties. Once registered, the CBA shall be sent to the public body in charge of mediation, arbitration and conciliation for filing purposes.

3. Within a maximum of ten days following presentation of the CBA at the registry, the labour authority shall publish it, as an obligation and without cost, in the “Official State Gazette” or, depending on its territorial scope, in the “Official Gazette of the Autonomous Community” or of the corresponding province.

4. The CBA shall be effective on the date agreed by the parties.

5. If the labour authority believes that a CBA breaches current law or seriously harms third party interests, it shall address the competent courts *ex officio*; the courts shall adopt the necessary measures to remedy the alleged irregularities, after hearing the parties.

6. Notwithstanding the provisions of the foregoing section, the labour authority shall ensure that the principle of equal treatment is upheld in any CBAs that may entail any direct or indirect discrimination on the grounds of sex.

To this effect, it may ask for advice from the Women’s Institute or the Equal Treatment Bodies of the Autonomous Communities, depending on the territorial scope. If the labour authority has addressed the competent courts based on its belief that the CBA may contain discriminatory clauses, it shall notify the Women’s Institute or the Equal Treatment Bodies of the Autonomous Communities, depending on the territorial scope, notwithstanding the provisions established in Article 95.3 of the Labour Procedure Act.

**Article 91. Application and interpretation.**

Regardless of the duties assigned by the parties to the committees, for the examination and resolution of conflicts derived from the general application and interpretation of CBAs, the competent courts shall resolve the matter.

Notwithstanding the foregoing, in the CBAs and agreements referred to in Article 83.2 and 3 herein, procedures may be foreseen, such as mediation and arbitration, to resolve any collective disputes derived from the application and interpretation of CBAs.

The agreement reached through mediation and the arbitration award shall have the legal effects and processing assigned to the CBAs governed by this Act, provided that the parties who adopted the agreement or executed the arbitration award are authorised to agree on a CBA, within the scope of the dispute, pursuant to the provisions of Articles 87, 88 and 89 herein.

These agreements and awards may be challenged for the reasons and further to the procedures foreseen for CBAs. In particular, an appeal may be lodged against an arbitration award if the requirements and formalities established to this effect are not met during the arbitration proceedings, or when the award has resolved issues not subject thereto.

These procedures may also be used in individual disputes, if the parties expressly subject to the same.

**Section 2. Adhesion and extension**

### ***Article 92. Adhesion and extension.***

1. In each respective negotiating unit, the parties authorised to negotiate may jointly agree to adhere to an entire applicable CBA, as long as they are not affected by another, notifying the competent labour authority for registration purposes.

2. The Ministry of Employment and Social Affairs or the corresponding body within the Autonomous Communities that are competent in the matter, may extend the provisions of an applicable CBA, with the effects foreseen in Article 82.3 herein, to several companies and workers or to a sector or sub-sector of activity, due to their being affected by the impossibility of executing a CBA in said scope from amongst those foreseen in Title III due to the absence of authorised parties.

The decision to extend a CBA shall always be adopted at the party's request and further to the procedure foreseen in the regulations, which may not last longer than three months; the absence of an express resolution within the term established shall be interpreted as a rejection of the application.

The extension proceedings may be initiated by any parties authorised to initiate collective negotiations within the applicable scope, further to the provisions of Articles 87.2 and 3 herein.

## **TITLE IV**

### **Labour infringements**

Repealed by Single Repealing Provision 2.b) of Royal Legislative Decree 5/2000, of 4 August (RCL 2000, 1804).

CHAPTER I.

### **ADDITIONAL PROVISIONS.**

#### ***Two. Training contracts executed with handicapped workers***

1. Any companies that execute traineeship contracts with handicapped workers shall be entitled to a reduction, during the term of the contract, of 50% of the employer's Social Security rate for common contingencies.

2. Any handicapped workers hired for training shall not be taken into account when calculating the maximum number of contracts that the companies may execute according to their staff.

3. Any companies that execute training contracts with handicapped workers shall be entitled to a 50% reduction in employer Social Security rates for training contracts.

4. Any training contracts executed with handicapped workers who are employed at Special Employment Centres shall continue to be subject to the specific provisions foreseen in Article 7 of Royal Decree 1368/1985, of 17 July (RCL 1985, 1982 and 2155), which governs the special employment relationship of handicapped persons who work at Special Employment Centres.

#### ***Four. Remuneration items***

The modifications introduced by this Act in the legal provisions applicable to salary shall not affect the remuneration items acknowledged in favour of workers until 12 June 1994, the effective date of Act 11/1994, of 19 May (RCL 1994, 1422 and 1651), which shall continue in the same terms applicable at the time until a CBA establishes a salary system that entails the removal or modification of these items.

#### ***Five. Senior executive staff***

All remuneration paid to senior executive staff shall enjoy the salary guarantees established in Articles 27.2, 29, 32 and 33 herein.

#### ***Six. Institutional representation of employers***

For the purposes of holding institution representation to defend the general interests of employers before the Public Administration and other entities and bodies of a state or Autonomous Community nature that foresee this representation, all employer associations that represent at least 10% of the companies and workers at a state level shall be entitled to this representation.

Furthermore, the employer associations of an Autonomous Community with at least 15% of all employers and workers within the same may also be represented. The foregoing shall not include any employer associations that are integrated into state federations or confederations.

All employer organisations that are the most representative further to this additional provision shall be entitled to obtain provisional assignments of the use of public buildings in the terms established by law.

#### ***Seven. Regulation of conditions by branch of activity***

Working conditions by branch of activity in economic production sectors and territorial areas where no CBA exists may be regulated by the Government, at the request of the Ministry of Employment and Social Security, further to any consultations deemed necessary with employer associations and trade unions, notwithstanding the provisions of Article 92 of this Act, which shall always be the prevailing procedure.

#### ***Eight. Employment Code***

The Government, at the request of the Ministry of Employment and Social Security, shall gather in a single text referred to as an Employment Code the various organic and ordinary laws which, together with this Act, govern employment matters, arranging them into separate Titles, one per Act, numbered in order and fully transcribing their literal wording.

Furthermore, said Employment Code shall successively and periodically include any general labour provisions through the procedure established by the Government regarding the method of incorporation, according to the rank of the incorporated rules.

#### ***Nine. Reimbursable advance payments***

All reimbursable advance payments over appealed judgments, established in Act of 10 November 1942 (RCL 1942, 1867), may total up to 50% of the amount acknowledged in the judgment in favour of the worker.

***Ten. CBA clauses related to ordinary retirement age***

CBA's may establish clauses that enable termination of an employment contract upon the worker reaching the ordinary retirement age foreseen in Social Security regulations, provided that the following requirements are met:

a) This measure must be based on objectives related to the employment policy indicated in the CBA, such as an improvement in stable employment, transformation of temporary contracts into indefinite contracts, sustained employment, the hiring of new workers or any others aimed at benefiting the quality of employment.

b) The worker affected by termination of the employment contract shall be entitled to the minimum contribution period or a greater one, if agreed in the CBA, and the other requirements established in Social Security laws must be met in order to be entitled to a contribution-based retirement pension.

***Eleven. Confirmation of representation capacity***

For the purposes of issuing certificates confirming representation capacity at a state level, further to Article 75.7 herein, the Autonomous Communities entrusted with duties related to the deposit of certificates regarding elections of workers' representative bodies shall send a copy of the registered election certificates each month to the state public office.

***Twelve. Prior notice***

The Government may shorten the minimum one-month prior notice foreseen in paragraph two of Article 67.1 herein, in those sectors of activity involving high staff mobility, after consulting the trade unions in this functional scope that represent at least 10% of the workers' representatives, and the employer associations with 10% of the employers and workers affected within the same functional scope.

***Thirteen. Out-of-court resolution of conflicts***

In the event that, even if no procedure is agreed in the applicable CBA to resolve any differences that may arise during the consultation period, out-of-court bodies or procedures are established further to Article 83 herein for the resolution of conflicts in the corresponding territorial scope, the parties in said consultation periods may jointly decide to subject their difference to these bodies.

***Fourteen. Replacement of workers on extended leave of absence who are caring for their relatives***

Any provisional contracts executed to replace a worker who is on extended leave of absence further to Article 46.3 herein shall be entitled to a reduction in employer Social Security contributions for common contingencies, in the following amounts, whenever these contracts are executed with beneficiaries of unemployment benefits, based on contributions or care, who have enjoyed the benefits for longer than one year:

- a) 95% during the first year the replaced worker is on extended leave of absence.
- b) 60% during the second year the replaced worker is on extended leave of absence.
- c) 50% during the third year the replaced worker is on extended leave of absence.

This reduction shall not apply to contracts affecting the spouse, ascendants, descendants and other relatives by blood ties or affinity, up to the second degree inclusive, of the

employer or of whoever holds executive posts or belongs to the management bodies of enterprises incorporated as a corporation and any contracts executed with the latter.

The contracts executed pursuant to these provisions shall be governed by Article 15.1.c) and implementing regulations.

### ***Fifteen. Application of limits to a successive chain of contracts in the Public Administration***

The provisions of Article 15.5 above shall be effective within the scope of the Public Administration and its autonomous bodies, notwithstanding the application of constitutional principles of equal treatment, merit and capacity in access to public employment; consequently, the foregoing shall not hinder the obligation to cover the work posts in question through ordinary procedures, according to the provisions established in applicable law.

### ***Seventeen. Differences in conciliation matters***

Any differences that arise between employers and workers in relation to the exercise of the rights to conciliate one's private life, family and career, recognised by law or in a CBA, shall be resolved by the competent courts through the procedure established in Article 138 bis) of the Labour Procedure Act.

### ***Eighteen. Calculation of indemnification in certain cases of reduced working schedules***

1. In the events of reduced working schedules foreseen in Article 37 above, sections 4 bis), 5 and 7, the salary to be taken into account when calculating the indemnification foreseen in this Act shall be the one to which the worker would have been entitled in the absence of a reduced working schedule, as long as the maximum legal term established for this reduction has not elapsed.

2. Likewise, the provisions of the foregoing paragraph shall apply in the case of a part-time exercise of the rights established in paragraph ten of Article 48.4 and Article 48 bis).

## **TRANSITIONAL PROVISIONS.**

### ***One. Learning contracts***

Notwithstanding the provisions established in Article 11.2.d) above, any workers bound to the company under a training contract that has not exhausted the maximum three-year term may only be hired again by the same company under a learning contract ("*contrato de aprendizaje*") for the time remaining until the three years transpire; the term of the training contract shall be taken into account to calculate the remuneration payable to the trainee.

### ***Two. Contracts executed before 8 December 1993***

All traineeship, training and part-time contracts, and those executed with permanent-discontinuous workers, prior to 8 December 1993, the effective date of Royal Decree-Law 18/1993, of 3 December (RCL 1993, 3295), shall continue to be governed by the regulations applicable at the time they were executed.

The provisions of this Act shall apply to any contracts executed pursuant to Royal Decree-Law 18/1993, of 3 December (RCL 1993, 3295), except for the provisions of second paragraph d), section 2, of Article 11.

### ***Three. Contracts executed before 24 May 1994***

Any provisional contracts to increase employment, executed further to Royal Decree 1989/1984, of 17 October (RCL 1984, 2602 and 2710), prior to 24 May 1994, the effective date of Act 10/1994, of 19 May (RCL 1994, 1421), on Urgent Measures to Increase Employment, shall continue to be governed by the regulations applicable at the time they were executed.

Any provisional contracts with a maximum three-year term that expired between 1 January and 31 December 1994, subject to an extension of less than eighteen months, may be renewed again until this term is completed.

### ***Four. Validity of regulatory provisions***

In any matter that does not oppose the provisions of this Act, replacement contracts and partial retirement shall continue to be governed by Articles 7-9 and 11-14 of Royal Decree 1991/1984, of 31 October (RCL 1984, 2604), governing part-time contracts, replacement contracts and partial retirement.

### ***Five. Validity of rules on working schedule and rest periods***

All rules on working schedule and rest periods contained in Royal Decree 2001/1983 (RCL 1983, 1620) shall remain in force until 12 June 1995, notwithstanding any adjustment carried out by the Government to the provisions of Articles 34-38, after consulting the affected employer and trade union organisations.

### ***Six. Work Ordinances***

Any Work Ordinances currently in force, unless a term is otherwise established by means of an agreement foreseen in Article 83.2 and 3 herein, shall continue to apply as voluntary law until they are replaced by a CBA, until 31 December 1994.

Notwithstanding the provisions of the foregoing paragraph, the Ministry of Employment and Social Security is authorised to repeal work regulations and labour ordinances, in whole or in part, before this date, or to extend until 31 December 1995 any ordinances affecting sectors with coverage difficulties, further to the procedure foreseen in the following paragraph.

This repeal shall be carried out by the Ministry of Employment and Social Security, further to a report from the National Consultation Committee on CBAs regarding the extent to which the content of the Ordinance is covered by collective negotiations. To this effect, it shall be ascertained whether within the scope of the Ordinance in question there are collective negotiations that sufficiently regulate the matters delegated by this Act to collective negotiations.

If the Committee issues a negative opinion on the coverage and there are authorised parties for collective negotiations within the scope of the Ordinance, the Committee may summon them to negotiate a CBA or to reach an agreement on specific matters to remedy any coverage defects. If no agreement is reached during these negotiations, the Committee may agree to subject the resolution of the dispute to arbitration proceedings.

The co-existence of CBAs or agreements to replace the Ordinances with CBAs in force in their respective scopes shall be governed by the provisions of Article 84 herein.

### ***Seven. Termination prior to 12 June 1994***

Any termination of an employment relationship occurring prior to 12 June 1994, the effective date of Act 11/1994, of 19 May (RCL 1994, 1422 and 1651), shall be governed in material and procedural terms by the rules applicable at the time the termination took place.

All proceedings initiated prior to 12 June 1994 further to the provisions of Articles 40, 41 and 51 herein as previously worded shall be governed by the regulations applicable at the initiation date.

### ***Eight. Elections of worker representatives***

1. Any elections held to renew the workers' representatives, elected during the last calculation period prior to the effective date of this Act, may be held within fifteen months as of 15 September 1994, extending the corresponding mandates until new elections are held to all intents and purposes, excluding during this term the provisions of Article 12 of Act 9/1987, of 12 June (RCL 1987, 1450), on representation bodies, specification of working conditions and the participation of staff at the service of the Public Administration.

2. By virtue of a majority agreement of the most representative trade unions, an election calendar throughout the period indicated in the foregoing paragraph may be established in the corresponding functional and territorial scopes.

These calendars shall be notified to the public office at least two months before the commencement of the corresponding election process. The public office shall distribute these calendars, notwithstanding the processing pursuant to Article 67.1 herein of applications for the scheduled elections. The notification of these calendars shall not be subject to the provisions of paragraph four, Article 67.1 herein.

Elections shall be held at the various work centres further to what is foreseen in the calendar and applicable prior notice, except for those centres where the workers have decided, by majority agreement, to hold the elections on a different date, provided that the corresponding writ of application is sent to the public office within fifteen days following deposit of the calendar.

Any elections requested before the calendar is deposited shall prevail over the same if requested prior to 12 June 1994, as long as they were applied for by the workers of the corresponding work centre or by agreement of the trade unions holding the majority representatives at the work centre or company, as the case may be. This same rule shall apply to any elections requested prior to said date, if the election process has not ended by said date.

3. Renewal of all duties of staff representatives and members of works council, including the effects thereof, shall fully apply whenever the term indicated in section 1 above has completely expired.

### ***Nine. Institutional participation***

The three-year term in which to request the presence of a trade union or employer association in an institutional participation body, referred to in the First Additional Provision of the Organic Act on Trade Union Rights (RCL 1985, 1980) shall begin to run as of 1 January 1995.

### ***Ten. Temporary employment disability and provisional disability***

Whoever is in a situation of temporary employment disability or provisional disability at 1 January 1995, regardless of the contingency giving rise to the same, shall be subject to preceding laws until such situations disappear.

***Eleven. Extended leave of absence to care for children prior to 13 April 1995***

All extended leaves of absence to care for children, in force on 13 April 1995, the effective date of Act 4/1995, of 23 March (RCL 1995, 955), pursuant to the provisions of Act 3/1989, of 3 March (RCL 1989, 505), shall be governed by the provisions of this Act, provided that on said effective date the worker on leave is enjoying the first year of extended leave of absence or of the period longer than a year corresponding to the extension, by virtue of a collective or individual agreement, of the right to a reserved work post and calculation of seniority.

Otherwise, the extended leave of absence shall be governed by the rules applicable upon commencement of the leave and until expiration thereof.