

Don't Lose Your Wages To An Insolvent Company!

by Paula Nuñez de la Peña

One of the main consequences of the crisis with the Spanish Economy in 2008 was a large growth in unemployment across our country. With the disappearance of hundreds of firms; wages and allowances were owed to countless workers who faced a long period of unemployment. Such situations have left many workers with a bleak outlook feeling little hope that they will recover their dues from the company, and adding to their concerns, the worries of attorney fees.

Sadly this situation occurs far too often due to the general ignorance regarding the existence of the independent agency FOGASA. FOGASA is responsible for the payment of workers by legally set wages and allowances protecting workers when their employing company is Insolvent or undergoing Insolvency Proceedings. The allowances you could receive are calculated by taking into account the wages owed, and then a percentage of accumulative compensation.

Payment Of Wages

Recognized in an Act of Settlement or a Court Order, this includes monies owed to employees via wages or bonuses, including handling and any outstanding allowances. The maximum amount payable is the result of multiplying the minimum wage three times daily, adding any bonuses, and then multiplying that by the number of days of unpaid wages, not exceeding 150 days (See Figure 1).

Figure 1

Year	2011	2010	2009	2008
Triple SMI (daily)	72.66	73.74	74.68	69.86
Limit 150 days	11,202	11,061	10,899	10,479



As Head of the Labour Law Department at **Lexland Abogados**, Paula Nuñez regularly advises clients on all labour law related matters which amongst other services includes the drafting and termination of standard employee and senior executive employment contracts, bonus schemes, stock options, collective bargaining agreements and social security contributions. She also provides companies with guidance on staff restructuring, disciplinary procedures, pay reclamations and contract modifications.

Payment Of Compensation

In cases of unfair dismissal or non-complying contract termination compensation is calculated on the basis of 30 days/year of service. In cases of class action and redundancy (Articles 51 and 52 of the Workers' Statute and Article 64 of the Insolvency Act) compensation is calculated on the basis of 20 days/year, and on the basis of 8 days/year regarding the termination of temporary or fixed term contracts (Law 35/2010 09-17). The maximum amount can be seen calculated in Figure 2.

Figure 2

Year	2011	2010	2009	2008
Triple SMI (daily)	72.66	73.74	74.68	69.86
Annual Limit	27.258,20	26.915,10	26.520,90	25.498,90
Annual Limit	10.903,28	10.766,04	10.608,36	10.199,56

terminated as part of collective redundancies or when there was a need to objectively amortize accredited jobs due to economic, technical, organizational or production objectives.

In these cases compensation will be paid directly to the company if they can prove that 100% of the statutory compensation will be received by the worker, otherwise, it shall forfeit directly to the worker. It is worth noting that permanent contracts signed as of 18-06-2010 are excluded from this protection.

Direct Payment

The Wage Guarantee Fund is paid directly, without the need for a declaration of insolvency from the respective company, and includes the following compensation:

1. In companies with less than 25 workers, the fund will compensate 40% of the legal compensation for each employee, in cases where the employee has been

2. In the case of Downsizing Plans, the labor authority may determine the existence of external forces and may decide that all, or a portion of the compensation from the affected workers, is satisfied by the Wage Guarantee Fund without damaging the company's right to be compensated for the company.

In both cases the amount of compensation is calculated on the basis of 20 days per year of service. The maximum amount of annuity payable may not exceed more than three times the minimum wage, allowing for any bonuses payable.

Lexland Abogados can help you with the application process to claim your wages assuring a smooth process. Providing you have the legally required documentation the amounts and limits specified within this article are guaranteed.



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