Salary organization

Jorge Baquero Aguilar
https://orcid.org/0000-0002-8524-7947

Contents

1. Legal concept of salary

Wages and their protection, in the Spanish legal system, are regulated in a series of legal and regulatory norms, which are listed below:

- ET.
- Royal Decree-Law 3/2004, of 25 June 2004, to rationalise the regulation of the minimum interprofessional wage and to increase its amount (BOE nº. 154, of 26/06/2004).
- Royal Decree 145/2024, of 6 February, which sets the minimum interprofessional wage for 2024 (BOE nº. 33, of 07/02/2024).
- Order of 27 December 1994 approving the model of the individual salary receipt (BOE nº. 11, of 13/01/1995).
- Royal Decree 902/2020, of 13 October, on equal pay for women and men (BOE nº. 272, of 14/10/2020).
- Royal Decree 505/1985 of 6 March 1985 on the organisation and operation of the Wage Guarantee Fund (BOE nº. 92, 17/04/1985).
- Order PCM/1047/2022, of 1 November, which approves and publishes the procedure for the assessment of jobs provided for in Royal Decree 902/2020, of 13 October, on equal pay for women and men (BOE nº. 03/11/2022).
- Pursuant to Article 3.1 ET (relating to the sources of the employment relationship), "the rights and obligations concerning the employment relationship" (of which the salary forms part) are also regulated - within the hierarchy of rules established by the article - by: a) the applicable collective agreements (letter d) of Article 3.1), b) the "will of the parties, expressed in the employment contract, the purpose of which is lawful and under no circumstances may conditions less favourable or contrary to the employee's interests be established that are less favourable or in breach of the employment contract. 3.1), (b) the "will of the parties, expressed in the employment contract, the purpose of which is lawful and under no circumstances may less favourable conditions or conditions contrary to the legal provisions and collective agreements mentioned above be established to the detriment of the employee" (Article 3.1 (c)) and c) by "local and professional customs and practices" (Article 3.1 (d)), being the source of obligations in relation to the employee's salary.

In order to be able to talk about the organisation of wages, we must start from the characteristics of the employment relationship established in Article

1 ET, section 1 of which states that it "shall apply to employees who voluntarily provide their paid services as employees and within the scope of organisation and management of another person, natural or legal, called an employer or entrepreneur". Remuneration, therefore, for the provision of services as an employee, will entail the materialisation of the receipt of a salary for the provision of a specific service. The ET regulates wages and wage guarantees in Section 4, Chapter II, Chapter II, Title I. Article 26 establishes the legal concept of wages. Wages based on the provisions of paragraph 1 of the aforementioned article are: a) all of the employees' economic benefits, whether in cash (legal tender) or in kind (non-monetary payment, such as company car, housing, etc.). In no case may the salary in kind exceed thirty percent of the employee's salary benefits, nor may it lead to a reduction of the full amount in money of the Minimum Interprofessional Wage (hereinafter SMI). This also applies to the special employment relationships referred to in Article 2 ET. b) For the professional provision of services as an employed person in return for actual work, irrespective of the form of remuneration or the periods of rest that can be counted as work (weekly rest, public holidays, holiday time).

In the opposite direction, paragraph 2 of the same Article 26 also establishes which items are not to be considered as wages: a) amounts received by the employee as compensation or allowances for expenses incurred as a result of his work, b) Social Security benefits and indemnities, c) compensation corresponding to transfers, suspensions or dismissals.

2. Salary structure and composition

Article 26.3 ET establishes that the wage structure shall be determined on the basis of two possibilities: a) through collective bargaining, which takes the form of collective agreements. As a result, the wage structure is conditioned by the wage system adopted in the company or in the corresponding sector of activity. b) Alternatively, through an individual contract. With the qualification that, even if collective bargaining establishes the wage structure, through the employment contract these conditions can be improved on the basis of the agreement of the parties reflected in the employment contract.

The composition of the salary, also established in the same section of Article 26, shall be as follows:

a) Basic salary, as fixed remuneration: 1) per unit of time (year, month, fortnight, week, day, hour), 2) per unit of work (product or effective performance in the provision of the work: parts produced, operations carried out, metres built, etc.), 3) but there is a third option not expressly contemplated in the ET, which is a mixed system that contemplates both the unit of time and the unit of work (daily wage or, monthly, combined with another item calculated on the results obtained by means of a system of bonuses or incentives). The amount of the basic salary usually varies according to the professional group or level in which the employee is classified, which is established in the salary tables of the applicable collective bargaining agreements.

b) Where applicable, wage supplements, which shall be calculated in accordance with the criteria agreed for this purpose. These allowances shall be set according to a series of relative circumstances: the employee's personal conditions, the work carried out or the company's situation and results.

Wage supplements are established through collective bargaining. They may vary from one collective bargaining agreement to another. The following wage supplements, among others, can be found: 1) seniority: length of service in the company, 2) extraordinary bonuses: special payments (July and December), 3) bonuses and incentives: depends on the company's production process and the procedure established for their calculation and receipt by the employee, 4) commissions: which may constitute a salary supplement or a special type of salary based on results (for example, for sales), 5) profit-sharing: recognition of amounts that are added to the salary, formation of assets, investment funds, pension funds, etc., 6) company stock options, 7) any other that can be agreed with the employer by collective agreement or company agreement with the legal representatives of the employees, 8) as well as any other that may be agreed between the employee and the employer reflected in the employment contract.

It may also be agreed whether or not salary supplements can be consolidated. In any case, the following allowances shall not be consolidated, unless otherwise agreed: those linked to the job, and those linked to the situation and results of the company. In relation to wages, it is important to bear in mind that paragraph 4 of Article 26 itself establishes that, "All tax and social security charges payable by the employee shall be paid, and any agreement to the contrary shall be null and void". This means that the employer will be

responsible for those tax or Social Security expenses established by the appropriate regulations, and it is not possible to agree otherwise with the employee on the basis of the provisions of this section, as well as the provisions of section 5 of Article 3 ET, which regulates the non-availability of the necessary employment rights on the part of the employees: "Employees may not validly dispose, before or after their acquisition, of the rights that they have recognised by legal provisions of necessary law. Nor may they validly dispose of rights recognised as unavailable by collective agreement".

Extraordinary bonuses (pagas extraordinarias) regulated in Article 31 ET also form part of the salary. They consist of two extraordinary bonuses per year. One of them on the occasion of the Christmas holidays. The other will be fixed by collective agreement by company agreement between the employer and the legal representatives of the employees in the month agreed, although it usually coincides with the summer holidays (June or July). The amount of the extraordinary bonuses will be fixed by collective agreement. It is also possible, by agreement, to establish more than two extraordinary bonuses per year. These bonuses may not be prorated in the monthly payroll over the twelve monthly payments, unless expressly provided for in the applicable collective bargaining agreement.

Likewise, overtime worked by the employee will also form part of the salary. Its legal configuration is based on Article 35 ET. Based on the provisions of paragraph 1, they will be considered as such "those hours of work carried out over and above the maximum duration of the ordinary working day" fixed, in relation to working time, in accordance with the provisions of Article 34 ET with regard to the working day. The collective agreement or, if applicable, the employment contract, may opt for payment or compensation of such overtime (for equivalent paid rest periods). Payment shall be made according to the amount to be determined. However, in no case may the value of the overtime be less than the value of an ordinary hour and compensation. In the absence of an agreement in this respect, it is understood that overtime worked "shall be compensated by rest within four months of its completion" (last paragraph in fine of Article 35.1).

With regard to the total number of annual overtime hours, section 2 of Article 35 ET establishes that they may not exceed eighty hours per year, with the qualifications contained in section three of the article, which we will see below. In the case of part-time employees (working hours which, in annual terms, are less than the company's general working hours), the maximum number of overtime hours must be reduced in real proportion to those working hours. For this purpose, overtime compensated by rest within four months of its completion (and not paid for financially) may not be counted. In any case, the Government may abolish or reduce the maximum number of overtime hours per specified period, either generally or for certain branches of activity or territorial areas, in order to increase job opportunities for unemployed employees. There is a caveat to the total calculation of overtime. When the reason for the overtime is "to prevent or repair accidents and other extraordinary and urgent damage", such hours must be paid as overtime, but they will not be taken into account for the purposes of the maximum duration of the ordinary working day, nor for the calculation of the maximum number of authorised overtime hours.

As stipulated in section 4 of Article 35 ET, overtime is voluntary for the employee, unless otherwise stipulated in the collective bargaining agreement or in the employment contract, but always within the legal limits analysed above. For the purposes of calculating overtime, each employee's working day shall be recorded day by day and totalled in the period established for the payment of remuneration, and a copy of the summary shall be given to the employee in the corresponding receipt (Article 35.5 ET). However, in addition to the above, there is another limitation to overtime. Article 12 ET establishes that employees with a part-time contract (when the provision of the service has been agreed for a number of hours per day, per week, per month or per year, which is less than the working hours of a comparable full-time employee) and employees with a relief contract (that which is agreed for a number of hours per day, per week, per month or per year, (when the service has been agreed for a number of hours per day, per week, per month or per year that is less than the working hours of a comparable full-time employee) and employees with a relief contract (that which is entered into to enable a employee to take partial retirement to replace the working hours left vacant by the employee who partially retires or to replace employees who partially retire after having reached ordinary retirement age) may not work overtime (Article 12.4(c), except in cases of "preventing or repairing accidents and other extraordinary and urgent damage" (Article 35.3 ET). However, they may work additional hours, which may be previously agreed or voluntary. They may not exceed the legal limit for part-time work in accordance with the part-time nature of the employment contract. In order not to incur in illegality, the working hours of part-time employees will be recorded day by day and totalled on a

monthly basis, and a copy will be given to the employee, together with the salary receipt, of the summary of all the hours worked in each month, both ordinary and supplementary.

Article 12.5 ET considers supplementary hours to be those performed "in addition to the ordinary hours agreed in the part-time contract". The regulation establishes rules for the performance of supplementary hours:

a) The performance of additional hours may not be required if it has not been agreed in advance with the employee. Such an agreement, which must necessarily be in writing and which shall constitute a specific agreement of the employment contract, may be made either at the time of conclusion of the employment contract or subsequently.

b) The additional hours agreement may only be concluded for part-time contracts with a working week of not less than ten hours per week on an annual basis.

c) The agreement must reflect the number of hours that may be required by the employer, which may not exceed thirty per cent of the ordinary working hours covered by the contract, unless the applicable collective bargaining agreement establishes another maximum percentage, which in no case may be less than thirty per cent or exceed sixty per cent of the ordinary hours contracted.

d) The employee must know both the day and the time when the additional hours are to be worked with at least three days' notice, unless a shorter period has been established by collective bargaining.

e) The employee may waive the additional hours agreement by giving fifteen days' notice to the employer, provided that one year has elapsed since the agreement was entered into. However, one of the following circumstances must apply: the employee has family responsibilities as provided for in Art. 37.6 ET, the employee has training needs (provided that there is a sufficiently accredited time incompatibility) or that there is an incompatibility with another part-time contract in another company.

f) In the event of non-compliance with the rules on the performance of supplementary hours, "the employee's refusal to perform supplementary hours, despite having been agreed, shall not constitute punishable employment conduct".

g) The employer may offer the employee the possibility of being able to work additional hours - in addition to those agreed - on a voluntary basis. The latter may not exceed fifteen per cent, which may be increased to thirty per cent by collective agreement, of the ordinary hours covered by the contract. The employee's refusal to work these hours shall not constitute punishable employment conduct. These voluntary additional hours shall not be counted for the purpose of calculating the percentage of agreed additional hours.

h) The performance of additional hours shall comply with the limits on working hours and rest periods established in Articles 34.3 and 4; 36.1 and 37.1 ET.

i) The additional hours worked shall be paid as ordinary hours and shall be calculated for the purposes of the Social Security contribution bases and periods of grace and the regulatory bases of benefits. The number and remuneration of the additional hours worked shall be recorded on the individual wage slip and in the social security contribution documents.

3. Setting the salary amount

Article 26.3 ET establishes the procedure for setting the amount of wages. It will be carried out through collective bargaining. Failing that, through the individual employment contract. Even the employment contract can improve the setting of the wage rate in the event that the applicable collective bargaining agreement so provides. In traditional production sectors, the habits and customs of the company, the sector of activity or the location may play a certain role in the setting of the wage rate. The different sources act according to the hierarchy of rules (Article 3 ET). State legislation usually establishes minimums that must be respected both by collective agreements and by individual agreements. In turn, what is established in the collective agreement acts as a minimum with respect to what may be agreed in the individual contract. But it is collective bargaining that is the main source for regulating wage rates, distinguishing between basic pay and bonuses, using the classification into occupational groups or levels. Inter-professional agreements usually establish the wage bands, sectoral agreements usually establish the basic rates, and company agreements usually specify the amount corresponding to each employee or group of employees. The employment contract and the individual agreement can improve wage levels. However, this possibility is almost exclusively reserved for highly qualified employees.

However, in any case, the salary structure must include the basic salary (as remuneration fixed per unit of time or work) and, where appropriate, salary supplements fixed according to circumstances relating to the personal conditions of the employee, the work performed or the situation and results of the company, which shall be calculated in accordance with the criteria agreed for this purpose. It shall be agreed (by collective bargaining or employment contract) whether or not these wage supplements can be consolidated, and those that are linked to the job or to the company's situation and results shall not be consolidated, unless otherwise agreed. Article 28 ET makes clear the employer's obligation to maintain equal pay on the basis of sex within the company. In such a way that he/she is obliged to pay the same salary for the same service (equal work, equal value), without any discrimination on grounds of sex. One job is of equal value to another when the nature of the functions or tasks effectively entrusted, the educational, professional or training conditions required for their exercise, the factors strictly related to their performance and the working conditions under which such activities are actually carried out are equivalent.

In order to ensure correct compliance with the regulation, the employer is obliged to keep a register with the average values of the salaries, salary supplements and non-wage payments of his staff, broken down by sex and distributed by professional groups, professional categories or jobs of equal or equal value. Thus, female employees have the right to access, through the legal representation of the employees in the company, to the wage register of their company. In the case of a company with at least fifty employees, when the average remuneration of employees of one sex is twenty-five percent or more higher than that of the other sex (taking the total wage bill or the average of the payments made), the employer must include in the wage register a justification that this difference is due to reasons unrelated to the sex of the employees. The approval of Royal Decree 902/2020 of 13 October on equal pay for women and men and Order PCM/1047/2022 of 1 November approving and publishing the procedure for the evaluation of jobs provided for in Royal Decree 902/2020 of 13 October on equal pay for women and men has been important for equal pay for reasons of sex within the company.

4. Minimun interprofessional wage

Within the catalogue of rights and duties of Spanish citizens, Article 35 CE recognises the right of employees to obtain sufficient remuneration to satisfy their needs and those of their families. This constitutional provision is transferred to Article 27 ET. Thus, the National Government is responsible for determining the minimum wage on an annual basis. Based on this basic legal provision, the amount of the SMI for each year is fixed by Royal Decree. The minimum wage has been attributed a double effect. One direct and strictly labour-related, serving as a floor or sufficient wage guarantee as a minimum for employees. The SMI is applied to those employees who are not covered by collective bargaining and serves as a minimum starting point for establishing wage tables in collective agreements negotiated by employers and employees' legal representatives. The other effect attributed to the minimum wage is indirect and, in turn, multiple. It is used as an income level indicator that allows access to certain benefits or the application of certain measures. It is also used as a reference parameter for the quantification of social benefits, which are systematically increased by the same amount as the SMI.

After consulting with the most representative trade union and employers' organisations, taking into account the CPI, the average national productivity achieved, the increase in the share of labour in national income and the general economic situation, the Government shall set the minimum wage annually, which may be revised every six months if the CPI forecasts are not met. Royal Decree-Law 3/2004, of 25 June 2004, for the rationalisation of the regulation of the minimum interprofessional wage and for the increase of its amount, was published in the BOE (Official State Gazette) nº. 154 of 26 June 2004. Article 1.1 of the decree dissociates the minimum wage from other effects other than employment "in order to guarantee the function of the minimum interprofessional wage as a minimum wage guarantee for salaried employees established in Article 287".

The labour effects to which the SMI is linked, among others, are: the salary of the employee in special employment relationships, the remuneration of the employee hired for training, the limits of protection of the Wage Guarantee Fund (FOGASA), the remuneration of employees declared to be Partially Permanently Disabled (IPP) who return to the company, etc. The link with the SMI is also maintained in order to determine the minimum contribution bases in the Social Security systems, as well as for the requirements for access to and, where applicable, maintenance of widowhood pensions, orphan's pensions, benefits in favour of family members, protection for the birth or adoption

of a third or successive child, for the amount of the financial benefit for multiple births or adoptions and for the requirements for access to and maintenance of the benefits that make up the unemployment protection system. In such a way that, as we have been discussing, Article 27 ET regulates the SMI, which will be set in accordance with what has already been analysed. In addition to all the above, it should be noted that the revision of the minimum wage will not affect the structure or the amount of professional salaries when these, as a whole and on an annual basis, are higher than the minimum wage.

Article 27.2 provides, within the protectionist framework of the SMI, for the non-attachability of the SMI both in its monthly and annual amount. The period of accrual will be taken into account for this purpose, as will the method of calculation (whether or not it includes the prorating of special payments), guaranteeing the non-attachability of the amount that results in each case. In the event that, together with the monthly salary, a bonus or special payment is received, the limit of non-attachability will be constituted by double the amount of the monthly minimum wage. In the event that the monthly salary received includes the proportional part of the extraordinary payments or bonuses, the limit of non-attachability will be constituted by the amount of the SMI in annual calculation prorated over twelve months. In BOE Nº 33 of 7 February 2024, by means of Royal Decree 145/2024 of 6 February, the minimum interprofessional wage for 2024 was set. In compliance with the mandate to the Government to set the minimum interprofessional wage annually, contained in Article 27.1 ET, this Royal Decree establishes the amounts that will apply from 1 January 2024, both for permanent employees and for temporary or seasonal employees, as well as for domestic employees. The new amounts represent an increase of five per cent with respect to those foreseen for 2023, being the result of taking into consideration all the factors contemplated in Article 27.1 ET.

The Royal Decree incorporates the rules of effect in a single transitory provision with the aim of preventing the increase in the SMI from causing economic distortions or unintended consequences in non-labour areas that use the SMI for its own purposes. Article 1 of the RD regulates the SMI for any activity in agriculture, industry and services. It does not distinguish between the age and sex of employees. It sets it at the following amounts: 37.8 euros/day or 1,134 euros/month, depending on whether the wage is fixed by days or by months. In the SMI, only the remuneration in cash is calculated, without the salary in kind being able, in any case, to give rise to a reduction of the full amount in cash. This wage is understood to refer to the legal working day in each activity, not including in the case of daily wages the proportional part of Sundays and public holidays. If a shorter working day is worked, it shall be paid on a pro rata basis. With regard to wage supplements as part of the employee's salary, Article 2 of the Royal Decree regulating the minimum wage for the year 2024 establishes that the minimum wage will be increased (serving as a module, where applicable, and according to what has been established in the applicable collective agreements and/or in the employment contracts) by the wage supplements referred to in Article 26.3 ET (personal conditions of the employee, work carried out, company results, etc.) and the amount corresponding to the guaranteed increase in the salary on time in the remuneration at a premium or with production incentive.

Article 4 of the Royal Decree establishes certain particularities in relation to the minimum wage for certain groups: temporary employees, seasonal employees and domestic employees. In the case of temporary employees, as well as seasonal employees whose services to the same company do not exceed 120 days, they will receive, together with the minimum wage referred to in Article 1, the proportional part of the remuneration for Sundays and public holidays, as well as the two extraordinary bonuses to which, as a minimum, all employees are entitled, corresponding to the salary of 30 days in each of them, without the amount of the professional salary being less than 53.71 euros per legal working day in the activity. With regard to holiday pay, the employees referred to in this article shall receive, together with the minimum wage set in Article 1, the proportional part of this corresponding to the minimum legal holidays in cases where there is no coincidence between the period of enjoyment of the holidays and the duration of the contract. In other cases, the payment for the holiday period will be made in accordance with Article 38 ET and other applicable regulations. For persons working in domestic employment, and in accordance with Article 8.5 of Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship of the family household service, which takes as a reference for the determination of the minimum wage of domestic employees who work by the hour, in an external regime, that set for temporary and seasonal employees and which includes all remuneration concepts, the minimum wage of these domestic employees will be 8.87 euros per hour actually worked. In the amounts of the minimum wage per

days or hours fixed in the previous sections, only the remuneration in cash is taken into account, without the wage in kind being able, in any case, to give rise to a reduction in the full amount in cash of the wages.

Finally, the Single Transitional Provision of the Royal Decree-Law on the minimum wage establishes clauses that do not affect the new amount of the minimum wage in the references contained in non-State regulations and private relations. Thus, in accordance with the express legal authorisation established in Article 13 of Royal Decree-Law 28/2018, of 28 December, for the revaluation of public pensions and other urgent measures in social, labour and employment matters, the new SMI amounts established in this RD will not be applicable: a) to the regulations in force on the date of entry into force of this Royal Decree of the Autonomous Communities, of the cities of Ceuta and Melilla and of the entities that make up the Local Administration that use the SMI as an indicator or reference of the level of income to determine the amount of certain benefits or to access certain benefits, benefits or public services, unless expressly provided otherwise by the Autonomous Communities themselves, by the cities of Ceuta and Melilla or by the entities that make up the Local Administration, b) to any contracts and agreements of a private nature in force on the date of entry into force of this Royal Decree that use the SMI as a reference for any purpose, unless the parties agree to apply the new amounts of the SMI.

5. Compensation and absorption of salaries

Wage levels are usually revised over time, usually in an upward direction. The minimum levels established in general by state regulation are usually revised upwards on a regular basis, as are the professional levels established by collective bargaining agreements. The question is whether the increase of the lower level is added to the higher ones or whether it is absorbed or compensated by the higher figures. The regulation of compensation and absorption of wages is carried out in Article 26.5 ET. It states that, "Compensation and absorption shall take place when the wages actually paid, as a whole and on an annual basis, are more favourable for the employees than those set in the reference regulatory or conventional order". This means that, as the SMI is established as the floor for the salary to be received by employees, if by agreement or by means of an employment contract the remuneration received by employees is more favourable than that established annually in the RD of the SMI, the salary will not increase by the percentage established in the RD of minimum salaries, as it continues to be higher. In such a way that compensation and absorption will take place until such time as the minimum wage is higher than the wage established in the agreement or contract.

Article 3 of Royal Decree 145/2024, of 6 February, which sets the minimum interprofessional wage for 2024, also clarifies aspects of compensation and absorption of wages, developing the provisions of the legal regulations. The rules for the application of compensation and absorption are as follows:

1. The revision of the minimum wage shall not affect the structure or the amount of the professional salaries that employees have been receiving when such salaries as a whole and in annual computation are higher than said minimum wage. The SMI in annual computation that will be taken as a term of comparison will be the result of adding to the minimum wage set in Art. 1 of this RD the payments referred to in Article 2, without in any case an annual amount of less than 15,876 euros being considered.

2. These payments may be compensated with the income that employees have been receiving for all concepts on an annual and full-time basis in accordance with legal or conventional rules, arbitration awards and individual employment contracts in force on the date of enactment of this RD.

3. The legal or conventional rules and arbitration awards in force on the date of enactment of this Royal Decree shall subsist in their own terms, without any modification other than that which is necessary to ensure the receipt of the amounts in annual computation resulting from the application of paragraph 1 of this article, and consequently, professional salaries lower than the indicated annual total shall be increased by the amount necessary to be equal to the latter.

The purpose of wage absorption and compensation is to avoid the overlapping of wage increases originating from different regulatory sources. If the figure resulting from a wage increase is still lower than what the employee receives, this figure remains unchanged, as the difference can be absorbed by the latter amount. On the other hand, if the wage increase exceeds the amount of the employee's salary, the latter has to be replaced by the new salary to make up the difference.

6. Form, place, manner and time of salary payment

The form, place, manner and time of payment of wages is generally laid down in Article 29 ET (settlement and payment). Wage settlement and payment shall be carried out in a timely manner. It must be documented, and it must be made on the agreed date and at the agreed place or in accordance with the customs and practices relevant to the company or sector of activity. As we will see below, the documentary form is reflected in the receipt for the payment of wages (the payroll). The date of payment is generally established in the applicable collective agreements. Normally, wages are paid from the 1st to the 5th of each month. However, in the employment contract, in the absence of conventional regulation, these or other terms may also be reflected. As for the agreed place of payment, this is the norm because, traditionally, it was paid at a specific place. It is important to take into account the fact that nowadays it is normal for wages to be paid by bank transfer, which provides a record of the specific event. However, it was normally paid at an agreed place, which was usually the company's premises at a time and place determined by company custom.

The settlement period may not exceed one month's work. The regulation also contemplates the possibility that the employee or his or her duly authorised legal representatives may receive advances on the payroll and on the work already carried out prior to the end of the month if the employee so requires. The settlement of the wages corresponding to those who provide services in jobs that are of a permanent-discontinuous nature, in the event of the conclusion of each period of activity, shall be carried out subject to the formalities and guarantees established in Article 49.2. Thus, in these cases, the employer, on the occasion of the termination of the contract, when notifying the employees of the termination of the contract, or, where appropriate, the advance notice of termination, must accompany a proposal of the document for the settlement of the amounts owed (settlement). Wage documentation shall be carried out by means of the delivery to the employee of an individual receipt justifying the payment thereof. The wage receipt shall conform to the model approved by the Ministry of Employment and Social Security unless, by collective agreement or, failing this, by agreement between the company and the employees' representatives, another model is established that contains, with due clarity and separation, the employee's different payments, as well as the legally applicable deductions. The wage receipt model is established in the Order of 27 December 1994 approving the individual wage receipt model.

If the employer is in arrears in the payment of wages, the interest for late payment of wages shall be ten per cent of what is due. In the case of the impossibility of providing the service, Article 30 ET establishes that, if the employee is unable to provide his services once the contract is in force because the employer is late in giving him work due to impediments attributable to the employer, the employee will retain the right to his salary, without being able to be made to compensate for the lost salary with other work carried out at another time.

The salary, as well as the delegated payment of social security benefits, may be paid by the employer in legal tender or by cheque or other similar means of payment through credit institutions, after informing the works council or personnel delegates. The salary is gross, and therefore acts as the basis for the legally applicable deductions and withholdings (tax and social security). These deductions must be made at the time of payment.

7. Salary protection

The Spanish legal system establishes a series of precepts aimed directly at protecting the employee's salary against the possible enforcement of the claims of the employee's creditors in respect of remuneration.

7.1. Salary non-attachment

Article 27. 2 ET dictates a rule of balance between the interests of the employee and those of his creditors. In such a way that the SMI, in its annual and monthly amount, is non-attachable. For the purposes of determining the above, both the period of accrual and the method of calculation will be taken into account, whether or not the proration of the special payments is included, guaranteeing the non-attachability of the amount that results in each case. In particular, if a bonus or special payment is received together with the monthly salary, the limit of non-attachability will be constituted by double the amount of the monthly minimum wage and in the event that the monthly salary received includes the proportional part of the special payments or bonuses, the limit of non-attachability will be constituted by the amount of the minimum wage in annual calculation prorated over twelve months. In this way, the employee's salary protection is established as an indispensable minimum.

Law 1/2000, of 7 January, on Civil Proceedings (BOE nº. 7, of 08/01/2000), in its Art. 607 regarding the attachment of salaries and pensions, reiterates the unattachable nature of the salary, wage, pension, remuneration or its equivalent, which does not exceed the amount indicated for the SMI. If the executed party is the beneficiary of more than one payment, all of them will be accumulated in order to deduct the unattachable part only once. In such a way that salaries, remuneration or pensions that are higher than the SMI will be seized according to the following scale: 1st) For the first additional amount up to that which represents the amount of double the SMI, 30 per cent. 2nd) For the additional amount up to the amount equivalent to a third SMI, 50 per cent. Third) For the additional amount up to the amount equivalent to a fourth SMI, 60 per cent. Fourth) For the additional amount up to the amount equivalent to a fifth SMI, 75 per cent. Fifth) For any amount exceeding the above amount, 90 per cent.

7.2. Salary credit privileges

Article 32 ET establishes the guarantees for employees' wages. In such a way that, in the face of possible competition with other creditors of the employer, a series of preferences are established for collection in the face of the different situations of risk for the employee caused by the employer:

1. Wage claims for the last thirty days of work and in an amount not exceeding twice the minimum wage shall take precedence over any other claim, even if the latter is secured by pledge or mortgage. This is a maximum level of protection.

2. Wage claims shall take precedence over all other claims in respect of objects produced by employees as long as they are owned or held by the employer. Medium level of protection.

3. Wage claims not protected in the previous sections shall have the status of singularly privileged in the amount resulting from multiplying three times the minimum wage by the number of days of salary pending payment, enjoying preference over any other claim, except for claims in rem, in the cases in which these, in accordance with the law, are preferential. The same consideration shall apply to severance pay in the amount corresponding to the legal minimum calculated on a basis not exceeding three times the minimum wage. Third level of protection.

The period for exercising the preferential rights of the wage claim is one year, starting from the time when the wage should have been received, after which time these rights will lapse. The preferences recognised by the rule will be applicable in all cases in which, although the employer is not declared bankrupt, the corresponding claims concur with one or more other claims on the employer's assets. In the event that the company has been declared bankrupt, the provisions contained in Royal Legislative Decree 1/2020, of 5 May, approving the revised text of the Bankruptcy Law, relating to the classification of claims and to enforcement and seizures, shall apply.

Thus, we can distinguish between two possible stages: 1st) a company with financial problems vis-à-vis creditors outside a bankruptcy situation and, 2nd) a company already immersed in bankruptcy proceedings declared by a judge. In the first case, the rules of the ET apply and, in the second, the provisions of the Insolvency Act apply. Both cases involve a process of liquidation of debts or monetary execution in which the relevant preferences for collection must be established. Insolvency proceedings may be declared at the request of the debtor entrepreneur himself (voluntary insolvency proceedings) or at the request of his creditors (necessary insolvency proceedings). The management of the company is no longer in control of the company and the functions are transferred to the insolvency administrators. The problem for employees in the event of insolvency proceedings in relation to wages is that outstanding wage claims must be claimed and paid within the joint operations for all creditors in accordance with insolvency law. Labour claims can have different classification and different order of recovery.

7.3. Guaranteed salary fund (FOGASA)

The protection systems analysed above are not always sufficient to ensure that the employee receives the corresponding income. Faced with this possibility, this system has been created, which applies to both the wage credit and the compensation credit, anticipating or assuming payment in advance when the employer lacks liquidity or assets. Article 33.1 ET establishes that the Wage Guarantee Fund (FOGASA) is an Autonomous Body attached to the Ministry of Employment and Social Security, which has its own legal personality and capacity to act for the fulfilment of its purposes. One of the most important of these is the payment to employees of the amount of wages pending payment due to the insolvency or bankruptcy of the employer. Wages are considered to be the amount recognised as

such in conciliation proceedings or in a court decision for all the concepts referred to in Article 26.1 ET, as well as the wages for processing in the cases in which they legally apply, without FOGASA being able to pay, for either concept, jointly or separately, an amount greater than the amount resulting from multiplying double the daily minimum wage, including the proportional part of the extraordinary payments, by the number of days of wages pending payment, with a maximum of 120 days.

FOGASA will pay compensation recognised as a result of a judgement, order, judicial conciliation or administrative resolution in favour of employees due to dismissal or termination of contracts in accordance with Articles 50 ET (termination at the employee's will), 51 ET (collective dismissal), 52 ET (termination of the contract for objective reasons), 40.1 ET (geographical mobility) and 41.3 ET (substantial modifications of working conditions), and termination of contracts in accordance with Articles 181 (termination in the event of agreement) and 182 (termination in the event of no agreement) of the consolidated text of the Insolvency Act, approved by Royal Legislative Decree 1/2020, of 5 May, and Article 11. 2 of Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship of the family home service, as well as compensation for termination of temporary or fixed-term contracts in the legally applicable cases. In all cases, with the maximum limit of one year's salary, except in the case of Article 41.3 ET, in which the maximum limit will be 9 monthly payments and in the case of Article 11.2 of Royal Decree 1620/2011, of 14 November, in which the limit will be 6 monthly payments, without the daily salary, the basis for the calculation, exceeding twice the minimum wage, including the proportional part of the special payments. The amount of compensation, for the sole purpose of payment by FOGASA for cases of dismissal or termination of contracts in accordance with Articles 50 and 56 (unfair dismissal), shall be calculated on the basis of thirty days per year of service, with the limit set in the previous paragraph. In the case of bankruptcy proceedings, as soon as the existence of labour claims is known or the possibility of their existence is presumed, the judge, either ex officio or at the request of a party, shall summon FOGASA, without which FOGASA shall not assume the obligations indicated in the previous paragraphs. The Fund shall appear in the case file as a subsidiary legally liable for the payment of the aforementioned claims, and may request whatever it deems appropriate and without prejudice to the fact that, once this has been done, it shall continue as a creditor in the case file.

For the purposes of the payment by FOGASA of the amounts recognised in favour of the employees, the following rules shall be taken into account: a) without prejudice to the cases of direct responsibility of the body in the legally established cases, the recognition of the right to the benefit shall require that the employees' claims appear on the list of creditors or, as the case may be, recognised as debts of the masses by the bankruptcy body competent to do so in an amount equal to or greater than that requested from FOGASA, without prejudice to the obligation of the employees to reduce their claim or to reimburse the Fund the corresponding amount when the amount recognised on the final list is less than that requested or that already received, b) the compensation to be paid by FOGASA, regardless of what may be agreed in the insolvency proceedings, shall be calculated on the basis of twenty days per year of service, with the maximum limit of one year's salary, without the daily salary, the basis for the calculation, exceeding twice the minimum wage, including the proportional part of the special payments, c) in the event that the employees receiving this compensation request FOGASA to pay the part of the compensation not paid by the employer, the limit of the compensation benefit payable by the Fund shall be reduced by the amount already received by them.

FOGASA will assume the obligations specified in the preceding paragraphs, subject to the prior investigation of the proceedings to verify their appropriateness. For the reimbursement of the amounts paid, FOGASA will be compulsorily subrogated to the rights and actions of the employees, retaining the privileged nature of the credits conferred on them by Article 32 ET. If these claims concur with those that the employees may retain for the part not paid by the Fund, both will be paid pro rata to their respective amounts. This subrogation constitutes a legal mandate, as it is a matter of public interest. This enables FOGASA to place itself in the position of the employees concerned as the holders of the corresponding claim against the company, and gives it the possibility of bringing appropriate actions against the company with a view to recovering the sums paid. FOGASA is financed by the contributions made by all the employers referred to in Art. 1.2 ET, whether they are public or private. The contribution rate will be set by the Government on the wages that serve as the basis for calculating the contribution to cover the contingencies arising from accidents at work, occupational illnesses and unemployment in the Social Security system (annually in the Quotation Order). The insolvency of the employer shall be deemed to exist when, once enforcement has been requested in the manner established by LRJS,

satisfaction of the labour claims is not obtained. The decision stating the declaration of insolvency shall be issued after hearing the FOGASA. The right to request from FOGASA the payment of the benefits resulting from the previous sections shall expire one year after the date of the conciliation act, judgement, order or resolution of the labour authority in which the debt for wages is recognised or the compensation is fixed. This period shall be interrupted by the exercise of enforcement actions or actions for recognition of the claim in bankruptcy proceedings and by the other legal forms of interruption of the limitation period.

FOGASA shall be considered as a party in the processing of arbitration proceedings, for the purposes of assuming the obligations provided for in this article. It shall waive the protection regulated in this article in relation to the unpaid claims of employees who work or have habitually worked in Spain when they belong to a company with activity in the territory of at least two Member States of the European Union, one of which is Spain, when the following circumstances jointly concur: a) a request has been made for the opening of collective proceedings based on the insolvency of the employer in a Member State other than Spain, provided for by its legal and administrative provisions, involving the partial or total divestment of the employer and the appointment of a liquidator or person exercising a similar function, b) proof that the competent authority has decided, in accordance with those provisions, to open the procedure; or that it has verified the definitive closure of the employer's undertaking or place of business and the insufficiency of the assets available to justify the opening of the procedure.

Where FOGASA is responsible for the protection of unpaid claims, it shall request information from the guarantee institution of the Member State in which the collective insolvency proceedings are being conducted on the outstanding claims of the employees and on the claims satisfied by that guarantee institution and shall request its cooperation in ensuring that the sums paid to the employees are taken into account in the proceedings and in securing the reimbursement of those sums. In the event of insolvency proceedings requested in Spain in relation to a company with activity in the territory of at least one other Member State of the European Union, in addition to Spain, FOGASA will be obliged to provide information to the guarantee institution of the State in whose territory the employees of the company in a state of insolvency have carried out or habitually carry out their work. In particular, they must inform it of the employees' outstanding claims, as well as those paid by FOGASA itself. Likewise, it shall provide the competent guarantee institution with the collaboration required in relation to its intervention in the procedure and the reimbursement of the amounts paid to the employees.

FOGASA will proceed with the investigation of a file to verify the validity of the wages and compensation claimed, respecting in all cases the limits provided for in the regulation. Once the proceedings have been completed, the competent body will issue a decision within a maximum period of three months from the date the application was submitted in the proper form. The interested party must be notified within 10 days of the date on which the decision was issued. Once this period has elapsed without an express decision having been issued, the applicant may consider the application for recognition of the obligations charged to FOGASA to have been accepted by administrative silence, and under no circumstances may the recognition of obligations be obtained by silence in favour of persons who cannot legally be beneficiaries or for an amount greater than that resulting from the application of the limits set out in the previous sections. The nature and organisation of FOGASA, the contribution and benefit system, the procedure and actions for subrogation before the body, etc. are regulated in Royal Decree 505/1985, of 6 March, on the organisation and operation of the Wage Guarantee Fund (BOE nº. 92, of 17/04/1985).