

Position Paper

The labor reform in
Spain: effects, thoughts
and suggestions for
improvement

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AmChamSpain

Cámara de Comercio de EE. UU. en España

ABOUT AMCHAMSPAIN

The U.S. Chamber of Commerce in Spain, *AmChamSpain*, is an apolitical, non-profit institution founded in 1917. We currently boast over 300 partner companies, which generate a combined turnover of 248 billion Euros in Spain - approximately 24% of the country's GDP - in addition to creating more than one million jobs. Indeed, *AmChamSpain's* roster of partners includes most of the largest American companies operating in Spain, virtually all companies listed in the IBEX-35 index and a significant number of SMEs from both sides of the Atlantic.

AmChamSpain forms part of the network of *AmChams* distributed across more than 120 countries, which in turn, form part of the U.S. Chamber of Commerce - the American employers' association - which, with over 3 million volunteer partner companies, is the main business organization in the United States. *AmChamSpain* has four basic objectives: (i) to work towards improving Spain's competitiveness, productivity and internationalization; (ii) to attract, retain and protect direct American investments; (iii) to support Spanish companies in the U.S and (iv) to encourage the exchange of science and technology between both countries.



INTRODUCTION

The labor reform passed in February 2012 may be considered ambitious, intensive and bold. Just one year after having been introduced, it has already driven many necessary changes within labor institutions that were, for the most part, stuck in the past. In short, the reform has established a new labor relations model, which is gradually being accepted by Spanish companies.

Nevertheless, the high unemployment rate in Spain, particularly given the situation of many companies, means that we must not be drawn into complacency. Moreover, a number of changes, which must be brought to light, need to be applied under the labor reform, in order for it to realize its full capacity and improve the competitiveness of companies in Spain, ranging from the country's smallest enterprises to those that generate a high volume of employment - the majority of which form part of the U.S. Chamber of Commerce in Spain (*AmChamSpain*).

Given the fundamental importance of continuing to implement such much-needed changes in the Spanish labor market, a work group at *AmChamSpain's* HR Committee prepared the present *position paper*, in order to present thoughts on how the labor reform is affecting companies, in addition to suggestions for improvement. Indeed, these are suggestions that we, at *AmChamSpain*, believe should be applied, so as to increase direct investment, create employment and, ultimately, promote economic growth in Spain.

EFFECTS OF THE LABOR REFORM

According to the evaluation report on the impact of the labor reform, issued by the Ministry of Employment and Social Security in Spain, the main aim of the reform was to establish a new employment culture, by building a new labor relations model, intended to:

1. Promote internal flexibility within companies, stop job destruction, lay foundations upon which to create stable employment and drive competitiveness.
2. Modernize collective bargaining.
3. Improve worker employability through training and effective labor mediation.
4. Promote the creation of stable, high-quality jobs, in addition to reducing labor market dualism.
5. Combat unjustified absence from work.
6. Strengthen fraud prevention mechanisms, protect workers' rights and fight unfair competition.

According to the government report, since the labor reform was passed over two years ago, the new regulations introduced under the reform have produced the following results, even within the context of the current, highly complex, economic climate:

Objective No.1: to build a new labor relations model, which stops job destruction and lays foundations upon which to create stable employment.

- The increase in unemployment has become more moderate.
- The inter-annual variation in the unemployment growth rate has decreased, despite economic activity having slowed-down even further.
- For the first time since the crisis began, a further decrease in GDP did not give rise to an accelerated job destruction rate.
- The progression of self-employment has aided the creation of more

favorable, stable job posts in the last nine quarters.

- More jobs would have been destroyed without the labor reform: the Ministry of Economy and Competitiveness believes that the reform helped to prevent the destruction of 225,800 jobs during the first year it was implemented.
- As a result of the reform, labor market evolution has made a significant contribution to improving the competitiveness of Spanish products: the Spanish economy has recovered all the competitiveness it lost to Germany since 2005, this factor being measured using ULCs (unit labor costs).
- It is estimated that the Spanish economy will be able to generate employment starting from a growth rate of between 1% and 1.2%, which is significantly lower than the rate before the reform, at above 2%.

Objective No. 2: to favor the internal flexibility of companies.

Method:

1. The reform boosts company mobility and changes to working conditions.
2. Business decisions to suspend employment contracts and reduce working hours are encouraged, with the aim of preventing redundancies.

Results:

1. Mass redundancies have decreased significantly.
2. In 2012, over 30% of companies with over 250 employees applied measures that would change working conditions.
3. The labor reform and the Second Employment and Collective Bargaining Agreement have facilitated a wage moderation process, which has made it possible to save thousands of jobs.

Objective No. 3: to modernize collective bargaining, in order to bring it in line with specific company and worker needs and to promote permanent dialog within companies.

Method:

3. Temporary non-application of collective agreements (known as opt-out).
4. A new collective bargaining structure, which by law, guarantees applicative priority of the company collective bargaining agreement.
5. New regulations governing the periods in which collective bargaining agreements are in force (known as ultra-activity).

Results:

1. Twice the number of agreements have been signed over the past few years.
2. There have been 2,149 opt-outs in order to prevent redundancies, affecting over 118,000 workers.
3. The end of ultra-activity has made collective bargaining more dynamic.

Objective No. 4: to improve worker employability through training and effective labor mediation.

Method:

6. Training as a right.
7. Reform and update occupational certificates.
8. Training and apprenticeship contracts.
9. Transformation of active employment policies.
10. Youth entrepreneurship and employment strategy.

11. Labor mediation reform.
12. Design of the national framework agreement for job placement agencies.

Results:

1. The number of occupational certificates increased by 50% over the last year and a half, reaching 587 certificates.
2. In 2013, the number of training and apprenticeship contracts increased by over 60% year-on-year.
3. Almost 70,000 young people (more than 500 per day) have had a job opportunity thanks to the youth entrepreneurship and employment strategy.

Objective No. 5: to promote the creation of stable, high-quality jobs and reduce labor market dualism.

Method:

13. New permanent contract to support entrepreneurs.
14. Prohibition on using successive temporary contracts for more than 24 months.
15. Promoting part-time work and regulating telework.
16. Clarification of the causes of contract termination on economic, technical, organizational or production grounds.
17. Removal of prior administrative authorization for collective redundancies.

Results:

1. Recruitment with initial permanent full-time contracts increased significantly.
2. The number of temporary contracts fell.
3. More than 120,000 entrepreneurial contracts were created.

This objective data both confirms and bears witness to the numerous benefits brought about by applying the labor reform. Nevertheless, this is only the start of the path leading to improved employment rates in Spain and the competitiveness of companies based here.

As such, *AmChamSpain* would like to propose the following measures, which we believe to be urgent and which must be applied as soon as possible, in order to achieve the objectives established.

SHORT-TERM PRIORITIES

1. Changes in the labor recruitment system

The labor reform has addressed significant changes in the field of recruitment, yet there are still too many employment contract models, including certain inefficiencies that make them complicated to use. Therefore, the following measures must be proposed:

- Reduce the different types of temporary contracts available to just one single type of contract, which might be entitled "business needs", covering the set of demands, whether work or service related, temporary, related to launching a new activity or product, etc., in addition to establishing a time limit, in order to reinforce full-time recruitment.
- Establish one single type of permanent contract, extending permanent entrepreneurial contracts currently in force to large companies.
- Group current youth training contracts into just one simple contract, which is easy to use and includes dual training modalities.

2. Reforming part-time contracts

Although part-time contracts were recently reformed, use thereof continues to be very limited in companies. The fundamental reason behind this may be the rigidity of their legal regime. There is no doubt that part-time contracts are a major employment generator, as can be seen looking at other European realities, and as such, we would like to propose the following:

- Greater flexibility in the legal regime of such contracts, introducing irregular workdays or intermittent work, following prior agreement between the parties.
- Allowing substantial changes to be made to working conditions, with the aim of easing the conversion from full-time to part-time work (through article 41 of the Statute of Workers' Rights), in order to prevent job destruction.

3. Reforming active employment policies

Bearing in mind that coordinating active employment policies in Spain is a complex task, given the autonomous powers thereof, it is imperative that actions favoring the speedy reintegration of unemployed Spaniards be taken, without altering current spending controls. This may be achieved through the following actions:

- Re-evaluating active policies currently in force.
- Greater coordination between the administrations involved.
- Analyzing dual training systems.

4. Adopting specific measures to combat youth unemployment.

There is no doubt that Spain's shocking youth employment rate is the main disaster to have befallen the country's labor market. While it is true that the European Commission has decided to help to improve this situation through specific funds aimed at alleviating the devastating effects of youth unemployment on both the economy and young people, and that the labor reform, through the Youth Employment Strategy, seems to be a step in the right direction, adding the following measures would help to push this progress forwards:

- Creating a single training/youth contract, which groups the entire range of current contracts together and offers incentives for use, simple regulations and a lower cost for companies.
- Successfully involving all public and private institutions, in order to increase employment amongst young people, including training, dual or theoretical actions.

5. Labor flexibility

The labor reform has introduced changes to the way in which internal flexibility is regulated and, looking at the results produced in company use, has clearly proven successful. However, various aspects of the legal regulations governing this flexibility must be improved, in order to prevent large or economically affluent companies from being penalized, so as to prevent future infeasibilities. As such, we propose:

- Granting workers greater mobility when carrying out functions related to other job posts, including those of other professional groups, in addition to increasing the time frame in which said mobility is granted, and functional versatility.
- Greater legal certainty in legal decisions, in order to facilitate the application of flexibility measures determined by companies.
- Foster a culture of geographical mobility from a legal, personal and fiscal perspective, with proposals that encompass every field.
- Greater legal certainty in defining the legal grounds behind flexibility, enabling flexibility to be employed in organizational and productivity related changes, or changes that affect the market situation, as well as for situations of company crisis. This alternative measure to redundancy would also have to encompass viable companies, whether large or small.
- Revision of certain numerical restrictions, such as the number of workers affected for example, in order to facilitate the application of labor flexibility measures in large companies.

6. More efficient regulation of service outsourcing

Looking at the current reality of companies, it is clear that outsourcing has become an ever more frequent practice, upon reducing costs, improving service efficiency and continuing other, good international practices. Nevertheless, the work-place regulation on outsourcing services is outdated and related to economic situations that differ greatly from those of today, in addition to being

far too focused on company fraud. As such, in favor of completely honest practice, we recommend:

- Modifying Art. 42 and 43 of the Statute of Workers Rights, in order to enable greater flexibility in the use of contracts, especially those related to the provision of services within the client's own facilities.
- Relaxing the Labor Inspectorate criteria on the illegal placement of workers in collaboration with other companies, especially in situations where the capacity and economic reality of the affected companies can be proved.

7. Collective Bargaining

The intensive changes encouraged in collective bargaining may lose their objective if legal doubts and judicial interpretations that do not comply with the spirit of the labor reform persist. Therefore, we recommend revision of those elements transformed in the field of ultra-activity agreements and failure to apply them.

MEDIUM-TERM PRIORITIES

1. Development of policies that link salaries to productivity

It is essential to move towards a closer relationship between reward and productivity as a collective bargaining bid, establishing new criteria in the salary structure, which fit in with the new working structure, company results and quality of the work carried out.

2. Wage moderation and reduction in social security payments

It is advisable to maintain and apply the multi-annual wage moderation agreement reached by social partners, in order to stay on the path towards business competitiveness and improved employment. At the same time, a reduction in companies' social costs must be analyzed, as far as possible, in addition to removing the recent incorporation of fringe benefits to base payments.

3. Reform the legal status of Mutual Societies

For the purpose of continuing to combat unjustified absence at work, Mutual Societies must take on a more active role in treating common illnesses.

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