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LABOUR NEWS

Paid Parental Leave of Eight Weeks Recognized for the First Time in the Private Sector

July 2025

For the first time in Spain, the right of an employee in the private sector to enjoy paid parental leave has been recognized. This is based on the direct application of Article 8 of Directive (EU) 2019/1158, which requires Member States to ensure adequate remuneration during such leave, and on the principle of the primacy of EU law.

This decision, handed down by Social Court No. 1 of Barcelona in judgment no. 168/2025, is based on the following premises:

- The European Directive is directly applicable without prior transposition if the State has failed to meet its obligation. Judges may directly apply EU law when national law cannot be interpreted in line with it.
- Article 45 of the Workers' Statute, which regulates parental leave as unpaid by providing for contract suspension, contradicts Article 8.3 of Directive (EU) 2019/1158.

The court applies the principle of primacy of EU law and directly enforces this Directive.

Regarding the paid nature of parental leave in Spain, some administrative courts have already ruled along similar lines for public sector employees by directly applying the European Directive.

Article 8 of Directive 2019/1158 requires States to ensure:

- A minimum of four months of parental leave per parent.
- That at least two months are adequately paid (though not specifying whether by salary or public benefits).

The Spanish legislator has transposed parental leave into Article 45.1.o) of the Workers' Statute. However, it is considered as a cause for unpaid contract suspension without compensation or benefit.

According to the Social Court, this does not satisfy the European mandate. It therefore resolves to apply the Directive directly and declares the employer's obligation to pay the employee during such leave.

This judgment changes the game for businesses by introducing a financial obligation:

- Companies must allow parental leave and recognize it as paid.
- Moreover, the ruling suggests that employers might have to pay for the leave as if the employee were actively working.

This ruling is final for the specific case, as no appeal is permitted.

However, we are likely to see differing decisions from various courts on this matter.

Only the Supreme Court can unify the doctrine and resolve this tension.

Spain Ratifies ILO Convention 191

On July 1, 2025, the Council of Ministers approved requesting parliamentary authorization to ratify ILO Convention 191 on a safe and healthy working environment.

The ratification of this convention—adopted at the 111th Session of the International Labour Conference in 2023—has been consulted with the most representative business and union organizations. The text is now forwarded to the Parliament for authorization before ratification.

The Convention establishes occupational safety and health as a new fundamental labor right, reformulates eight ILO conventions, and guarantees workers the right to a safe and healthy workplace.

From now on, any country ratifying one of the eight updated conventions does so under its revised version.

Ongoing Debate on Severance Pay in Spain

In June 2025, the European Committee of Social Rights issued a resolution stating:

- The maximum caps set by current legislation are not high enough to fully compensate the damage suffered by the victim and to deter employers.
- The current Spanish system may not adequately account for the actual harm suffered by the affected employee depending on the specific case.

Additionally, the resolution states:

- National courts cannot decide whether reinstatement is appropriate in a specific case because the law either explicitly requires it in null dismissal cases or allows either the company or the employee to choose. The Committee believes courts should be allowed to assess the appropriateness of reinstatement after consulting with the parties.
- In cases of wrongful or null dismissal of temporary employees, the applicable provisions are identical to those for permanent employees. In such cases, the Committee believes that the same considerations apply, and the legal caps are not sufficient to compensate the damage suffered and to deter the employer. The real damage, based on specific case circumstances, may not be adequately addressed, especially since the possibility of receiving additional compensation is very limited.

As a result, the Committee unanimously concluded that:

- There is a violation of Article 24.b of the Charter regarding severance for wrongful dismissal.
- There is a violation of Article 24.b of the Charter regarding reinstatement.
- There is a violation of Article 24.b of the Charter regarding severance for wrongful dismissal of temporary workers hired unlawfully.

Following this, the Supreme Court ruled in Judgment 736/2025 of July 16, 2025, on whether courts can award additional compensation along with the statutory severance for disciplinary dismissal under Article 56.1 of the Workers' Statute, based on Articles 10 of ILO Convention 158 and 24 of the Social Charter.

The Supreme Court states that Article 24 of the Charter cannot be directly applied to override national law (Article 56 of the Workers' Statute). It also points out that under the Annex to the Charter, compensation or any other appropriate remedy must be set by the legislature or collective bargaining agreements, not by judicial rulings.

Finally, the Court states that decisions by the European Committee of Social Rights are not judicial in nature and are directed to the Council of Europe's Committee of Ministers, which is not bound by them. These decisions serve only as a basis for any decision the Committee may take. Therefore, there is no legal mechanism to enforce such recommendations on the affected States.

Consequently, unless the legislator changes the way severance is calculated, based on the recent Supreme Court decision, courts should not award additional compensation beyond what is provided for wrongful dismissal.

Extension of Birth and Childcare Leave Until the Child is Eight Years Old

On July 29, 2025, the Council of Ministers approved Royal Decree-Law 9/2025, of July 29, which extends birth and childcare leave. It modifies the consolidated texts of the Workers' Statute, the Basic Statute of Public Employees, and the General Social Security Law to fully transpose Directive (EU) 2019/1158 of the European Parliament and Council of June 20, 2019, on work-life balance for parents and caregivers, which repeals Council Directive 2010/18/EU.

Published in the Official State Gazette on July 30, 2025, the Royal Decree-Law adds 3 weeks of leave, with 2 of those weeks being flexibly usable until the child turns 8.

Specifically, Article One amends section 4 of Article 48 of the Workers' Statute to state:

"Contract suspension for each parent due to childcare shall be distributed as follows:

a) 6 uninterrupted weeks immediately after childbirth shall be mandatory and taken full-time.

b) 11 weeks—or 22 in the case of single-parent families—may be taken at the employee's discretion in weekly blocks, consecutively or intermittently, from the end of mandatory leave until the child turns 12 months old. However, the biological mother may start her leave up to 4 weeks before the expected date of birth.

c) 2 weeks—or 4 in single-parent families—for childcare may be taken at the employee's discretion in weekly blocks, consecutively or intermittently, until the child turns 8."

Section 5 of Article 48 of the Workers' Statute is also amended to state:

"Contract suspension for adoptive parents, guardians, or foster carers for childcare shall be distributed as follows:

a) 6 weeks shall be taken full-time, mandatorily and uninterruptedly, immediately after the judicial resolution formalizing the adoption or the administrative decision on foster care.

b) 11 weeks—or 22 in the case of single-parent families—may be taken at the employee's discretion in weekly blocks, consecutively or intermittently, within 12 months from the judicial or administrative decision.

c) 2 weeks—or 4 in single-parent families—for childcare may be taken at the employee's discretion in weekly blocks, consecutively or intermittently, until the child turns 8."

According to the sole transitional provision, the changes made to Article 48.4 and 48.5 of the Workers' Statute apply to qualifying events occurring from August 2, 2024. These additional weeks of contract suspension or birth and childcare leave, and the corresponding economic benefit, **may be requested from January 1, 2026, without requiring new recognition of entitlement. The existing regulations for voluntary birth and childcare leave will apply.**

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