

FALSE FREELANCER



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The difficult economic situation has affected Spanish companies in many different ways. One of them is the search for alternative ways of hiring staff. As a consequence, the replacement of employees for so-called "false freelancers" has become a very common irregularity in Spanish companies

But what exactly is a "false freelancer"?

The term refers to a person rendering services to a company through a mercantile agreement, even though his work should be executed by means of an ordinary labour contract.

It is not difficult to imagine why many companies have decided to adopt this type of mercantile relationship as it simply saves them a lot of money.

By hiring false employees the company does not have to make the mandatory contributions to the Spanish Social Security and in case of an "unfair" dismissal the employee would neither be entitled to severance payment nor could he apply for unemployment benefit.

Nevertheless, whether a freelancer should be considered an "ordinary employee" or not, depends on his daily work situation and not on the type of contract executed by both parties.

Accordingly, the Spanish law states that an ordinary labour relationship exists when, for example, the freelancer is subject to a standard working schedule imposed by the company; when he has to be in compliance with his employer's orders and instructions; when the company possesses the authority to sanction him; when he uses the company's work tools; and when he receives a periodical settlement.

Therefore, if the above facts are ascertained by a Spanish court, the freelancer would be entitled to the rights of an ordinary employee with a regular work contract. In the case of an unfair dismissal, the "false freelancer" would also receive a severance payment of 45 days of salary per year of service.

Moreover, the company will have to reimburse the corresponding contribution rates for the lack of payment to the Spanish social security, plus a 20 percent surcharge. In addition to that, very serious administrative fines could be imposed on the company.

To sum up, employers are advised to be careful because this kind of fraud may turn out to be quite expensive if they get caught. If you think you might be a "false freelancer", do not waste any time and contact a lawyer in order to demand your rights as soon as possible. And do not forget that if you have been dismissed you only have 20 working days to claim your labour relationship.



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