# CARING FOR THE CAREGIVER:

A Code of Good Practices for the Domestic and Care Work Sector



SEDOAC

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# 1. INTRODUCTION

## Why a "Code of Good Practices"?



We must remember that an employment relationship is one in which a person voluntarily provides services on behalf of another person (an employer), under the employer's direction, in exchange for monthly compensation known as a salary [1].

EIn the specific case of the employment relationship involving domestic work and caregiving, it is a labour relationship working for others between the head of a household and a domestic worker who provides services in the household (of any kind) to perform tasks related to running the household, as well as caring for its members, gardening, driving, etc [2].

As we can see, this employment relationship exists between private individuals—that is, between employers and employees—although, as we will see later, other entities are or may be involved.

From this point on, we will refer to domestic and care workers using the feminine form—that is, as female domestic and care workers—since, according to data from the Court of Justice of the European Union's judgment of February 24, 2022, C-389/20, 96% of workers in this sector for whom data is available are women.

In addition, it is important to note that, according to data from the Empowerment Center for Domestic and Care Workers – CETHYC and the 2024 legal report, 96.66% of the people that were attended were women, of whom 56% were live-in workers, and of those, **80% were not registered in the Social Security.** In the same report, but covering the year 2025, we found that approximately 1 in 2 domestic workers, overall, are not registered in Social Security.

By 2026, the regularization process has had a very significant impact, since—as will be seen in the report we are publishing—we are receiving a very high volume of consultations related to the fact that female workers already have their Foreign Citizens Identification Number (NIE), but their employers either do not want to register them with Social Security or they want to register them for fewer hours (under contribution).

As we can see—and as we have noted in our reports based on CETHYC's daily work—we are dealing with a sector—the care sector—that is clearly feminized, carried out mostly by migrant women, where a huge number of people are not registered in Social Security, and where there is a very significant and concerning violation of labor rights.

1. Art. 1.1 ET (RDL 2/2015)
2. Art. 1 del RD 1620/2011.

In this regard, it is worth noting, by way of illustration, that of the legal consultations conducted at CETHYC during the period from 2024 to 2025, nearly 40% were related to salary below the SMI[3], or the employers were not making the correct Social Security contributions (under contribution) or they reduced the employee's hours without their consent following the increase of the SMI in order to pay lower contributions (a substantial change in working conditions in violation of Article 41 of the Statue of Workers Rights).

It is also remarkable that, according to CETHYC data—which is consistent with reports from international organizations—90% of male workers in the sector are engaged in gardening, driving, and maintenance, and to a much lesser extent in caregiving, which remains overwhelmingly in the hands of female workers.

Thus, the conclusion is that, notwithstanding certain measures that have been adopted in recent years by the Spanish State, care work is being left in the hands of women—mostly migrants—in a genuine and flagrant violation of their labor rights, under regulations that grant them fewer rights than those of workers employed by others outside the domestic and care work sector, all of this despite the entry into force of ILO Convention No. 189 in February 2024, which provides for full equality of rights with respect to any other worker employed by others.

In this regard, it is worth noting that not only has there been violations of workers' labor rights by employers, but the State itself has been violating the fundamental rights of domestic and care workers for many years by excluding them from both the contributory and non-contributory unemployment insurance systems, as well as from FOGASA benefits[4], mandatory time tracking, occupational hazards, the tiered contribution system, the system for terminating employment relationships, and a long list of etc.

Thanks to the long and arduous struggle and mobilization of domestic and care workers, along with the CJEU ruling of February 24, 2022, which held that the exclusion of domestic and care workers from unemployment benefits constituted gender-based discrimination; in recent years, (2022–2024), several regulations have been enacted that have amended Royal Decree 1620/2011 of November 14, as well as the ratification of Convention No. 189 of the International Labor Organization, which has represented a positive step toward achieving equal rights for workers in the care and domestic work sectors compared to other workers employed by others.

3. Salario Mínimo Interprofesional
4. Fondo de Garantía Salarial (art. 33 ET)

Given this background, we believe it is absolutely necessary to develop a code or guide of good practices to care the caregivers, because the State has long neglected the care sector, leaving it in the hands of private entities that abuse and take advantage of lax regulations and the vulnerable situation of migrants to violate the basic and fundamental rights of domestic and care workers.

We want a sector that is clean, legal, transparent, responsible, and trustworthy. Care is so inherent to being human that it is imperative to give it the importance it deserves—which is everything. The undervaluation of care is neither justifiable nor acceptable, and even less so when it has always been delegated to women because of the logic and culture of patriarchy in our society.

Therefore, we cannot say that we live in a state governed by the rule of law if we allow and accept that the reality of caring for our elderly, our children, the home, etc., is left in the hands of exploited women, with employers who refuse to pay social security contributions and a State that refuses to assume its responsibility by implementing a modern, ambitious, democratic, and egalitarian care policy that eliminates labor exploitation of the women who make up the majority of the workforce in this sector. All individuals, entities, organizations, companies, and administrations must become aware of and respect, guarantee, and promote the rights of domestic and care workers, because a society that does not care for its caregivers can never call itself a just society.

That is why, with this guide, we at CETHYC—a project of the Active Domestic Work Association (SEDOAC)—have set the following objectives:

- We want a sector that is clean, transparent, lawful, responsible, trustworthy, and that respects the dignity of workers.
- We want to inform, educate, and empower not only domestic workers but also employers and other professionals and stakeholders in the sector so that they understand how the employment relationship works and ensure that this relationship is conducted with the professionalism, seriousness, dignity, and safeguards it deserves for all parties.
- We want to raise awareness among employers that domestic and care workers have basic rights, and that it is mandatory to respect these rights—just as it is important to recognize them—in order to avoid harmful consequences such as under contributions which cause so much harm to workers, just as workers must fulfill their contractual obligations.

- We want to share our knowledge and make it available to all stakeholders in the sector, including administrations, the judiciary, associations, intermediaries, businesses, and other professionals who encounter the sector.

- We want to raise awareness among members of society that caregiving is the most important job of all, since it is the foundation for the development of society.

- We want to raise public awareness that, because this is such an important work, it must be carried out in a transparent manner and with the necessary legal certainty for all parties involved.

- We want to raise awareness that if the State has placed caregiving to domestic and care workers, we have a legal, ethical, and social obligation to take care of our caregivers.

# 2. Pre-contract issues:

# JOB INTERVIEW



The job interview is very important for both parties in the employment relationship within the home care and in-home assistance sectors, as it is the moment when information is exchanged about both the employee and the employer, as well as the nature of the work to develop.

For this reason, it is of the utmost importance that the information provided be accurate and clear, and that questions focus on the skills to develop in the job rather than on personal matters or issues that could constitute any form of discrimination based on gender, nationality, ethnicity, ideology, religion, or any other social condition or of any other nature.

Therefore, whether a company or a household employer, we recommend:

## GOOD PRACTICE #1



The information provided by both parties must be accurate. Questions asked of the employee must NEVER constitute discrimination based on gender, origin, or any other social condition or of any other nature. Personal questions such as "Do you plan to get married and have children?" must be avoided, since these questions, insofar as they violate fundamental rights, are null and void and have nothing to do with the actual provision of services.

## GOOD PRACTICE #2:



Try to include as much information as possible in writing in the contract, the occupational hazard report, and any attachments to provide **greater guarantee for both parties.** Establishing a specific 40-hour workweek and its schedule will help both sides clearly understand which tasks need to be performed. It isn't necessary to go into a maximum detail, but establishing the work schedules—including breaks and hours on duty—will always provide greater certainty for both parties, and these schedules can always be modified over time by mutual agreement to ensure greater adaptability. For example: for a live-in worker with a 40-hour workweek plus 20 hours of on-site presence from Monday through Friday, distributed as follows: from 9 a.m. to 1 p.m., breakfast and general cleaning; from 2 p.m. to 4 p.m., lunch; from 4 p.m. to 6 p.m., break; and from 6 p.m. to 10 p.m., on-site time and dinner. This is a very simple and general example; ideally, the more detail, the better.

It is also good practice to designate a contact person in case of emergencies, provide information about the insurance provider, and include any other details that are relevant to ensuring greater legal certainty between the parties. Finally, it is highly beneficial and recommended to put in writing a breakdown of the specific tasks to be performed.

# Access to Employment

## *Fake Employment Agencies*

In the home care and domestic work sector, family members—regardless of the family structure—may act as direct employers; that is, they may hire a domestic worker directly, or they may use public services or duly authorized employment agencies as intermediaries[5].

At CETHYC, we have identified a series of "bad practices" consisting of:

- Individuals who pose as employment agencies but are NOT duly authorized. They enter into contracts with families, charging them a monthly fee while posing as an employment agency; these individuals then employ domestic workers who are either unregistered or registered but working under absolute precarious conditions.

Caution must be exercised to avoid this practice, both for the worker and the employer, since it could constitute an *illegal transfer of workers*[6], and solidary liability could be imposed on both the person posing as a staffing agency and the family, in addition to very severe administrative sanctions.

This means that the worker could claim all her labor rights, wages, social security contributions, and compensation in full to both: the person or persons posing as an employment agency and the family.

In addition, according to Article 8.2 of the Royal Legislative Decree 5/2000 of 4 August, approving the consolidated text of the Law on Infringements and Sanctions in the Social Order (LISOS), classifies illegal labor transfer as a very serious infringement of labor relations laws and establishes a financial penalty ranging from €7,501 to €225,018[7].

5. Art. 4.1 RD 1620/2011.
6. Art. 43 ET (RDL 2/2015)
7. Art. 40.1c) LISOS (RDL 5/2000)

## GOOD PRACTICE:



As an employee, you should make sure to gather all the necessary information during the interview or when you're offered the job by the person you'll be working with; you must request that person's details (first name, last name, ID number, and address). Similarly, a family interested in hiring someone to provide a domestic worker should ask that person to provide proof that they are a duly accredited employment agency to avoid problems.

### *Community of Madrid Aid Bond*

Another bad practice is one that is occurring in connection with the Community of Madrid's aid bond for hiring domestic workers to provide care for others, whereby, in order to collect the subsidy and make a profit, a small portion of the hours (4 to 8 hours per week) is registered with Social Security under a company acting as the employer, while the remaining hours (32 to 36 hours) are registered under the head of the household.

This practice is used to justify the charge of the aid bond[8], but this constitutes a bad practice because it implies that the worker has two employers, which—for the purposes of filing Form 100 for Personal Income Tax (IRPF)— that is, the "annual income tax return"—means that if she earns more than a certain annual income (currently the minimum professional salary), it will result in a huge tax disadvantage for this worker, who will likely have to pay a fortune to the tax authorities.

## BAD PRACTICE:



It is imperative that the legislative authority address this issue and change the regulations, because it means that a worker who exceeds the legally established limit and has two or more payers (keep in mind that Public Employment Service - SEPE - is also considered a payer) may end up having to pay one or two monthly installments of her newly acquired unemployment benefits to the tax authorities.

It is unacceptable that people who consistently earn around the minimum professional salary (keep in mind that, as of today, collective bargaining is not recognized in Spain for domestic and care workers) should pay taxes at the same rate as people who earn 30,000 euros or more per year.

8. Resolution of the Governing Council, dated May 24, 2023, approving the regulatory provisions and establishing the procedure for the direct award of grants under the incentive program for the hiring of domestic workers to promote work-family balance.

On the other hand, there is a situation of multiple jobs in the workplace, and there is also a situation of **under contribution**, since by registering fewer than 40 hours through a domestic employer. This means they will fall into lower contribution ranges than the €1,424.50 threshold and therefore will pay less contributions to Social Security than if they were working full-time directly for the company or directly for the family as a whole.

Furthermore, since the aid bond is tied to the care of people—generally dependents—this bad practice typically affects live-in workers, who are disadvantaged in this way, as their actual hours worked are not even recognized, nor are they being paid or having Social Security contributions made on their behalf.

And as in the previous case, this may constitute an irregular form of employment, and therefore Article 43 of the Statue of Worker Rights may apply regarding a possible illegal transfer of workers.

## GOOD PRACTICE:



Employers should process the aid bond through professionals who ensure that no changes are made to the employee's contract or Social Security contributions and should avoid companies that manage this bonus in a self-serving and harmful manner. Employees should review their employment history and contribution bases and ensure that the Social Security alert system is activated to prevent changes from being made without their consent.

## What happens if I work for a home care company as a domestic worker?

It is important to understand that a domestic and care worker hired by a company operating in the home care sector is not subject to the regulations governing domestic and care workers—that is, the aforementioned Royal Decree 1620/2011 of November 14—but rather to **"general" labor regulations**, that is, the employment contract will be governed by the Collective Bargaining Agreement for Home Care Services in the location where the service is provided, the Statute of Workers Rights, and other applicable regulations.

In this case, it is important to examine the differences that exist, using the Community of Madrid's Collective Bargaining Agreement for Home Care Services for 2024–2028 as an example:

- The maximum work dates (i.e., a full work dates) is 36 hours, and starting in 2026, it will be 35 hours, not 40 hours.
- Vacation time is 31 calendar days, not 30 calendar days.
- The gross annual salary for a home care aide (35 hours) is €18,188.89 per year, including bonuses, while for a domestic worker is the minimum professional salary €17,094 per year.

As these three examples show, the salary that a female worker providing services through a company should receive **is higher than the minimum professional salary, and she must work fewer hours.**

At CETHYC we have found that there are many workers—both external and internal—who work far more hours than the maximum set by the collective bargaining agreement (35 hours starting in 2026). And since the work they perform is that of a domestic worker and caregiver—even if they are referred to as "home care aides"—they are paid and have their social security contributions calculated based on the minimum professional salary, which results in domestic workers earning less and contributing less to Social Security.

## GOOD PRACTICE:

These companies must comply with the provisions of the collective bargaining agreement and basic labor standards so that work can be carried out with the maximum safeguards for both parties.

# Prohibition of Discrimination in Access to Employment

A **good practice** is to avoid discriminating against people when they seek employment.

Not only is it a good practice, but it is also a legal obligation, given that gender-based discrimination is strictly prohibited under national and international law; for example, at the international level, Articles 2 and 23 of 1948 Universal Declaration of Human Rights (UDHR) or Article 11 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or, at the European level, Articles 20 and 21 of the Charter of Fundamental Rights of the European Union or the very important Directive 2006/54/EC of the European Parliament and of the Council of July 5, 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, Directive 79/7/EEC of December 19, 1978, on the progressive implementation of the principle of equal treatment between men and women in matters of social security, among others.

Similarly, in this regard and at the national level in the Spanish State, we have Article 14 of the Constitution, which prohibits discrimination on any grounds, and the Comprehensive Law 15/2022 of July 12, on Equal Treatment and Non-Discrimination, which states in Article 2.1:

"*1. The right of every person to equal treatment and non-discrimination is recognized, regardless of nationality, whether they are minors or adults, or whether they have legal residency. No one may be discriminated against on the basis of birth, racial or ethnic origin, sex, religion, belief or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to diseases and disorders, language, socioeconomic status, or any other personal or social condition or circumstance.*"

Thus, this prohibition extends to labor relations, from access to employment to the end of the employment relationship[9].

## GOOD PRACTICE:



That employers and employment agencies take the job postings they publish and the interview process very seriously, and do not discriminate against domestic workers for any reason.

9. Article 9 Comprehensive Law 15/2022 of July 12, on Equal Treatment and Non-Discrimination.

# 3. EMPLOYMENT CONTRACT



An employment contract is a legal document that sets forth the personal information of the parties and the terms and conditions of employment, that is, the rights and obligations of the parties in the employment relationship.

It is important to remember that establishing conditions that are less favorable than those set forth by law or collective bargaining agreements is NULL AND VOID and illegal, since workers **have rights that they CANNOT waive.**

**For example:**

A family hires someone to work 40 hours a week doing routine housework. The work schedule is set from 10 a.m. to 6 p.m., and the gross salary is the minimum professional salary (€1,424.50 for 2026), gross, including bonuses. However, they decide to specify in the contract that vacation time will be 20 days per year because, due to their needs, they cannot provide 30 days of vacation.

Well, in this case, the fact that an employee agrees and signs off on taking 20 days of vacation per year does NOT prevent her from later claiming her legal right to 30 calendar days per year.

This is because labor rights are not granted by employers on a whim; Articles 9 and 3.5 of the Statute of Workers Rights stipulate that workers may not waive or dispose of the rights established by law or collective bargaining agreements, either before or after acquiring them. In other words, these rights are granted by law and entail obligations for employers.

**Another example:**

Let's say a family decides to hire a domestic and care worker who isn't registered with Social Security because her documentation isn't in order. She lives in and works from 9 a.m. to 10 p.m., with a two-hour break Monday through Friday; on Saturdays, she works from 9 a.m. to 2 p.m., then leaves, and on Sunday she returns to live in at 9 p.m. They pay her €1,100 a month in two half-payments. After some time, the worker asks her employers to raise her pay to the minimum professional salary because she has heard from other people and on the radio that the minimum salary has gone up. The family tells her no because, since she doesn't have papers, she has no rights and has agreed to be paid €1,100; if she doesn't like it, she can leave.

This, which unfortunately is quite common, is an example of a family denying a worker's labor rights simply because she lacks legal documentation. Well, the worker can assert her labor rights before the Labor and Social Security Inspectorate and/or the Social Jurisdiction, **since the fact that she does not have authorization to reside and work does NOT prevent her from having exactly the same labor rights as everyone else, regardless of whether she accepted those conditions.**

These cases are just excuses made by unscrupulous employers who don't want to register their employees in Social Security and don't want to pay to have someone providing a service as essential as caregiving nearly 24 hours a day and almost the entire week.

Therefore, in conclusion, any clause—whether written or verbal—that establishes working conditions inferior to those required by law **entitles a worker to file a legal claim against employers, who are obligated to comply with the law.**

## What form must an employment contract take?

According to Article 5.1 of Royal Decree 1620/2011, the form of the contract is as follows:

*"1. An employment contract may be entered into in writing or orally. It must be entered into in writing when required by law for a specific type of contract. In any case, fixed-term contracts with a duration of four weeks or more must be in writing."*

Furthermore, it is important to note that there is a **presumption** that, in the absence of a written contract, the employment is full-time and permanent. In other words, unless there is evidence to the contrary regarding the temporary nature and part-time status of the employment, **all employment relationships are considered full-time and permanent.**[10]

In addition, it is worth quoting the exact wording of Article 5.4 of RD 1620/2011:

*"4. When the duration of the employment relationship exceeds four weeks, the employee must receive information regarding the essential elements of the contract and the main conditions governing the performance of the work if these are not included in the written contract, in accordance with the provisions of Royal Decree 1659/1998, of July 24, which implements Article 8, paragraph 5, of the Statue of Workers Rights regarding information to be provided to the employee on the essential elements of the employment contract.*

In addition to the matters referred to in Article 2.2 of Royal Decree 1659/1998, such information must include:

10. Article 5.2 RD 1620/2011 and 8.2 RD 2/2015 23 of Octubre of the Statue of Workers Rights.

Wage benefits in kind, when their provision has been agreed upon.

b) The duration and distribution of the agreed-upon hours of presence, as well as the system of remuneration or compensation for them.

c) The rules governing overnight stays by the domestic worker at the family residence, if applicable."

In other words, we note that there is a LEGAL obligation for employers and companies to provide the essential elements of service delivery.

In addition to the above, Convention No. 189 of the International Labor Organization (ILO) entered into force in February 2024. The purpose of this international convention is for the signatory states to bring the working conditions of domestic and care workers in line with those of other workers.

Thus, this convention establishes the obligation of member states to ensure that the following information is provided, preferably in writing:

- *"(a) the name and address of the employer and of the worker;*
- *(b) the address of the usual workplace or workplaces;*
- *(c) the starting date and, where the contract is for a specified period of time, its duration;*
- *(d) the type of work to be performed;*
- *(e) the remuneration, method of calculation and periodicity of payments;*
- *(f) the normal hours of work;*
- *(g) paid annual leave, and daily and weekly rest periods;*
- *(h) the provision of food and accommodation, if applicable;*
- *(i) the period of probation or trial period, if applicable;*
- *(j) the terms of repatriation, if applicable; and*
- *(k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer"*[11].

11. Article 7 C-189 ILO.

Consequently, based on the foregoing, we can draw the following conclusion:

## GOOD PRACTICE:



That employer—whether households or companies—set forth in writing, as clearly as possible, all information regarding the personal data of the parties as well as the specific services to be provided.

If this requirement is not met, it should be noted that Article 5.3 of Royal Decree 1620/2011 of November 14 authorizes either party to require that the employment contract be formalized in writing.

## BAD PRACTICE:



Failing to draw up a written contract or omitting essential elements or information required by the preceding articles and regulations. In this case, domestic and care workers can use legal mechanisms to compel the employer to formalize the contract in writing **even if the domestic worker does not have a residence and work permit, or even if she has not been registered in Social Security!**

# I work at different locations under the same employment contract—is that okay?

There is no doubt that subcontracting in the domestic and caregiving sector is not a situation that can occur between individuals, except in the case of duly authorized employment agencies, as we have seen previously.

But what happens in cases where a person is registered with Social Security for 40 hours but works in different homes under that employment contract?

This is a practice that should be avoided, as it may constitute an illegal transfer of workers under Article 43 of the Statue of Workers Rights. The High Court of Justice of Catalonia ruled on this matter[12] in the case of an employer who had hired a worker who also provided services at his daughter's home.

12. STSJCat 14 October 2008.

In the aforementioned judgment, among others, there is no doubt that this is an anomalous situation and that, for the hours she worked at her daughter's home, she was entitled to a contract and Social Security register separate from her father's; therefore, the court determined that both parties were jointly and severally liable for all debts and classified the facts as an illegal transfer of workers. Furthermore, with the entry into force of Royal Decree 893/2024 of September 10, which regulates occupational safety and health in the context of domestic service, this makes even more sense, since an occupational risk assessment report must be prepared for each household and each type of work performed; consequently, it stands to reason that this risk assessment report should be conducted for each employment contract.

Let's remember, as we've mentioned before, that it's important to keep in mind that the law classifies the illegal transfer of workers as a VERY SERIOUS offense and establishes sanctions ranging from €7,501 to €225,018[13].

## BAD PRACTICE:



When a group of friends decides to share a worker, they register her with Social Security under a single contract in one person's name, even though she provides services at multiple residences. If a worker has an employment contract tied to caring for a person and/or a home, she cannot provide services at another residence, even if it belongs to a family member.

## GOOD PRACTICE:



An individual employment contract must be drawn up for each service provided at each household, with the corresponding Social Security registration.

13. Article 8.2 and 40.1c) LISOS (RLD 5/2000).

# Is there a probationary period for home care work?

The probationary period is a timeframe that must be specified in the employment contract and allows either party to terminate the employment relationship for no other reason than to notify the other party that the employment relationship is being terminated due to failure to complete the probationary period.

It is clear that, since this is a type of termination "without cause," it cannot be used to conceal a dismissal based on discriminatory grounds or to conceal a violation of fundamental rights—such as an employer taking advantage of the situation to end a probationary period upon learning that an employee is pregnant[14].

In any case, **the probationary period may not exceed 2 months; it must be set forth in writing from the beginning of the employment relationship, and either party must provide 7 days' notice before terminating the employment for this reason[15].**

Does this mean that an employee can resign at the end of the probationary period? That's right. As we've said, the probationary period is a time during which the employer evaluates the employee's job skills, and the employee verifies that the conditions discussed during the interview and/or agreed upon in the employment contract are being met. Therefore, **the end of the probationary period applies to both.**

WARNING! Only the end of the probationary period at the employer's discretion would make you eligible to apply for unemployment benefits.

So, what's the difference between a worker's probationary period ending and her resigning from her job?

In both cases, the employee is NOT eligible for unemployment benefits, since she is not legally considered unemployed—it is the employee herself who has decided, of her own free will, to terminate the employment contract. If the employee is a domestic worker providing care directly to a family, she must give 7 days' notice to end the probationary period and 15 days' notice in the case of voluntary resignation or termination of employment; however, if, for example, a worker is employed by a company that provides home care or similar services, and the worker requests to end the probationary period, then one must consult the collective bargaining agreement to see if there is an established notice period or, in any case, Article 14 of the Statue of Worker Rights (SWR), **which does not specify a particular notice period.**

14. Article 14.2 SWR
15. Article 6.2 del RD 1620/2011.

Although it is not always possible, it is advisable to provide advance notice when ending a probationary period so that both parties have a minimum amount of time to plan.

## Term of the Employment Contract

In principle, the term of the employment relationship in domestic and care work must be indefinite, unless there is a valid reason for a temporary contract as established in the basic legislation, namely, the Statue of Worker Rights (SWR).

Therefore, if no specific terms are established, no written contract is in place, or the employee works without being registered with Social Security, **the employment relationship will be considered permanent and full-time**[16], unless there is evidence to the contrary regarding its temporary nature.

Therefore, in this type of employment relationship, it is typical to have a permanent employment relationship due to the very nature of the services provided.

For a fixed-term employment contract to be valid, there are two specific options:

- Production-related reasons. We're not saying it can't happen, but in this sector, it's very difficult to convince anyone that there's a mismatch in the need for permanent employment due to an unforeseeable and occasional increase in activity. Above all, it is difficult to justify; **therefore, we do not recommend this type of hiring, since it must be clearly stipulated in the employment contract and must be justifiable before a judge or the Labor Inspectorate if required. Thus, to avoid potential problems or disputes arising from this, it is best to offer a permanent contract.**
- Replacement of an employee (temporary position). In this case, a contract to replace an employee may be permitted in the sector, **provided that the employee's position is reserved, and the employment contract clearly specifies the person being replaced and the justifiable reason.**
- Other situations. There may be other situations, such as the need to hire someone on a temporary basis because housing is available only temporarily; however, in general, each case must be evaluated individually. We recommend entering into permanent contracts to avoid problems.

16. Articles 8.2 and 15.1 SWR.

## But in the case of replacing an employee whose position is reserved, when is the position considered reserved?

These are circumstances in which an employee does not perform work for a legally recognized reason but is required to return to their job as soon as that reason ceases to exist (for example, temporary incapacity, mandatory leave of absence, substitution to cover a legally mandated reduction in working hours, pregnancy, maternity/paternity leave, etc.).

It is very important for employers to exercise great caution when choosing this type of employment contract, since if the requirements for a temporary contract are not met —whether because the grounds are insufficient, the employee has continued to work after the grounds no longer apply, or the grounds are not genuine—the result is that the contract constitutes **fraud**, and therefore **the employment relationship will be considered permanent for all purposes.**

These types of contracts are indeed more common in companies within the sector, as they have a workforce of employees and it is normal for situations to arise that require replacement.

Let's look at an example of the consequences of failing to clearly state the reason for the contract:

> Suppose I am a household employer, and I decide to offer my employee a 6-month temporary contract due to production needs, but I do not specify the reason for the hiring in the contract. When the time comes, I give advance notice and inform my employee that her temporary contract is ending. However, since there is no valid reason for the contract to be temporary, that employment relationship is deemed to be indefinite due to fraud; consequently, the termination of the temporary contract would constitute an unjustified dismissal and would entitle the employee to claim severance pay of 33 days per year of service[17].

We must remember that **temporary employees have the same rights as permanent employees and should not face discrimination or have their rights curtailed simply because they are temporary.** Another type of employment contract that may exist in the sector is the "fixed discontinue"[18].

17. Article 56 SWR.
18. Article 16 SWR.

This refers to employment contracts for performing tasks typical of the domestic and caregiving sector, but on a seasonal basis.

Likewise, it is often difficult to fit this type of employment contract into the sector (though not impossible), but the same applies as with temporary employment: if it does not correspond to a legitimate reason, then it also constitutes fraud.

The compensation due upon termination of a temporary contract is 12 days per year of service; in the case of a temporary replacement position, no compensation is due[19].

## BAD PRACTICE:



Unjustifiably taking advantage of a temporary employment contract to avoid the consequences of an unjustified dismissal. Entering a temporary employment contract or a fixed discontinued employment contract without a valid reason.

## GOOD PRACTICE:



Offer permanent employment contracts, unless there is a valid reason justifying a temporary contract—such as replacing an employee on maternity leave or an employee on temporary incapacity leave, etc.

19. Article 49.1 C) SWR.

# 4. WORKING HOURS



We must pause and conduct a more in-depth analysis of this issue, since the hours, schedule, and working day in the domestic and caregiving sector are a veritable hotbed of notorious, flagrant, and intolerable labor exploitation—a fact fully known to all stakeholders, including companies, the general public, and the public administration—which we must resolve at all costs, given that time is a fundamental variable in everyone's life, and in the workplace, time is a unit that has economic value —as it must necessarily be.

As a society, we cannot and must not allow or tolerate the existence of human beings —in this case, women—who are devoting practically **24 hours of their time** to a task as absolutely essential to society as caregiving, for the meager wage of the minimum professional salary for 40 hours, and often even less.

This practice must not desensitize us or lead to complacency or acquiescence, since it is not only illegal but also unjust and should have no place in a rule of law or in a society that defines itself as democratic.

Based on our experience at CETHYC, we have concluded that, in general, many employers do not value it because they do not want to pay or make contributions, nor do they consider it important; however, **it is indeed important—and very much so —**since it affects various aspects:

- Physical health due to the physical demands of their work, considering that most female workers are between the ages of 40 and 65 (and older) and that housework and caregiving often involve moving people, using objects, performing repetitive physical tasks, climbing stairs, walking, bending down, lifting and handling objects, and much more. This causes—or can cause—the worker's physical health to deteriorate.

- Mental health issues caused by confinement, loneliness, exhaustion due to excessive working hours, and the abuse that domestic and care workers routinely suffer. Uncertainty about their pay, their vacations, and their time off. In addition, many suffer profound distress due to their employment situation and their immigration status: "I know this family is taking advantage of me, but they're going to get my papers in order, so I put up with it." "I put up with eating food from the trash because I wanted them to get my papers in order." These are examples of testimonies we receive at CETHYC that illustrate what they must endure psychologically and emotionally. Lack of freedom, confinement, direct abuse by the person they care for (whether conscious or unconscious due to a condition that suppresses volitional element), and by the family. Situations of sexual harassment, suggestive remarks, and touching without consent. All of this causes tremendous and very significant harm to mental health that cannot and must not be ignored.

- The free development of personality. The time spent working is not being devoted to other areas such as education, leisure, or family, and therefore affects the freedom to engage in—or not engage in—other activities that contribute to our development as human beings.

- Material conditions. It is unacceptable for a live-in worker to work 70 or 80 hours a week for €1,424.50 gross—which is the minimum professional salary for 2026— given that housing and living costs make this situation unsustainable and condemn this sector to the most precarious means of survival, when in reality, based on the hours worked, they should be earning a gross salary of €2,035 by 2026 (40 regular hours + 20 on-site hours).

At CETHYC, we have been working for years to combat the principal bad practice of failing to pay or make the required social security contributions for hours worked, as required by law. In line with the above, according to the report "Invisible Labor, Broken Bodies", published in 2025 by Oxfam Intermon[20], according to the National Institute of Statistics (INE), there are 565,718 domestic and care workers in Spain, of whom nearly 90% are women, 70% have dual citizenship or foreign citizenship, 38,143 are live-in workers, and 1 in 4 are undocumented live-in workers, estimated at approximately 70,000.

These figures are similar to those reported by CETHYC, although there are certain variations, given that, in fact, the overwhelming majority of female workers who are actually live-in domestic workers **do not have this status recognized in their employment contracts, and our data show a higher percentage of undocumented live-in domestic workers—ranging from 30% to 40%, depending on the period.**

Given all the above, we believe it is essential—AS A GOOD PRACTICE—to strictly comply with the law regarding working hours; therefore**, we will now explain how it works and how it should work:**

## WORKING HOURS

Working hours may be agreed upon in an employment contract or established in collective bargaining agreements[21]; therefore, both companies operating in the sector and domestic employers must consider the issue of working hours.

So, let's look at how it works.

20. https://www.oxfamintermon.org/es/nota-de-prensa/empleo-hogar-cuidados-precariedad-informalidad-problemas-salud
21. Article 34.1 SWR.

## Maximum legal duration of the working day

There is currently a debate over what the maximum legal weekly work hours should be. Just as there is a minimum professional salary below which workers cannot legally be paid, there is also a maximum number of working hours that cannot be exceeded—this is what we refer to as a "full-time."

The full-time, or **the maximum number of hours that may legally be worked per week, is 40 hours per week[22].**

This means that a person may NOT legally work more than 40 hours per week.

**EXAMPLE:** "A home and care worker provides services Monday through Friday from 8 a.m. to 4 p.m. and on Saturdays from 10 a.m. to 2 p.m."

In this example, the employee works 40 hours per week from Monday through Friday and an additional 4 hours on Saturdays. Therefore, her total workweek exceeds 40 hours, which means there is a violation of the legal limit for a full-time work.

In the domestic work and caregiving sector, an exception is made for on-presence or attendance hours, during which the employee must be available to the employer; therefore, we can distinguish three types of hours in this sector: regular hours, on-presence or attendance hours, and extraordinary hours.

- Actual working hours: these are the regular hours of actual work that the employee must perform, which must NOT exceed 40 hours per week.
- On-presence or attendance hours: this refers to periods during which the worker is NOT performing actual work and is at the employer's disposal simply to "be available," to be on standby, or to perform simple tasks such as opening a door, administering medication, waiting to put the person in her care to bed, etc. This refers to a period during which, even if the employee is not actually performing work, she does not have free use of her time.

  This is important because a domestic worker **is not required to remain in the home when she is not working[23]**, therefore, unless otherwise specified in the employment contract, a domestic worker may leave the employer's home, as she cannot be compelled to stay; doing so could constitute an administrative illicit or even a crime against personal freedom.

22. Articles 34.1 SWR and 9.1 RD 1620/2011, 14 de November.
23. Article 9.1 RD 1620/2011, 14 de November.

There is also a maximum limit on on-presence or attendance hours; this means that the average number of on-presence or attendance hours per week cannot exceed 20 over a one-month period, and these hours must be compensated at the regular hourly rate and subject to Social Security contributions, or they must be offset with time off[24].

- Extraordinary hours: this refers to all hours worked beyond the agreed-upon workday or the agreed-upon full workday and on-presence or attendance time[25]. An annual limit of 80 extraordinary hours is established, and, as one would expect, it is voluntary[26].

## Time tracking issues: is it mandatory to keep a record of hours worked?

According to SEDOAC-CETHYC's interpretation, the answer is YES—and not only based on the recent CJEU ruling of December 19, 2024, Case C-531/2023, but also since 2019. We explain why.

Royal Decree 1620/2011 of November 14, which regulates special employment relationships in the family home, expressly excludes the application of Article 35.5 of the Statute of Workers Rights[27]—that is, the obligation to record a worker's total hours for the purposes of calculating and compensating extraordinary hours. As we can see, in 2011, when the Royal Decree amending the regulations governing domestic workers was published, time tracking for the purpose of calculating extraordinary hours was expressly excluded.

Subsequently, 11 years later, when a major regulatory change took place through Royal Decree-Law 16/2022, of September 6, aimed at improving the working conditions and Social Security benefits of domestic workers—which expanded their rights, as we will see later (access to unemployment benefits, FOGASA, etc.), Article 9.3 of Royal Decree 1620/2011 was not amended. Therefore, as of 2022, the exclusion from time tracking for the purpose of calculating working hours to monitor and compensate for extraordinary hours remains in effect.

However, in 2019, Royal Decree-Law 8/2019, dated March 8, on urgent measures for social protection and combating job insecurity in the workday, was published. Its Article 10 amends the Statue of Worker Rights by adding Article 34.9, which requires all workers to establish a time-recording system that records the start and end of the workday.

24. Article 9.2 RD 1620/2011, November 14.
25. Article 35.1 SWR.
26. Article 35.4 SWR.
27. Article 9.3 del RD 1620/2011. November 14.

CONCLUSION: Royal Decree 1620/2011 excludes the application of Article 35.5 of the SWR **but NOT that of Article 34.9 of the same statute; therefore, as of May 12, 2019, there is an obligation to maintain a time log recording the start and end times, which also applies to domestic workers and caregivers**[28]

Notwithstanding the foregoing, as we have already indicated, of course, **as of December 2024, there is also no doubt that time tracking must be implemented,** since the CJEU ruling of December 19, 2024, Case C-531/2023, has determined that Spanish legislation excluding domestic workers from the system for tracking extraordinary hours or from time tracking in general is, once again, discriminatory on the basis of gender, as this sector—as we have already noted—is predominantly composed of women.

## BAD PRACTICE:



Employing a live-in domestic worker under a 40-hour-per-week contract and specifying in the sections that specifically regulate working hours and overnight stays that the worker does NOT work during the day but does stay overnight. Not only do they fail to establish specific schedules and duties, but in reality, you end up with a worker putting in 70 or 80 hours a week—Monday through Friday from 8 a.m. to 11 p.m. with barely two hours of rest, and on Saturdays until lunchtime, returning to work on Sunday night—while paying her only the minimum professional salary for 40 hours.

This example, which is extremely common, is a bad practice that we must avoid for several reasons:

1.Because it is **ILLEGAL.** Remember that failing to comply with regulations regarding work schedules, working hours, and overtime and/or night work constitutes a SERIOUS infringement[29] and may result in administrative sanctions ranging from €751 to €225,018, depending on the graduation of the sanctions[30].

2.Because this illegal situation is NOT ethical and, furthermore, constitutes, in our view, a form of modern slavery and a complete injustice. We have migrant women working almost 24 hours a day for a miserable salary, often without residence or work permits, performing work that is so essential to sustaining life—namely, caregiving in the most important sphere of life, the home and the people who live there—while being stripped of their most basic labor rights as their situation of need is exploited.

28. Shared view by High Court of the Basque Country Judgment, 6 March 2025.
29. Article 7.5 del LISOS (RDL 5/2000)
30. Article 40.1 b) LISOS

## GOOD PRACTICE:



Clearly specify in the employment contract the work schedule, the tasks to be performed, and the compensation. For example: Monday through Friday from 8 a.m. to 3 p.m., the employee will perform household duties, prepare breakfast and lunch, and attend to the employer's needs. From 3 p.m. to 5 p.m., the employee will have a 2-hour break. From 5:00 p.m. to 10:00 p.m., the employee will take the employer for an afternoon walk, prepare dinner, and remain on duty until the employer goes to bed.

The employee shall be responsible for recording regular hours, hours of presence, and extraordinary hours in a logbook or notebook for the purposes of tracking, calculating, and payment, and shall submit this record to the employer for calculation, compensation, and Social Security contributions.

## RECOMMENDATION:

In any case, you should avoid work schedules like the ones described above; it would be preferable to hire two people, since fewer hours worked = more work for everyone = less job insecurity. After all, at CETHYC we uphold the slogan "LIVE IN WORK IS MODERN SLAVERY."

Total: 8 actual working hours + 2 hours of break time + 4 hours of on-call time. Weekends off, leaving on Friday night and returning on Monday morning.

Compensation: Minimum professional salary (SMI) for 40 hours + 20 hours of on-presence time: €2,035 gross, including prorated bonuses for the year 2026, including prorated pay.

# 5. PAID LEAVE AND HOLIDAYS

## for domestic workers



Paid leave refers to days established by regulation that allow domestic and care workers to be absent from work while continuing to receive their regular pay. The same applies to **holidays,** which are 14 days per year that are designated annually as days when employees do NOT work; they are paid and NOT recoverable[31]. Of the 14 days, 8 are national holidays, 4 are decided by the Autonomous Communities, and 2 by local authorities (city councils, etc.). In any case, there are 14 days per year.

It is important to remember that people with part-time contracts cannot be discriminated against about holidays, which apply to them on the same way.

Regarding **paid leave,** Royal Decree 1620/2011 does not specify any type, but refers to general labor regulations. Therefore, domestic and care workers are entitled to the following paid leave:

### 1. Marriage or Registration of Unmarried Partnership. [32]

This consists of 15 calendar days that must be taken immediately following the wedding or the registration of the unmarried partnership. If the date falls on a business day, it is included in the 15-day period; however, if it falls on a non-business day, the 15-day period will begin on the next business day. The only exception at this time—unless otherwise provided for in a collective bargaining agreement—is that the 15 days may be taken immediately following maternity leave, even if the employee is on temporary incapacity leave.

### 2. Accident, illness, hospitalization, or surgery involving a family member [33]

This coverage applies for 5 days in the event of a serious accident or illness, hospitalization, or outpatient surgery requiring home rest for a spouse, unmarried partner, or relatives up to the second degree by blood (immediate family) or marriage (my spouse's or unmarried partner's family).

What are degrees? Degrees refer to our relatives, ranked from closest to most distant. There are four degrees based on how close or distant they are.

Thus, the **first degree includes:** parents and parents-in-law, children, and daughters-in-law and sons-in-law. **Second-degree** relatives include grandparents, siblings, brothers- and sisters-in-law, and grandchildren.

This leave covers illnesses, medical procedures, and hospitalizations for all these individuals in relation to the affected employee. The rest (**third and fourth grades**) are not included. Spouses and unmarried partners are included.

32. Article 37.3 a) SWR.
33. Article 37.3 b) SWR.

It is not clear whether this refers to calendar days or business days. However, it appears that most rulings—in the absence of specific provisions in an applicable collective bargaining agreement—seem to refer to **business days,** distinguishing between short-term and long-term leave by applying the criterion that short-term leave is calculated in business days and long-term leave in calendar days, unless otherwise specified in the agreements, such as the Collective Bargaining Agreement for Home Care Workers applicable in the Community of Madrid, which specifies "5 business days[34] ".

## GOOD PRACTICE:



If you are a home care worker, it is very important to review the collective bargaining agreement that applies to you, as it may include potential improvements and specific provisions regarding paid leave. The Collective Bargaining Agreement for the Community of Madrid, for example, offers many improvements in Article 24 compared to the Statute of Workers Rights, which applies to the employment relationship of domestic and care workers in this regard.

### 3.Death of a spouse, unmarried partner, or relatives up to the second degree of kinship by blood or marriage

In the event of the death of a spouse, unmarried partner, or relatives up to the second degree of kinship by blood or marriage, the leave period is **two days**; if travel outside the locality where the employee works is required, then the duration is extended to **four days**; we define business days according to the short-duration criterion outlined above and in accordance with EU Directive 2019/1158.

### 4.Home relocation (moving day)

This is leave granted for moving one's habitual residence; although it is commonly referred to as "moving" leave, eligibility is not contingent on moving furniture, but rather on the fact that the employee is changing her habitual residence. The leave lasts **one day.**

### 5.To fulfill an unavoidable public and personal duty

This is paid leave granted for having to fulfill a public obligation that is personal in nature. A typical example is serving on an election board when elections are held, and you are called to do so; even exercising the right to vote (going to the polls) counts as paid time off.

34. Article 24 Collective Bargaining Agreement for Home Care Workers applicable in the Community of Madrid.

This category could also include, for example, testifying at a trial or serving on a jury; however, it does not include accompanying family members—even minors—to the doctor, as the law does not consider this to be the fulfillment of a public duty.

This is questionable, since the obligation to care for a child, for example, is a legal obligation.

Duration refers to the time strictly necessary to fulfill a mandatory public duty. If an employee receives compensation for performing a public duty (for example, payment for serving at a polling station or compensation for testifying in court), this amount must be deducted from their salaries.

### 6.Time necessary for prenatal exams, childbirth preparation classes, and—in the case of adoption—attendance at the sessions required to complete the adoption or foster care process

The duration is limited to the **essential time.** Attendance at informational and technical sessions required for adoption and/or foster care.

### 7.New leave for circumstances that prevent an employee from going to work due to recommendations, restrictions, or prohibitions issued by public authorities

This is a **4-day leave** of absence that applies when the indicated restrictions, prohibitions, or recommendations are in effect, but also when there is a situation of serious and imminent risk, including those resulting from a disaster or adverse weather conditions.

It may be extended beyond the established duration if the cause that prompted it continues, without prejudice to any measures that may be adopted, such as the temporary suspension of the employment contract by the employer, etc.

### 8.Organ or tissue donation

This is paid leave granted in the event of an organ or tissue donation that takes place during working hours, for the time necessary to complete the donation.

### 9.Leave for job search in the event of objective dismissal if employed by a company, or in the case of termination of employment for domestic workers under Article 11 of Royal Decree 1620/2011 of November 14

In the event of termination based on one of the three possible grounds set forth in Article 11 of Royal Decree 1620/2011, or in the case of working for a company and being subject to objective dismissal, during the notice period (7, 15, or 20 days, depending on the type of termination and the domestic worker's length of service)—which runs from the delivery of the termination letter to the termination date—**the worker is entitled to 6 hours of paid leave per week to search for employment.**

## GOOD PRACTICE:



Employers must understand that these types of leave exist and apply to their domestic workers; therefore, they cannot and should not restrict them, as doing so could have negative consequences. Domestic workers should communicate the situation in advance so they can exercise their right.

The best and most protective approach for all parties is for such communications to be made in writing to ensure greater legal certainty for both sides.

## BAD PRACTICE:



Denying domestic workers, the leave specified by the employer; failing to pay for it; deducting it from their salaries; limiting it; or requiring them to make up the time later.

### Holidays[35]

As for holidays, domestic and care workers are entitled to **14 paid holidays per year that are paid and NOT RECOVERY.** In other words, domestic and care workers are not required to work on holidays and must be paid for them without having to recoverable in another period.

35. Articles 9.6 RD1620/2011 and 37.2 SWR.

The number of hours specified in the employment contract is irrelevant; that is, in the case of a part-time worker, the rule applies the same way, since there can be no discrimination between part-time and full-time workers[36].

Of the 14 days listed, 2 are designated by local authorities, and if an Autonomous Community has its own holiday, it may substitute it for one of the 12 national holidays.

**For example:** In the Community of Madrid, May 2 is a holiday, and the local government (the Madrid City Council) has established for the year 2025 the local holiday of May 15 (San Isidro) and Almudena Day on November 8, which in 2025 will be on November 10 because November 8 falls on a Saturday.

## BAD PRACTICE

**Deducting, limiting, or requiring employees to make up for working on holidays; or, if working on a holiday is agreed upon, we remind you that it must be paid DOUBLE—as both a regular workday and holiday.**

36. Article 12.4 d) SWR..



# 6. VACATIONS SYSTEM



Vacations are always a very important issue in the domestic and caregiving sector, as they provide valuable time off during which domestic workers can focus on their personal or professional lives, taking a break from the demands of their regular work.

Thus, the right to vacation is regulated by Article 40.2 of the Constitution, ILO Convention No. 132, Article 38 of the Statue of Workers Rights, and Article 9.7 of Royal Decree 1620/2011 of November 14, which regulates employment relationships in the family home. Therefore, based on the provisions set forth above, vacation entitlement is as follows:

- **30 calendar days per year** (note that for workers providing in-home care or employed through an agency, they must refer to the collective bargaining agreement to determine the number of days and how they are taken). The fact that these are calendar days means that if a day falls on a holiday as described in the previous chapter, that day would be lost. A typical example in Madrid is August 15.
- The 30 days may be divided into several periods; however, there must be at least one period of 15 consecutive days.
- The dates must be agreed upon by mutual consent.
- If no agreement is reached, the employer chooses 15 days, and the employee chooses 15 days.
- The dates for taking the leave must be known at least **2 months in advance.**

In addition, we must remember that vacation time is a right to be **enjoyed**; in other words, an agreement to pay for vacation time in lieu of taking it during the calendar year is not valid.

Thus, the 30 days must be taken between January 1 and December 31. Only if they have not been taken during the calendar year must they be paid in cash. Employers are obligated to facilitate the taking of vacation time[37]. Do my vacation days expire if the calendar year ends and I haven't used them—in other words, do they expire?

**Absolutely NOT.** The Court of Justice of the European Union has been very clear on this issue, ruling that EU member States' laws providing for the automatic expiration of vacation time if it is not taken within the calendar year are contrary to the EU law[38].

37. CJUE Judgment, 6 November 2018, Case C684/16, among others.
38. CJUE Judgment, 29 November 2017, Case C214/16.

In other words, as we have already indicated, in this case the right to claim financial compensation would arise.

In addition, we must also remember that if the vacation period could not be taken due to temporary incapacity resulting from pregnancy, breastfeeding, temporary incapacity resulting from a common illness, a work-related accident, or an occupational disease, or due to maternity, paternity, adoption, or foster care leave, etc., the leave may be taken immediately after the end of the relevant situation, provided it is taken within 18 months of the start of the incapacity.

## GOOD PRACTICE:



At CETHYC, we strongly recommend that domestic and care workers request their vacation time as soon as possible and that the dates for taking vacation be established at least two months in advance and IN WRITING, so that both parties have the guarantee that the vacation will be granted and taken.

## BAD PRACTICE:



Unilaterally imposing vacation days on the worker, as well as failing to provide at least two months' advance notice of the 15 days to which each party is entitled, in the absence of an agreement. We also consider a bad practice NOT to put this in writing.



Taking the employee to a beach house or another residence other than her usual one to accompany the family **DOES NOT CONSTITUTE VACATIONS**, since vacations, by their very nature, require complete mental and physical rest; and even if she is at the beach on "vacation," if the employee is required to perform work—no matter how simple, basic, or minor it may be—it is NOT vacation time.

# 7. CHANGES TO WORKING CONDITIONS OR THE EMPLOYMENT CONTRACT



An employment relationship—whether in domestic work and caregiving or in any other sector—may be modified due to various circumstances, either because the employer or the company is compelled by objective situations or changes, or because new working conditions are negotiated, etc.

At CETHYC, we always view workers' rights and employment conditions as a "backpack" in which you store your rights, your schedule, your workday (whether split or continuous), your salary and bonuses, your work-life balance rights, your duties, your workplace, your seniority, etc.

So, in this way, you keep adding the rights you've secured over time to your "backpack"—that is, if I've agreed with the company or my employer that they'll pay for my travel card, that right goes into my "backpack"; if my employer and I agree that I'll work from 8 a.m. to 4 p.m. Monday through Friday, that goes into my "backpack"; and so on with all the rights I have as a worker.

Now, can the employer or the company open my "backpack" and take out the rights I've stored there?

This is where the problems arise, because the answer is both YES and NO.

**YES > if they comply with the procedures established by law or that the change is very minor.**

**NO > if there is no legal basis for it; in other words, the employer CANNOT simply take away the rights in the "backpack" whenever it feels like it.**

How does the modification of working conditions work? First, we need to clarify two important points:

**1.** Not all contract amendments require the procedure set forth in the law. There is what is known as the employer's ius variandi, which allows for minor amendments that do not affect the substantive content of the employment relationship.

This right of employers to make certain modifications stems from their organizational authority over their own means of production, which is a result of the freedom of enterprise currently in effect in Spain.

These changes may include, for example, a change in job duties, provided that the new duties fall within the same professional group or category.
In the case of domestic workers, since the specific tasks to be performed are not typically outlined in the contract, it would fall within this scope, for example, to ask the worker—during her work hours—to perform a cleaning task that she did not previously do or has never done before.

For example: Andrea has been working for two years and is responsible for housekeeping and meal preparation, working a 30-hour workweek. Her employer, Marta, has purchased some plants for the living room and has instructed Andrea to water the plants during her work hours.

Although the employer would need to update the occupational risk assessment when introducing a change in the workplace, this example could fall under the employer's ius variandi—the right to modify certain aspects of the employment relationship. In this case, it involves a task within her professional "category," which would be akin to a form of functional mobility.

**2.**The second important point is that Royal Decree 1620/2011 of November 14, which regulates the special employment relationship for domestic service, makes **NO** mention of this issue; therefore, pursuant to Article 3 of that same legal text, we must refer to the general regulations governing all workers: the Statue of Workers Rights (SWR).

In other words, there is no specific regulation for substantial changes to working conditions in domestic and care work.
Keep in mind that this applies when the worker provides services directly to an employer—not to a company—in which case the collective bargaining agreement and the SWR apply directly.

How, then, do changes to working conditions work?

The law stipulates that there are working conditions that **CANNOT** be altered; in other words, the employer CANNOT simply take them away from me. These working conditions are[39]:

a. Workday.

b. Schedule and distribution of working hours.

c. Shift work system.

d. Compensation system and salary amount.

e. Work and performance system.

f. Duties, when they exceed the limits established for functional mobility in Article 39.

This list is not exhaustive; there may be other conditions that, if removed or changed, could be considered a "substantial modification."

The key point of what we explained in the previous section is that there are changes employers can make—such as the example we gave earlier—that are NOT substantial.

39. Article 41.1 Statue of Workers Rights.

However, if any of the conditions listed above are altered, then they ARE considered substantial.

This is the key point, since if the employer wishes to make a substantial modification—for example:

> Marta, the employer, has hired Andrea for 30 hours. She works from 9 a.m. to 3 p.m., Monday through Friday. However, Marta does not want her to continue working those hours and tells her that starting next week, she will work from 9 a.m. to 11 a.m. and from 5 p.m. to 7 p.m., Monday through Friday, for a total of 20 hours per week.

In this example, we can clearly see that three aspects of Article 41 have been modified:

1. The workweek is reduced from 30 hours to 20 hours.

2. The work schedule and distribution of work have changed.

3. The shift work system can also be understood within this context, since it has shifted from a continuous workday to a split workday consisting of two turns—one in the morning and one in the afternoon.

Although we note that in this case it affects three points of Article 41, the crucial factor in classifying a modification as substantial is not only that the modification appears on the list, but that the modification itself is substantial[40].
Well, it's clear that in this case we're dealing with a substantial change in working conditions. Is it legal for the employer to do this?

For the changes to be legal, the employer should follow these steps[41]:

1. Provide written notice **15 days in advance** in a letter explaining the objective reasons for reducing the workweek from 30 to 20 hours and changing the schedule to a two-shift system.

2. Upon receiving this notice, the employee has the right to sign writing "NOT IN AGREEMENT," and we strongly recommend that she do so. The employer should not be afraid to allow the employee to sign indicating her disagreement, nor should it prevent or restrict her from doing so, if the employer understands that it is acting in accordance with the law—especially if the employee has previously sought legal advice.

The employee has **three options:**

40. Supreme Court Judgment, 09 April 2001.
41. Article 41.3 SWR.

a. **Accept the new employment conditions.** In this case, the employment relationship is NOT terminated, and no severance pay is required; rather, the employment relationship continues with the sole changes being the workday, schedule, salary, and Social Security contributions; however, the rest of the employment benefits remain the same, that is, seniority.

b. **Challenge the decision in court** because the reasons stated in the letter are NOT true or are NOT sufficient to justify the change. In this case, the employee must comply with the order but file a lawsuit within 20 days of the decision being notified. In this lawsuit, the employee would request that the employment conditions prior to the change be reinstated and that the salary lost due to the change be paid and social security contributions made, in addition to compensation for damages suffered.

c. **Terminate the employment relationship** with the right to severance pay of 20 days per year worked, a final settlement, and the right to unemployment benefits. In other words, YES, this is a way for the employee to voluntarily decide to end the employment relationship with the right to severance pay of 20 days per year, a final settlement, and unemployment benefits.

These issues are very important because at CETHYC we have observed—and reflected this in various reports from our legal department—that as the minimum professional salary rises, and thus the cost of Social Security contributions increases, employers—who are typically advised by consultants—unilaterally decide to reduce working hours in order to pay lower contributions and lower salaries.

Let's keep in mind here that domestic and care workers pay Social Security contributions based on a tiered scale. If you reduce the hours—and thus the salary—you can drop down to a lower contribution tier and, consequently, pay less in Social Security. This practice, which is very convenient for employers and, in fact, is commonly done, **is truly devastating for the workers.**

The reason is that if workers contribute less, they will receive lower temporary incapacity benefits, lower unemployment benefits, and will be significantly disadvantaged in terms of their retirement benefits and any potential severance pay in the event of termination.

Returning to the example of Marta and Andrea, what happens if Marta does not follow the steps we have outlined? Well, if the outlined steps are not followed, the substantial modification would be ILLEGAL. Therefore, the consequences would be:

- 1.Employees may also exercise the same rights we have outlined above (to accept the offer, file a lawsuit, or "self-dismissal"[42], that is, ending the employment relationship with the right to severance pay of 20 days per year, final pay, and unemployment benefits).

42. Although we really don't like this word—because we've noticed professionals using it carelessly on social media—we're including it here for clarity.

1.If the procedure set forth in Article 41 has not been followed—that is, if there is no written notice stating the objective reasons justifying the change—and, furthermore, the measure undermines the employee's dignity, then the employee may initiate another "self-dismissal," that is, termination of the employment relationship at her own discretion[43] entitled to severance pay equivalent to 33 days per year (the same as for unjustified dismissal).

In addition, if the harm to dignity also constitutes a violation of fundamental rights—such as discrimination based on gender or origin, or moral, psychological, or physical harm—the employee may claim compensation for damages in addition to other damages resulting from the change made.

## Conclusion:

Why is it important to understand how amendments to employment contracts work from a legal standpoint?

Because at CETHYC, we have observed that employers are constantly making substantial amendments with the intent of harming workers to avoid paying higher salaries or Social Security contributions.

We have always maintained that if a family cannot pay a worker what the law entitles her to, it will have to seek alternatives; and if the State does not cover the cost of care, then we encourage reflection on the underlying causes of this situation. However, what is unjustifiable under any circumstances is the **exploitation of domestic and care workers by taking advantage of people's situations of need.**

Furthermore, we have found that employers, **to circumvent the legal procedure for changing workers' employment conditions, force them to sign a document stating that both parties mutually agree to the modification of employment conditions.**

## GOOD PRACTICE:



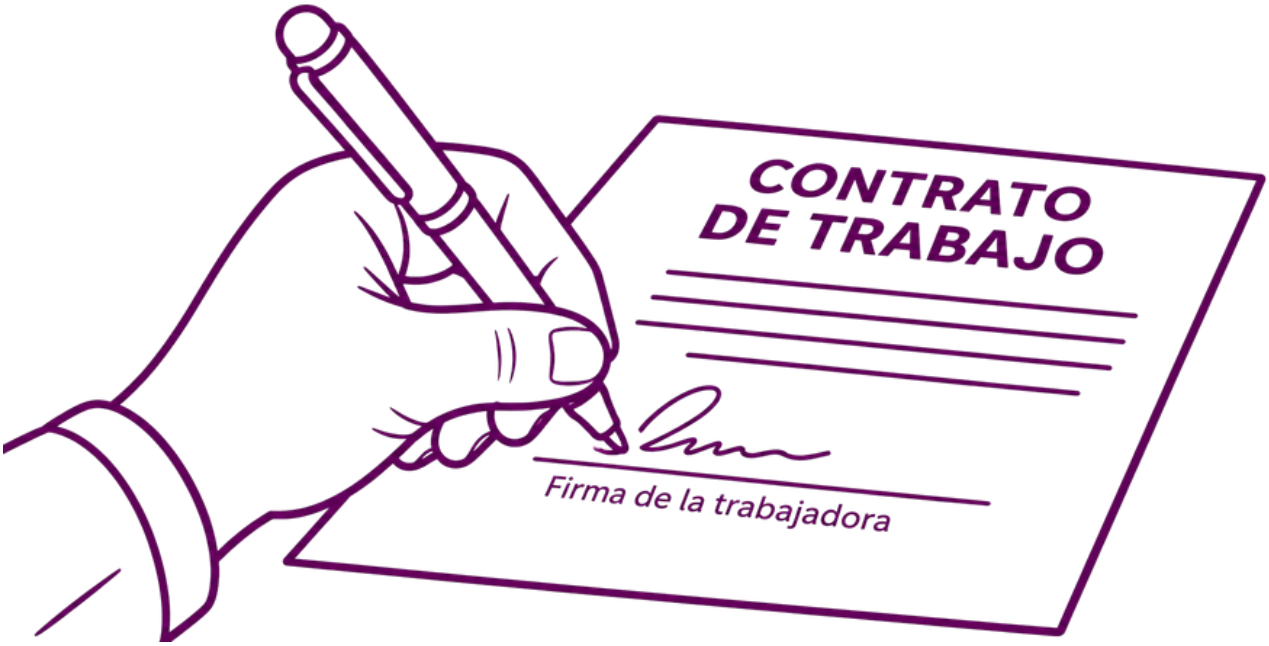
Domestic and care workers should NEVER sign any document if they do not understand it or have doubts. There is NO obligation to sign anything we do not understand; therefore, if signing is required, the document should be signed writing "NOT IN AGREEMENT."

43. Article 50.1 a) SWR.

## BAD PRACTICE:

When an employer attempts to unilaterally impose reduced hours, schedule changes, pay cuts, etc., without following legal procedures and by forcing employees to sign documents "by mutual agreement."

Regarding a change in work location—that is, a change in residence as the place of work outside the employee's usual locality—the employee has 7 days to express her objection and may terminate the employment relationship with the right to severance pay of 12 days per year of service[44].




44. Article 10.2 RD 1620/2011, November 14.

# 8. COMPENSATION, BASIC RIGHTS, AND DUTIES

## for domestic and care workers and for employers



## COMPENSATION

As we have been explaining since the beginning, there is a distinction in terms of compensation depending on whether a worker provides services directly to a family (special employment relationship within the family home) or provides services for a company in the home care sector (applicable collective bargaining agreement).

Well, this distinction is significant in terms of salary, since while domestic and care workers who provide services directly to families are paid the minimum salary—the minimum interprofessional salary—,[45] under the collective bargaining agreement for the home care sector, the salary scale corresponding to the Autonomous Community or province where the services are provided shall apply; generally speaking, this salary scale is higher than the minimum interprofessional salary.

Thus, for the year 2026, we see that the minimum salary amounts to €1,424.50 in 12 payments—that is, with the two special payments included in the salary—or €1,221 in 14 payments—that is, with the summer and Christmas special payments not included in the regular monthly salary.

Regarding the evolution of the minimum professional salary, we observe that in **2016 it was €655.20 paid in 14 installments, and in 2026 it is €1,221[46]—meaning that over the last 10 years, the amount has nearly doubled.** However, if we look at the trend from 2006 (€540.90) to 2016, the increase was only €114.30. The salary increases in recent years are of utmost importance, as they represent a significant improvement in workers' rights, particularly in areas covered by Social Security, such as retirement, incapacities, unemployment, etc.

### BAD PRACTICE:



I have a housekeeper and caregiver, and the minimum professional salary (SMI) increased in February. It is now June, and I have not given her a retroactive raise to cover the difference between what I paid and what I should have paid.

It's important to note here that even if the salary increase takes effect in February or March of the year, the effects of the increase are always retroactive to January, even if the Royal Decree establishing the minimum professional salary is published later.

45. Article 8 RD 1620/2011, 14 November.
46. RD 126/2026, 18 February, establishing the minimum salary for 2026.

But is the salary of €1,221 in 14 payments or €1,424.50 in 12 payments for the year 2026 net or gross?

The salary set forth in the Royal Decree establishing the minimum professional salary (SMI) or as published in the salary tables of collective bargaining agreements (such as the one for home care workers, for example) is always a GROSS amount.

This means that the portion of Social Security contributions payable by the employee must be deducted from that amount. If the employee works for a company, personal income tax must also be deducted.

Let's look at an example:

A worker hired for 40 hours per week who has agreed with her employers to receive her summer and Christmas bonuses spread over 14 payments.

- Gross monthly salary: €1,221
- Employee's social security contribution: 6.40% of €1,424.50 = €91.17
- Net monthly salary excluding bonuses: €1,221 – €90.88 = **€1,129.83**
- In this case, when it is time to pay the bonus, the net amount of 1,221 € must be paid in June and December because, as we have said, Social Security contributions are made in 12 installments, including the bonuses. If an employee is paid a bonus of 1,129.83 €, the employer is deducting the contribution twice, and this is not legal.

For an employee who is paid in 12 installments, including bonus payments:

- Gross monthly salary: €1,424.50
- Employee's Social Security contribution: €91.17
- Total monthly net pay: **€1,333.33**

## BASIC RIGHTS

The basic rights of domestic workers are, in short, the right to receive compensation above the legal minimum salary, the right to be enrolled in Social Security and make legal contributions, the right to have their working hours and legally established rest periods respected, the right to vacation time, the right to occupational safety and health, the right to effective employment, the right not to be discriminated against for any reason, to physical and psychological integrity, the right not to be subjected to reprisals or punishment for asserting their rights.

## BASIC DUTIES (ARTICLE 5 OF THE SWR)

Basic duties include fulfilling the specific obligations of the job in good faith and diligence, complying with occupational safety measures, and following and obeying the employer's instructions—provided they are lawful and legitimate, etc.



# 9. OCCUPATIONAL SAFETY AND HEALTH



This issue has traditionally been a subject of debate because, historically, domestic workers and caregivers in private households were excluded from the scope of common occupational safety and health regulations[47]. Fortunately, however, this has changed since 2022, and specific regulations have been established for the sector:

Royal Decree 893/2024, dated September 10, regulating occupational safety and health in the domestic service sector.

This Royal Decree addresses several very important issues, which we will detail below:

### 1. A genuine right to effective protection, safety, and health in the workplace for domestic and care workers, and the corresponding obligation of employers to guarantee this right.

### 1.Occupational risk assessment and implementation of preventive measures in domestic work[48]

This issue is of vital importance. At the start of the employment relationship—or, for relationships already in place, upon the entry into force of the requirement to conduct this assessment—the employer must conduct an occupational safety and health risk assessment for the employee or employees it has hired.

## BAD PRACTICE:



This assessment—or any other cost arising from occupational safety and health regulations—**must never be borne by the employee.**

This occupational risk assessment must consider the nature of the work to be performed, the employees, the location, and the social and psychological circumstances.

If the risk assessment identifies a risk or hazard to the employee, the employer must establish specific measures to eliminate, reduce, and control such risks or hazards.

47. Article 3(4) of Law 31/1995, of November 8, on Occupational Risk Prevention—repealed by Article 1(1) of Royal Decree-Law 16/2022, of September 6, on improving working conditions and Social Security benefits for domestic workers ("B.O.E." September 8).
48. Article 3 of Royal Decree 893/2024 on Occupational Safety and Health in Domestic Service.

For example, if a live-in caregiver is caring for a very elderly person who has difficulty moving—and as part of her duties, the caregiver must assist with moving the person—what tools will the employer provide to facilitate this process? An adjustable bed? Hoists? Etc. It's a simple but clear example.

Employers **should not be afraid** to conduct this occupational risk assessment because the Institute for Occupational Safety and Health has developed a very simple, intuitive, and free tool—in collaboration with various domestic workers' associations—where you simply answer a few questions, and a file is generated containing all the relevant information.

**The tool is available on the following website:**
**https://www.prevencion10.es/**

## GOOD PRACTICE:



The employer is looking for a live-in caregiver to manage the household and care for an elderly person. Once the candidate is selected and they are ready to sign the employment contract, the employer provides the employee with a signed copy of the occupational risk assessment so that she has it from the beginning of her employment. This document covers all issues affecting the performance of her duties, including the nature of the work itself, the living environment, psychosocial risks, workload, breaks, and so on.

It is mandatory and important to provide the employee with a copy.

In addition to the risk assessment and preventive measures, the employer must provide the employee with all necessary work equipment and personal protective equipment[49] that she needs to carry out the activity.

Similarly, workers have the right to information and participation regarding occupational risk prevention; therefore, honest, empathetic, and open dialogue between both is highly recommended to ensure greater occupational safety and health for domestic and care workers.

Let's remember that when a worker is well cared for, she will be better equipped to care for older adults and children as well.

49. Article 4 RD 893/2024 on health and safety in domestic service.

### 3.Regarding a situation of serious and imminent danger[50]

In the event of a serious and imminent risk arising from work, the employer:

- Must immediately inform the employee of the existence of such a risk and take the necessary protective measures.
- Must provide the necessary instructions so that, in the event of a serious and imminent danger, the employee may stop working and, if necessary, leave the workplace.

It follows from the above that an employee may leave the workplace in the event of a serious and imminent risk to her life or health; however, she must always notify the employer at that time.

### 4.Health Monitoring[51]

Workers have the right to have their health monitored, and this responsibility falls directly on the employer.

Thus, this monitoring—among other possible measures—may consist of an appropriate and voluntary medical examination, which may be a one-time examination for each worker.

The regulations generally provide that this examination be conducted every three years, unless circumstances warrant more frequent examinations.

## BAD PRACTICE:



The family moves to a different home with different circumstances, and the employer fails to update the occupational risk assessment report. In this case, the risk assessment report and the preventive measures must be updated or a new report must be made.

### 5.On the prevention of violence and harassment in the workplace for domestic workers

The family moves to a different home with different circumstances, and the employer fails to update the occupational risk assessment report. In this case, the risk assessment report and the preventive measures must be updated or a new report must be made.

50. Article 6 RD 893/2024 on health and safety in domestic service.
51. Article 8 RD 893/2024 on health and safety in domestic service.

The regulations themselves establish that leaving the employer's home in the event of violence or harassment suffered by the worker may never be considered a resignation, nor may it be grounds for dismissal, without prejudice to the possibility of terminating the employment relationship pursuant to Article 50 of the Statue of Workers Rights, which we will discuss later, and of requesting protective measures before the social jurisdiction[52].

On this website, the National Institute for Safety and Health at Work (INSST) has published and made available for download the protocol for responding to violence and harassment in the home: https://www.insst.es/documentacion/material-normativo/protocolo-de-actuacion-frente-a-situaciones-de-violencia-y-acoso-en-el-servicio-del-hogar-familiar-2025

For a worker who is experiencing abuse or harassment from her employer or people associated with them, it is important to have what we at CETHYC colloquially refer to as PLAN B.

PLAN B consists of the following:

1º Having an alternative place to live in case of being fired. This is especially important for live-in workers, whether documented or undocumented: having a room or friends and family who will take you in if you're fired or forced to leave your current residence.

2º. Having some money saved to support yourself while looking for another job.

3º. Having a support network and a list of contact numbers and important places to turn to in case of an emergency, immediate dismissal, etc. We are referring to centers or associations that assist domestic workers, municipal, provincial, or state institutions, the police, hospitals, social services, bar associations and/or a trusted attorney, labor inspection agencies, labor mediation services, free legal counseling services, etc.

4º. Safely keep any evidence you have regarding incidents of harassment or violence to make it available to the authorities.

5º. In the event of an assault or violence, seek immediate help, call the police, go to a health center or hospital to obtain a medical report documenting your injuries, and follow the appropriate legal procedures.

52. Supplementary Provision No. 2 of Royal Decree 893/2024 on Occupational Safety and Health in the Family Home Service.

At this point, we must remember that female workers who are not registered with Social Security and do not have legal residency have the same labor rights as any other person with documentation or a national ID card.

Thus, general best practices in this area would include:

a. A clear definition of the household and caregiving tasks to be performed.

b. Establishing specific work schedules, considering actual working hours, hours of presence, and rest periods.

c. For live-in workers, the room where they live must be well-ventilated, of adequate size, and must ensure and safeguard their privacy with a bed that guarantees a good night's rest.

d. If the job involves caring for a very elderly person, it is highly recommended to designate a person (such as son/daughter or other relative) as the point of contact for matters related to occupational risk prevention and contractual issues.

e. Honesty when preparing the occupational risk assessment report. It is highly unwise to prepare an occupational risk assessment report stating that everything is in order, only for it to later turn out that the report did not reflect reality, since the worker has the Labor and Social Security Inspectorate at her disposal to compel employers to do things properly, keeping in mind that the sanctions in this area are very severe[53]; therefore, in our opinion, it is not worth taking the risk in this case, since we are talking about the right to health and physical and psychological well-being.

f. In the occupational risk assessment report, establish preventive measures regarding architectural features, the placement of furniture and spaces, appliances, electrical outlets, windows, window frames, and any other element in the home that could pose a risk.

Examples of violent and harassing behavior, which are, obviously, very bad practices in this area:[54]

a. Making requests, insinuations, or proposals of a sexual nature that are unwelcome to the recipient.

b. Insisting on initiating or maintaining a romantic or sexual relationship after the other person has expressed rejection or a lack of interest.

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53. Article 40.2 del LISOS (RDL 5/2000)

54. Source: Compiled by the author based on Asociación Por Ti Mujer (2024), Report on Sexual Violence, pp. 11–12, and CCOO–Ministry of Equality (2021), Sexual Harassment and Sex-Based Harassment in the Workplace in Spain.

c. Making comments about sexual relations, intimate preferences, fantasies, sexual abilities, or any other aspect of a person's sex life.

d. Telling jokes, making pranks, or using sexually explicit expressions that are offensive, humiliating, or inappropriate.

e. Spreading or encouraging rumors regarding a person's sexual or romantic life.

f. Engaging in any of these behaviors via phone calls, messages, messaging apps, social media, or other communication channels.

g. Sending or displaying text, audio, photographs, videos, drawings, or other materials with sexual, suggestive, or pornographic content without having been requested or consented to.

h. Making hiring, continued employment, salary, time off, promotion, or any other employment condition contingent upon accepting sexual demands. This also includes threatening to cause harm to a person's employment if they reject such demands.

i. Directing persistent stares, obscene gestures, or other bodily expressions of a sexual nature that are unwanted or intimidating.

j. Seeking or imposing nonconsensual physical contact, such as touching, kissing, hugging, cornering, or coming excessively or unnecessarily close.

k. Creating, through behavior of a sexual nature, an intimidating, degrading, humiliating, hostile, or offensive work environment, even if there is no explicit sexual request. 53

l. To disparage, question, or discredit a person's professional decisions in an offensive manner based on their sex or stereotypes associated with it.

m. To assign duties outside a person's professional category—whether involving greater or lesser responsibility—or linked to roles traditionally attributed to women, when the decision is based on gender biases or stereotypes.

n. Giving contradictory instructions, demanding impossible results, deliberately causing errors, or withholding information or resources necessary to perform the job properly.

o. Spreading statements or rumors intended to damage the employee's personal or professional reputation.

p. Repeatedly ridiculing, belittling, or criticizing a person using sexist language or language based on gender stereotypes.

q. Repeatedly engaging in conduct involving harassment, isolation, discrediting, or psychological pressure that is intended to, or has the effect of, degrading working conditions, undermining the employee's dignity, or causing her to leave her job.

In the same wat, the National Institute for Safety and Health at Work's own protocol on harassment and violence in the home-based workplace provides a list of examples of workplace harassment:[55]

a. Preventing access to certain areas of the home that are necessary and agreed upon for basic needs (bathroom, shower, etc.).

b. Threatening dismissal, withholding or delaying payment for services rendered, or deducting money as a form of punishment or retaliation.

c. Sending threatening or intimidating messages.

d. Yelling or using an aggressive tone when giving instructions.

e. Making hurtful jokes or ridiculing the worker.

f. Physically assaulting the worker.

g. Throwing objects contemptuously at the worker so they will pick them up.

h. Denying the worker water or food, if food is included in the salary agreement.

i. Making insinuations or unjustified accusations of theft.

j. In the case of live-in work, entering their private space or touching their personal belongings without consent.

k. Withholding their passport.

We strongly suggest all parties involved in the employment relationship within the household (workers, employers, public and private resources, associations, professionals, etc.) to carefully read the Protocol developed by the National Institute for Safety and Health at Work.

55. https://www.insst.es/documentacion/material-normativo/protocolo-de-actuacion-frente-a-situaciones-de-violencia-y-acoso-en-el-servicio-del-hogar-familiar-2025

# 10. RIGHTS RELATED TO BALANCING PERSONAL, FAMILY, AND WORK LIFE



The rights related to balancing family and work life, among others, are regulated by the Statue of Worker Rights; in the case of domestic and care workers, the same rights apply as for the other workers[56].

It is essential for both parties in the employment relationship to understand this issue to engage in negotiations and reach agreements that ensure job security and respect for workers' work-life balance rights.

Although the regulations state that these rights must be compatible with the nature of the employment relationship in the family home, the fact is that this statement should not constitute gender-based discrimination against domestic workers, as that would violate ILO Convention No. 189.

Thus, the rights to work-life balance that we highlight are:

## 1. RIGHT TO ADJUST AND DISTRIBUTE THE WORKDAY[57]

This right allows an employee to request adjustments to the duration and distribution of her workday, as well as to the organization of her work time and the manner in which she performs her duties—including remote work (which, in this case, would not be very feasible due to the physical nature of the work performed in the home)—in order to effectively exercise her right to balance family and work life.

The request for such adjustments must be proportionate and reasonable considering the needs of the work performed in the family home.

If the work-life balance is needed due to having children, this right may extend until the children reach 12 years of age.

This same right extends to the spouse or unmarried partner, blood relatives up to the second degree of kinship of the worker, and other dependents when it is proven that they live at the same address and are unable to care for themselves.

For workers employed by companies in the home care sector, they should consult the applicable collective bargaining agreement, as it may contain criteria, terms, or other provisions related to the exercise of this right.

56. Articles 3b and 9.6 RD 1620/2011 on family home service.
57. Article 34.8 SWR (RLD 2/2015).

### How is this implemented?

The employee must submit a written request to exercise her right to a work-life balance at least 15 days before the start date and attach documentation supporting the relevant circumstances. At this stage, great care must be taken about personal data, which is protected by Organic Law 3/2018 on the Protection of Personal Data and the Guarantee of Digital Rights.

It is recommended that this request be sent via certified fax *(burofax)*, as this method allows you to provide reliable proof of your request in the event of a lawsuit.

A negotiation period then begins, and within a maximum of 15 days, the employer must respond by granting the request, denying it, or offering alternatives. If the company does not respond within the deadline, the right is presumed to have been granted.

In the event of a denial, the employee may assert her rights before the courts of first instance, in the labor division of the appropriate judicial district, using the procedural mechanism established for such matters[58].

## 2. NURSING INFANT CARE[59]

In the event of birth, adoption, guardianship for the purpose of adoption, or foster care, employees are entitled to 1 hour of leave per day until the child reaches 9 months of age.

This right may be substituted with a reduction in working hours **by the same amount or by accumulating the hours into full days.** The employee chooses how to exercise this right.

If the employee chooses the reduced work hours option, there will be no proportional reduction in pay, except when both parents exercise this right simultaneously, in which case it may be extended until the child is 12 months old; however, starting in the 9th month, there will be a proportional reduction in pay.

In the case that there are several employees and they are working simultaneously, the employer may limit their exercise of this right, if there are valid reasons that are incompatible with the performance of their duties.

58. Article 139 of the Law Governing Labor Jurisdiction (Law 36/2011).
59. Article 37.4 SWR (RLD 2/2015).

## 3. HOSPITALIZATION OF THE INFANT AFTER BIRTH[60]

Employees shall be entitled to take one hour off work in the event of the premature birth of a child, or if, for any reason, the child must remain hospitalized following delivery.

Likewise, they shall be entitled to reduce their workday by up to two hours, with a proportional reduction in pay.

## 4. REDUCTION OF WORKING HOURS TO CARE FOR A CHILD UNDER 12 YEARS OF AGE, A PERSON WITH A DISABILITY WHO IS NOT EMPLOYED, OR A FAMILY MEMBER WHO CANNOT CARE FOR THEMSELVES

This right allows an employee to reduce her daily work hours with a proportional reduction in pay, by at least one-eighth to one-half of the agreed-upon workday.

For example, an employee with a 40-hour contract—Monday through Friday from 8 a.m. to 4 p.m.—could reduce her workday by at least one-eighth (that is, at least 5 hours per week, or 1 hour per day) up to half the workday, which would be 20 hours, or 4 hours per day.

This is a very important right that has been expanded through various reforms.

Thus, for example, a parent, prospective adoptive parent, or permanent foster parent shall be entitled to a reduction in working hours—with a proportional reduction in pay equal to at least half the duration of such reduction—to care for a dependent child affected by cancer (malignant tumors, melanomas, and carcinomas) during the child's hospitalization and ongoing treatment, or by any other serious illness that involves a long-term hospital stay and requires their direct, continuous, and permanent care, as certified by a report from the public health service or the health administrative body of the corresponding Autonomous Community, and, at most, until the child or person who has been placed in permanent foster care or in custody for the purpose of adoption reaches the age of twenty-three.

The regulation itself states that this is the exercise of a right intended to promote shared responsibility for caregiving, since the care of children and the use of reduced work hours have historically been the domain of women, resulting in a greater caregiving burden for them than for men.

60. Art. 37.5 ET (RDL 2/2015)

Therefore, it is very important that both parents be able to exercise this right according to their life circumstances, but it also necessarily involves men in the care of children; otherwise, we will continue to fall back on gender stereotypes and roles when it comes to caregiving.

Therefore, this right can and should be exercised by mothers, fathers, parents, adoptive parents, etc.

As with reduced work hours for nursing infant care, if several employees are simultaneously exercising this right or if there are proven reasons that make providing the service incompatible, the employer may limit it and must offer reasonable alternatives.

## 5. HOW ARE THE WORKING HOURS FOR THE 2ND, 3RD, AND 4TH WORK-LIFE BALANCE RIGHTS WE HAVE OUTLINED?

The specific working hours must be chosen by the employee within her schedule and workday. In other words, it is important to distinguish this from the right established in Article 34.8 of the Statue of Working Rights, which we discussed first, where the request is for an adjustment to the schedule and workday.

In that case, if an employee works Monday through Friday from 8 a.m. to 4 p.m., she could request a change to her work schedule so that her new schedule would be, for example, from 10 a.m. to 6 p.m. In other words, there is a modification to the work schedule and its distribution.

However, for all other rights, the reduction in working hours must occur within the existing work schedule.

We must note that collective bargaining agreements related to the care sector, home care, etc., may establish specific criteria or conditions for exercising these work-life balance rights.

On this matter, there are several judicial rulings in which it has been held that it is perfectly permissible to exercise the right to a reduced workday and also the right to adjust the workday[61], with a denial of such requests being considered a potential violation of fundamental rights due to the prohibition against gender-based discrimination.

61. Judgment No. 551/2022, Madrid High Court of Justice, Labor Chamber, Section 5, Rec. No. 279/2022, October 17, 2022.

## 6. REDUCED WORK HOURS FOR VICTIMS OF GENDER-BASED VIOLENCE [62]

Workers who are considered victims of gender-based violence, sexual violence, or terrorism shall have the right—in order to ensure their protection or their right to comprehensive social assistance—to a reduction in their work hours with a proportional reduction in pay or to a reorganization of their work schedule, through adjustments to their schedule, the implementation of flexible hours, or other forms of work-time arrangements used by the employer.

They shall also have the right to perform their work entirely or partially remotely, or to cease doing so if that is the established system, provided in both cases that this method of performing work is compatible with the position and duties performed by the employee.

## 7. THE RIGHT TO BE ABSENT FROM WORK DUE TO FORCE MAJEURE OR URGENT FAMILY MATTERS, ILLNESS, OR AN ACCIDENT THAT MAKES ONE'S IMMEDIATE PRESENCE ESSENTIAL[63]

As provided in the SWR, an employee shall have the right to be absent from work due to force majeure when necessary for urgent family reasons related to family members or household members, in the event of an illness or accident that makes the employee's immediate presence essential.

Employees shall be entitled to compensation for hours of absence due to the reasons set forth in this section, equivalent to **four days per year**, in accordance with the provisions of a collective bargaining agreement or, in the absence thereof, an agreement between the employer and the employees' legal representatives, provided that employees, where applicable, provide proof of the reason for their absence.

## 8. RIGHT TO A LEAVE OF ABSENCE FROM WORK

Article 46 of the Statue of Worker Rights regulates leaves of absence, which it divides into "mandatory" and "voluntary" leaves of absence.In general, the effect of a leave of absence on the employment contract is that the employment relationship is suspended; thus, the employment relationship remains in effect, but the employee does not perform work, and the employer does not pay the salary[64].

62. Article 37.8 SWR (RDL 2/2015)
63. Article 37.9 SWR (RDL 2/2015)
64. Article 45.2 SWR (RDL 2/2015)

However, depending on the type of leave, there are other consequences. Here, we will discuss what are known as "mandatory" leaves.

a. Leave of absence due to a public office position that makes the job incompatible. In this case, seniority is preserved for all purposes, and the employee's position is reserved; that is, once the leave of absence ends, the employee may return to their position in the same way as when returning from vacation or a period of temporary incapacity.[65]

b. Leave of absence to care for family members.

- Biological or adopted children, including those in foster care or under guardianship. Entitlement to mandatory leave of absence for a period not exceeding 3 years.
- Spouse, unmarried partner, or relatives up to the second degree of kinship. Entitlement to leave of absence for a period not exceeding 2 years.

These leaves of absence mean that the employment relationship is maintained; the company or employer reserves the employee's position for the first year and thereafter reserves a position within the same professional group; the company or employer does not pay the employee's salary. In the case of a large family, the period during which the position is reserved is extended to 15 months, and to 18 months for a special large family.

Regarding "voluntary" leave of absence.

This is an individual right of each employee that involves the suspension of the employment contract (that is, the employee does not perform work and the employer does not pay salary), **but the employee does not have job reservation;** that is, the employee has a preferential right to re-employment in the event of a vacancy in the same or a lower category.

During this leave, you may work elsewhere without having to provide any justification; this was also the case with previous types of leave, but any such work must be compatible with the caregiving responsibilities for which you requested the leave. Thus, in this case, once the period of voluntary leave ends, the employee may request reinstatement to the position they previously held. However, if the employer has terminated the position, the employer is under no obligation to reinstate the employee unless there is a similar vacancy or one of a lower rank.

In large companies that are constantly hiring, this option can be useful for exploring other career opportunities; **however, in the domestic and caregiving sectors, one must be extremely cautious because if you request a voluntary leave of absence and your position is eliminated, you may ultimately lose your job.**

65. Article 46.1 SWR (RLD 2/2015).

**Therefore, it is essential to carefully weigh all options before requesting a voluntary leave of absence.**

Finally, it should be noted that, for contribution purposes, the employer deregisters the employee from Social Security for the duration of the leave (whether voluntary or mandatory). The only difference is that, in the case of leave to care for children or family members, the employee benefits from the fact that the duration of the leave is considered to have been effectively covered by contributions for the purposes of retirement, permanent incapacity, death and survivors' benefits, and maternity and paternity benefits[66].

In any case, it is important to emphasize that these rights will take into account the promotion of shared responsibility between men and women with regard to caregiving and will seek to prevent the perpetuation of gender roles—that is, to ensure that it is not always women who have to reduce their working hours, request leave, and so on. Men must take responsibility for caregiving to achieve true equality.



66. Article 237.2 General Social Security Law (RLD 8/2015)..

# 11. TERMINATION OF THE EMPLOYMENT RELATIONSHIP



The employment relationship is terminated when one party notifies the other of its unequivocal intention to end the existing contractual employment relationship, whether that relationship was established verbally or through a written contract and registration.

In other words, it is important to keep in mind that even if there is no contract or Social Security registration, there may still come a point when either party wishes to terminate the employment relationship—which, let us remember, exists regardless of whether a contract has been signed or Social Security registration has been completed.

Thus, as we noted in the earlier sections of this code, even if a worker does not have a residence and work permit, she has the same labor rights as someone who does have a Foreign Citizens Identification Number (NIE) or a National Identity Number (DNI). In the case of the termination of the employment relationship, the same applies, with one exception: unfortunately, employers typically do not acknowledge that they have carried out an improper dismissal and that they must pay severance in accordance with the terms set forth by law. This is precisely what we are going to examine.

Before analyzing the various causes, reasons, and circumstances surrounding the termination of an employment relationship, we must point out that this is closely related to unemployment—that is, what in Spain we commonly refer to as *"paro."*

**Unemployment is a situation protected by the State Public Employment Service (SEPE) and is a right that domestic workers were systematically denied until the regulatory reform of Royal Decree 1620/ 2011 of November 14, which took effect in September 2022. This reform meant that domestic workers could begin contributing as of October 1, 2022, to the unemployment insurance program to gain access to both the contributory and non-contributory "unemployment benefits" systems.**

At the end, we'll briefly address the big question: What about those who have been making contributions for years prior to that date? We'll address it later, but we'll go ahead and mention that, as of November 2025, the SEPE has been recognizing contributions made prior to October 2022 to calculate both contributory and non-contributory unemployment benefits.

In any case, as we've said, the termination of the employment relationship is related to unemployment benefits in the sense that, depending on who initiated the termination of the employment relationship, the worker enters the so-called "legal status of unemployment," which determines whether or not she is entitled to receive unemployment benefits.

Another consequence of the termination of the employment relationship is the possibility that the employer may pay severance for the years worked; however, this severance pay is not applicable in all cases.

Finally, in the case of "dismissal" (termination at the employer's initiative), the dismissal must be classified as justified, unjustified, or void. We will discuss this further below, along with the consequences of each classification.
Thus, the termination of an employment relationship occurs for the following reasons or under the following circumstances; we will begin with the general causes[1] which apply to all workers; we will then discuss the specific situation of domestic and care workers[67]:

1º **By mutual agreement between the parties.** In principle, nothing prevents the parties from agreeing on severance pay, since it is by mutual agreement; however, in this case, the employee is not entitled to unemployment benefits.

2º. **For reasons validly specified in the contract,** unless such reasons constitute a clear abuse of rights on the part of the employer. In this case, if the employer terminates the employment relationship, the employee is entitled to severance pay based on the type of termination validly specified in the contract and is entitled to unemployment benefits.

3º. **Upon expiration of the term agreed upon in the contract.** In this case, we are referring to temporary contracts, which we already discussed in the section on contract duration. In this instance, severance pay of 12 days per year worked is due, and the employee would be eligible for unemployment benefits.

4º. **Due to the employee's resignation or voluntary termination.** In this case, the employment relationship is terminated solely at the employee's discretion. The consequences are that there is NO severance pay, nor is the employee entitled to unemployment benefits. This is the form of termination that offers the least protection to an employee; therefore, it must be carefully considered before proceeding.

For this to take effect, the employee must provide written notice in accordance with the collective bargaining agreement or practice. In general, the standard is the well-known 15-day notice period, which is typically applied in the absence of specific provisions.

But can an employee change her mind during those 15 days' notice period? **Yes**[68], she must provide written notice that she is rescinding her voluntary resignation; however, the principle of good faith must always apply, just as a company or employer may rescind a termination during the notice period.

67. Article 49 SWR (RLD 2/2015).
68. Supreme Court Judgment, Labor Division, Section 1, Rec. No. 3289/2009, July 1, 2010.

Another important question is: if I do not give the 15-day notice required for voluntary resignation, can they deduct those 15 days from my severance pay? **Absolutely yes**[69]

## BAD PRACTICE:



An employer who intends to fire an employee and, to avoid paying severance, gives the employee a letter of voluntary resignation to sign.



An employee wants to leave her job and communicates her intention to resign voluntarily. When the time comes for the resignation to take effect, the employee demands that her employers provide her with the paperwork for unemployment benefits and severance pay.

Both behaviors constitute practices carried out in bad faith. In the first case, the employer seeks to deceive or abuse their position to avoid paying severance pay, thereby preventing the employee from receiving unemployment benefits. In the second case, the employee is attempting to defraud the employer to collect unemployment benefits and, on top of that, severance pay to which she is not entitled, since, as we have indicated, voluntary resignation does not entitle the employee to severance pay.

5º. **Due to the death or retirement of the employee.** In either case, no severance pays or unemployment benefits are due.

6º. **Due to the death, incapacity, or retirement of the employer.** In this case, the employee is entitled to unemployment benefits and is entitled to severance pay equal to one month's salary, including bonuses. This type of termination of the employment relationship greatly affects domestic and care workers, as many of them care for the very elderly and/or people with terminal illnesses or conditions that may lead to death.

Thus, a situation may arise in which a worker who has cared for a person—who is also her employer—for 20 years is terminated, resulting in a worker with such long service receiving only one month's pay for so many years of work.

69. Supreme Court Judgment, March 16, 2005, Appeal No. 118/2003, ECLI:ES:TS:2005:1672.

However, it is important to distinguish between two key issues: it is one thing for the person being cared for to be the person named in the employment contract, and quite another for the employers to actually be individuals acting on their behalf under the terms established in Article 1.3 of Royal Decree 1620/2011 of November 14.

Let's consider this scenario: a worker who has been caring for a person with Alzheimer's and other conditions for 10 years—conditions that prevent the employer from fully performing their duties—and one of the son/daughters is the one who gives orders, makes payments, supervises the work, and handles contractual matters such as vacations time, schedules, breaks, leave, sick leave, etc. It is clear that in this case, if the caregiver were to die, the reason "death, incapacity, or retirement of the employer" would not be correct, since —even though the deceased person is named in the contract—the employer was also the son/daughters who performed the employer's functions; therefore, it would not be technically correct to use this reason.

Therefore, in this case, it would be more appropriate to invoke the termination provision set forth in Article 11 of Royal Decree 1620/2011 of November 14—which we will examine below—as a just cause for employers to terminate an employment contract.

In any case, at CETHYC we believe that legislative change is necessary in this regard, given that, as the regulations currently stand, they leave live-in workers unprotected, especially in the event of the employer's death—a provision that was undoubtedly drafted without considering how it might affect this sector, but rather with salaried workers in general in mind.

### 7º. At the employee's request, based on a breach of contract by the employer or company.

This is a very sensitive issue, and one about which, unfortunately, there is a great deal of misinformation; therefore, we will try to clarify how it works.

This is what is incorrectly referred to as "self-dismissal," which is simply a way for the employee to terminate the employment relationship while retaining the right to compensation like that for wrongful termination[70] and the right to unemployment benefits.

This is a way to terminate the employment relationship because the employer is engaging in a series of actions that constitute a serious or very serious breach of its obligations as an employer.

This relates to the oft-cited Article 50 of the Statue of Workers Rights (SWR), which sets forth three grounds on which an employee may terminate the employment relationship due to a breach of the employer's obligations, namely:

70. Article 50.2 SWR (RLD 2/2015).

a. Substantial changes to working conditions made in violation of the provisions of Article 41 and that result in a violation of the worker's dignity.Here we see a distinction between the severance pay to which you are entitled when the employer makes a substantial change to the working conditions—as we discussed earlier—which would be 20 days per year of service[71] and the right to unemployment benefits. Thus, the difference lies in the phrase "undermining the dignity of the worker"; in general, court rulings refer to "humiliation and professional degradation"[72] or even a complete loss of function.

b. Failure to pay or repeated delays in the payment of the agreed-upon salary.In this case, a delay is considered to exist when the date set for salary payment is exceeded by 15 days, or when a worker is owed three full months' salary within a one-year period—even if not consecutive—or when there is a delay in salary payment for six months, even if not consecutive.

c. Any other serious breach of the employer's obligations, except in cases of force majeure, as well as the employer's refusal to reinstate the employee under their previous working conditions in the cases provided for in Articles 40 and 41, when a court ruling has declared such actions unjustified.

Here we distinguish between two scenarios: the first involves a serious breach of the employer's obligations; case law has identified certain types of conduct that constitute such a breach, such as paying salary "under the table" without making Social Security contributions[73], behaviors that constitute sexual harassment[74] fail to assess or prevent psychosocial risks in a case of workplace harassment by a supervisor who mistreated his subordinates[75], and there are many other examples.

As we can see, for this claim to succeed, we are talking about serious or very serious breaches of an employer's obligations.

One of the classic grounds for termination of the employment relationship under this section is "mobbing" or workplace harassment[76] and behaviors such as those listed in the section on the protocol against violence and harassment in the workplace for domestic and care workers.

Of course, it goes without saying that these are all bad practices, since many of them affect fundamental rights or rights of constitutional significance; therefore, they must never be carried out.

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71. Article 41.3 SWR (RLD 2/2015).
72. Murcia High Court of Justice Judgment No. 886/2024, July 16, Rec. No. 473/2024, ECLI:ES:TSJMU:2024:1613.
73. Supreme Court Judgment No. 480/2020, June 18, 2020.
74. Labor Judgment No. 2479/2022, High Court of Justice of Asturias, Labor Chamber, Section 1, Rec No. 2216/2022, November 29, 2022.
75. Canary Islands High Court of Justice —Santa Cruz de Tenerife— 721/2024, September 27, Rec. No. 256/2024, ECLI:ES:TSJICAN:2024:2530.
76. Supreme Court Judgment, September 20, 2011, ES:TS:2011:6132.

The second scenario addressed in this section of Article 50.1 of the Statue of Workers Rights is when a court ruling orders a company to restore the previous terms and conditions in the event of a substantial change to working conditions, and the company refuses to comply.

**But... how does this article work? Can I simply tell my employer that I'm terminating the contract due to a material breach, and by doing so, am I automatically entitled to severance pay and unemployment benefits?**

The answer is that, generally speaking, no—you must continue working while filing a conciliation petition with the labor arbitration and conciliation services in the province where you reside. Subsequently, if no agreement is reached, you must file a lawsuit, since it is the judge who must terminate the employment relationship.

Generally speaking, it is not appropriate for the employee to "terminate the employment relationship" and stop going to work.

There are exceptions that have been established by court rulings; for example, when you haven't been paid for a long time, it makes no sense to keep going to work when you aren't being paid and it doesn't seem like you'll continue to be paid,[77] there are other circumstances that entitle an employee to stay away from work, such as when going to work would constitute humiliation, an attack on their dignity, or a violation of their fundamental rights.

In any case, it is possible to request what are known as "precautionary measures"[78] which are particularly important if you are filing a lawsuit to terminate the employment relationship, since you can ask the judge to allow you to stop going to work while still retaining the right to receive your salary and make Social Security contributions.

There are precedents in which a preliminary injunction has been granted exempting the domestic and care worker from reporting to work, while preserving her right to receive salary and Social Security contributions, while she filed a lawsuit seeking termination of her employment contract under Article 50 due to nonpayment of salary[79].

However, whenever there are doubts about whether or not to invoke Article 50 of the Statue of Worker Rights, it is best to consult professionals. Keep in mind that for domestic workers and caregivers—and, in general, for all workers—there are free resources available to address this issue, or you can contact the various domestic workers' associations operating throughout the country.

77. Supreme Court Judgment, October 28, 2015, Appeal No. 2621/2014.
78. Articles 79.7 and 180.4 of the Law Governing Labor Jurisdiction (Law 36/2011).
79. Madrid Labor Court No. 11 (now Chamber No. 11 of the Madrid Labor Court) - Order No. 12/2024, February

**8º. Termination by the employer.** Termination is a form of contract termination that reflects the employer's unequivocal intent. In this case, depending on the type of termination, it may or may not result in severance pay. However, in any case, whenever there is a termination, the employee will be legally considered unemployed and will be eligible for unemployment benefits provided she meets the requirements for the benefit. Thus, we will begin with disciplinary dismissal.

This type of termination occurs when the employee seriously breaches their obligations in a culpable and intentional manner, such as failing to show up for work for three consecutive days, faking a sick leave, assaulting coworkers or subjecting them to workplace harassment, breaching the principle of good faith in the employment contract, or violating the fundamental rights of others, such as the employer or fellow employees, etc.

Thus, there is no exhaustive list of behaviors that may lead to disciplinary dismissal; it will depend on the specific facts of the case. To carry out this termination, the employer must initiate a disciplinary proceeding prior to the termination so that the employee can defend herself[80].

## BAD PRACTICE:



Carrying out a disciplinary dismissal without giving the employee the opportunity to defend herself against it, or conducting the adversarial proceeding without setting forth the facts of the allegations and presenting the evidence—thereby allowing the employee to make her case and submit evidence—so that a decision can ultimately be made that is proportionate and appropriate to the circumstances, rather than turning the preliminary proceeding into a mere formality.

Thus, the initiation of the adversarial proceedings will be based on a detailed statement of the allegations against the employee, who will be given a reasonable period of time—depending on the complexity of the allegations—to present her defense if she so chooses.

Once the statements have been submitted—or if none have been submitted—the employer will communicate its final decision: whether to close the case without imposing any disciplinary action, whether to impose disciplinary action such as suspension from work without pay or other measures, or whether it ultimately decides to proceed with disciplinary termination.

The disciplinary termination letter must contain a detailed account of the facts and must be served in writing[81] and this termination entitles the employee to unemployment benefits if she meets the eligibility requirements, but it does NOT entitle her to any severance pay, since the termination was caused by the employee herself.

80. Article 7 of ILO Convention No. 158 - Supreme Court Judgment No. 1250/2024, November 18.
81. Article 54 SWR (RLD 2/2015).

Now we will examine the grounds for termination specific to domestic and care workers—that is, the grounds that may justify the termination of a domestic worker under the regulations governing their employment.

Thus, in principle, the regulations state that any of the grounds listed in Article 49 of the Statue of Workers Right (which are all the ones we are covering in this chapter) may be invoked, provided they are consistent with the special nature of this employment relationship[82].

In addition to the above, the regulations provide for the possibility of terminating the employment relationship for the following justifiable reasons:

**1.A decrease in the household's income or an increase in its expenses due to unforeseen circumstances.**

This would include, for example, losing a job and not being eligible for unemployment benefits, having to pay a sum of money that prevents the employer from continuing to cover the worker's costs, etc. In other words, this is an economic ground. As the regulation itself indicates, it refers to the household's income—that is, not just that of the person named in the contract. For example, consider the case of a worker who provides services to a married couple by caring for their children and performing household chores. In this case, both spouses cannot be listed as employers on the contract; however, if the worker were to be dismissed for this reason, the household's overall financial situation would have to be assessed. The provision also specifies that the reason must be a supervening circumstance —that is, a reason that arose years ago, for example, cannot be used.

**2.A substantial change in the household's needs that justifies letting the domestic worker go.**

In this case, we are dealing with a circumstance within the household that justifies the worker's dismissal. Here, for example, we see dismissals such as when the person being cared for moves into a nursing home—although the specific case would need to be examined—or, for instance, we consider that the death of a very elderly and dependent person fits better under this provision than under Article 49.1(g), in cases where the children or other relatives are also employers. It could also involve the separation of the family, but again, each specific case must be analyzed.
The key is that the situation must arise from necessity and not from the employers' whim; hence, the provision specifies that it must be a substantial change—that is, not just any change will suffice.

**3.Conduct by the employee that reasonably and proportionately justifies the employer's loss of trust.**

This is a type of termination that, based on experience, is closely related to disciplinary dismissal, although it is not the same thing.

82. Article 11.1 RD 1620/2011 on the family home service.

Disciplinary grounds involve serious and intentional breaches of obligations by the employee; in this case, the grounds must be a loss of trust. It is not the same because disciplinary dismissal involves very significant formal requirements, and trust is either present or absent—although proportionality takes precedence in the application of the termination of the employment relationship.

The procedure for terminating an employment relationship for just cause is as follows:

1. A letter explaining the facts and grounds for termination must be provided, with 7 days' notice if the employment relationship has lasted less than one year, and 20 days' notice if the employment relationship has lasted more than one year. During this notice period, the employee is entitled to 6 hours of paid leave per week to search for employment.

2. At the same time the letter is delivered, the employer must provide severance pay equal to 12 days' pay per year worked, up to a maximum of 6 months' pay.

## GOOD PRACTICE:



An employer who is forced to terminate an employment relationship due to a very significant and unforeseen financial loss that even jeopardizes the family's financial well-being. Within the 20-day notice period, the employer delivers a letter explaining the reasons in detail, pays severance pay equivalent to 12 days per year worked, and explains that upon termination, the employer will provide the corresponding final settlement, allowing the employee 6 hours per week to search for employment.

Once the termination takes effect, the employer pays the remainder of the final settlement, including vacations pay, bonuses, and salary, and provides the employer's certificate so the employee can apply for unemployment benefits.

Since these grounds for termination are initiated by the employer, they result in unemployment if the requirements for receiving unemployment benefits are met.

What happens if the employer fails to comply with the requirement to provide a letter or pay severance pay?

We will address this later in the section on "Classification of the termination of the employment relationship."

9º **For legally valid objective reasons.** This refers to the so-called "objective dismissals" under Articles 52 and 54 of the Statute of Workers Rights, which are of limited applicability to the domestic and caregiving sector, as this sector has its own regulations regarding justified termination by household employers, as discussed in the previous point. The exception would apply to workers who provide in-home care services or work for a company; in such cases, the grounds for objective dismissal could indeed apply. In summary, this type of dismissal occurs when a company must terminate the employment of one or more workers for objective reasons—that is, for economic, technical, organizational, or technological reasons, as well as due to supervening incompetence.

For this dismissal to be carried out correctly, the employer must provide a dismissal letter with 15 days' advance notice, stating the cause and the facts underlying the dismissal.

These facts and the cause must be substantiated before a judge; otherwise, the dismissal would not be carried out correctly. At the same time the termination letter is delivered, the company must pay severance equivalent to 20 days' pay for each year worked. Furthermore, this type of termination entitles the employee to unemployment benefits.

10º. **By decision of the employee who is forced to permanently leave her job as a result of being a victim of gender-based violence or sexual violence.** In these cases, the employee may immediately terminate the employment relationship of her own volition and be entitled to unemployment benefits, without the need to file a lawsuit, as was previously required when the employment relationship was terminated at the employee's request under Article 50 of the Statue of Worker Rights.

In this case, the law does not specify any particular compensation, but it does not preclude the employee from claiming compensation for other matters, such as emotional distress resulting from the violation of fundamental rights, etc.

11º. **When a worker is declared to have a permanent and total incapacity.** The employment relationship may be terminated in this case when the worker is declared to have a permanent and total incapacity and it would place an excessive burden on the company or employer to make accommodations to the job, or if no position compatible with the worker's ability to work can be offered.

This ground for termination could indeed apply to domestic and care workers; however, due to the very nature of the employment relationship, making accommodations could be complicated, depending on the type of work performed, the worker's injuries, her remaining work capacity, etc.

This ground for termination entitles the employee to unemployment benefits and, depending on the case, may also entitle her to severance pay of 20 days per year or the amount specified in the collective bargaining agreement; both are compatible with compensation for emotional distress arising from the violation of fundamental rights.

## 12º Classification of the termination of the employment relationship.[83]

Generally speaking, when an employment relationship is terminated and the employee believes that the termination was improper—either due to the manner in which it was carried out, unjustified grounds, or a violation of their fundamental rights—and files a lawsuit challenging the termination, the result is that the termination must be classified as justified, unjustified, or void.

- **Justified termination:** This occurs when one of the terminations we have studied in this section—those initiated at the employer's discretion—has been carried out in accordance with the formalities required by law and, furthermore, supported by evidence justifying the grounds for such termination.

  For example, a disciplinary dismissal that has followed the adversarial procedure and for which there is evidence supporting the contents of the written notice may be classified as a justified dismissal; therefore, the employee is entitled to unemployment benefits but is not entitled to claim any severance pay.

  Another example would be termination for justifiable causes under Article 11, which we have studied: if it was carried out by delivering the written notice, paying the severance pay, and the grounds are proven and proportionate, then such termination will be considered just and the employee will not be entitled to severance pay other than the 12 days per year already paid.

- **Unjustified Dismissal:** Unjustified dismissal occurs when the termination of the employment relationship at the employer's initiative is carried out improperly in terms of procedure, or when the grounds for termination are insufficient or not properly substantiated.

  Thus, failing to provide a written notice of termination would constitute an unjustified dismissal; failing to specify the detailed facts underlying the dismissal or termination would also constitute an unjustified dismissal; failing to conduct a hearing in cases of disciplinary dismissal; or failing to pay the severance pay of 12 days per year upon delivery of the notice of termination for just cause under Art. 11 of Royal Decree 1620/2011, etc. There are several types of termination—that is, terminations based on the employer's unequivocal will—that are always considered unfair: tacit termination and verbal termination.

  Implied termination occurs when the employer indirectly demonstrates an unequivocal intention to terminate the employment relationship. For example, removing the employee from the social security system without providing a letter of termination, refusing to open the door to allow the employee access to their workplace, asking the employee to hand over their keys and take their belongings, etc.

83. Article 55 SWR (RLD 2/2015).

This constitutes an unjustified dismissal because it does not meet the requirements of any of the forms of termination we have discussed in this section.

On the other hand, there is verbal dismissal—that is, a dismissal that, however justified it may be, is communicated verbally. In this case, as in the previous one, it is not possible to carry out a valid verbal dismissal since it does not meet any of the requirements discussed in this section. The problem with a verbal dismissal is proving that it actually took place.

## GOOD PRACTICE:



A family who's domestic and care worker is not officially registered dismisses the worker verbally and immediately without paying any severance pay, final settlement, or compensation (this is obviously a bad practice). The worker quickly sends a certified fax stating that she has been dismissed and gives the employer a deadline to either confirm the verbal dismissal or indicate whether the employment relationship continues.



A family provides a worker with a letter of dismissal and final settlement, along with severance pay of 12 days per year worked, effective immediately. The employee does not know whether the reasons given to her are valid or whether the severance pay and settlement are correct. For this reason, she informs the family that she will sign the document, noting the date but writing "not in agreement."

## BAD PRACTICE:



An employer refuses to pay the severance they themselves have prepared because the employee they are dismissing signs the document with the notation "not in agreement."



A live-in-worker who is not registered with Social Security and does not have an employment contract. She knows she is going to be fired because her employer has asked her to come in for a meeting. The employee records the conversation without asking her employer for permission, and it turns out that during that conversation, she is verbally fired without being paid severance or compensation.

The main consequence of the dismissal being classified as wrongful is:

1. The employer has the option to reinstate the employee to her position by paying the salary she has not received from the date of dismissal until reinstatement, deducting any salary she may have earned from other jobs, and the employer must reimburse the SEPE for all unemployment benefits the employee has received.

1. The employer may choose to pay severance pay equal to **33 days per year worked, up to a maximum of 24 monthly payments.**[84]

Before examining the final classification of a termination, let's pause to consider an important point.

Are "liquidation for settlement" and "severance pay" the same thing?

**Absolutely NOT.** "Liquidation for settlement" is a document that settles the employer's outstanding obligations to the employee upon termination. Severance pay is the amount owed based on the type of termination that occurs.

**An example:**

A full-time contract worker earning the minimum professional salary (SMI) for 2026, which amounts to €1,424.50 gross, including prorated pay. She has 5 years of service.

The employer decides to terminate the employment relationship due to a substantial change in family circumstances, as provided for in Article 11.2 of Royal Decree 1620/2011 of November 14.

Thus, with 20 days' notice, the employer delivers the termination letter and severance pay of 12 days per year of service, totaling €1,732.82. When the dismissal takes effect, the employer provides a settlement and final pay statement indicating:

- Monthly salary: €1,424.50, including the prorated bonus.
- Accrued but unused vacation pay for the year: €474.83, corresponding to 10 days.
- Severance pay for just cause: €1,732.82 (previously paid).
- TOTAL: €1,899.33 gross severance pay.

As we can see, severance pay is part of the final settlement; in other words, it is one of the items included in the settlement.

However, the employee is not satisfied with the termination because she believes the reasons given in the letter are insufficient or not sufficiently detailed.

84. Article 56.1 SWR (RLD 2/2015).

In this case, if the employee sues the employer for wrongful termination, the court must determine whether the termination was just or unjust. If the termination is deemed unjust and the employer chooses to pay severance, it must pay the amount of €4,765.25, which is the severance pay equivalent to 33 days per year worked, minus whatever has already been paid as severance pay—that is, minus €1,732.82. Therefore, the employer must pay the employee €4,765.25 – €1,732.82 = €2,865.92 because the dismissal was deemed unjustified and the employer opted for severance pay rather than reinstatement.

Therefore, it is **good practice** for an employee who has doubts about whether her final pay has been calculated correctly or whether the termination letter is in order to sign all documents provided by the employer, noting the date and writing "NOT in agreement."

Similarly, the employer must pay the employee what it considers to be her legal entitlement even if she signs with "NOT in agreement," since the employer risks having to pay interest under Article 29 of the Statue of Workers Rights and other possible additional amounts if it fails to pay.

- **Nule dismissal[85]:** This determination must always be made by a judge, since a dismissal is deemed null and void when it is based on grounds of discrimination prohibited by law—such as discrimination based on gender, race, beliefs, sexual orientation or gender identity, or any social condition or situation—or when it violates fundamental rights, for example, if the dismissal occurred in a context of violence or harassment.

  Specific examples include the dismissal of a pregnant employee during the protection period established in Article 55.5(a), (b), and (c). In this case, it is important to remember that an employee is under no obligation to tell her employer that she is pregnant, as this is a matter of her privacy.

  Among legal professionals, there does not seem to be much consensus on whether to recommend communicating this information in writing to the employer for the record. In general, if there is concern that the employer's reaction upon learning of the pregnancy could lead to dismissal, it is advisable to document the communication in writing, as this ensures the employee is fully protected under the legal framework that deems termination null and void due to gender discrimination—whether the termination is based on pregnancy or childbirth, or even occurs upon returning to work after maternity leave or parental leave.

  However, as we mentioned, the employee is not required to notify her employer of her pregnancy. But what happens if she is dismissed anyway?

85. Article 55.5 SWR (RLD 2/2015).

Here, objective protection takes precedence over subjective protection for pregnant workers[86] In other words, if an employee is terminated while she is within the protected period referred to in Article 55.5(a), (b), and (c), and that termination is declared unjustified, it will automatically be deemed null and void, with the consequences inherent in such a ruling, which we will discuss below.

## Consequences of nule dismissal[87]

1. The employee must be reinstated to her position, and the salary she failed to receive from the date of termination until her reinstatement must be paid, deducting any other salaries she may have received, and the employer must reimburse the employee for any unemployment benefits she received during that period.

In the case of a domestic worker, is reinstatement also mandatory if the termination is deemed null and void? This issue, strictly speaking, has not been expressly resolved by the Supreme Court, and there are rulings that say yes and rulings that say no. However, there are more rulings stating that reinstatement is not mandatory and that, instead, the employment relationship is terminated with compensation, entitling the employee to 33 days' pay per year as of the date of the termination, which coincides with the date on which reinstatement would have occurred.

For example, consider the case of an employer who issued a termination notice based on an outdated ground (which has been replaced by the three justifiable grounds under Article 11 that we have examined) to a pregnant domestic worker. The Court ruled that the dismissal was null and void due to gender discrimination, since the termination notice was, in reality, a cover-up for the fact that the domestic worker was being fired because she was pregnant. Thus, the Court was unequivocal and expressly stated that the legal consequence of the nullity of a worker's dismissal is mandatory reinstatement [88].

However, as we have mentioned, there are several other rulings that clearly state that reinstatement is NOT applicable; rather, the employment relationship is terminated as of the date on which reinstatement would have occurred, and severance pay of 33 days per year worked is granted.

Another, more recent example comes from Madrid, involving a worker whose dismissal was declared null and void; the reason for rejecting mandatory reinstatement is that the regulation governing the employment relationship of domestic and care workers (Royal Decree 1620/2011 of November 14) does not include that possibility, although Article 11 appears to refer to general labor regulations; however, it specifies that the general regulations shall apply only to matters that are not incompatible with the special nature of this employment relationship.

86. Constitutional Court Judgment No. 92/2008, July 21.
87. Article 55.6 SWR (RLD 2/2015).
88. Judgment of the High Court of Justice of Andalusia, Labor Chamber (Seville Division), No. 2108/2022, July 14, 2022.

Since the workplace is a family residence, the Court considers that imposing mandatory reinstatement would constitute a violation of personal privacy and the inviolability of the home[89].

Thus, it appears that—in the absence of an explicit ruling by the Supreme Court—the prevailing view is that, as of now, there is NO mandatory reinstatement for domestic workers in the event of a null and void termination, and this is replaced by a termination of the contract with the right to severance pay as if it were an unjustified termination, without prejudice to compensation for the violation of fundamental rights—which would be perfectly compatible—and which is the other consequence of a null and void termination, as we will see below.

2. In the event that a violation of a fundamental right has been established—such as the prohibition against discrimination under Article 14 of the Spanish Constitution, the right to dignity under Article 10, the right to physical and moral integrity under Article 15, or the right not to suffer reprisals for asserting one's rights (guarantee of indemnity) under Article 24 of the Spanish Constitution, the right to strike and freedom of association under Article 28, etc., then compensation for damages is due, including both provable financial damages and non-pecuniary damages that are difficult to prove.

In this case, the amount of compensation is not fixed; however, the judge may set the amount deemed appropriate, taking into account the difficulty of quantifying the non-pecuniary damage caused by the violation of fundamental rights, and may use the penalties established in Royal Legislative Decree 5/2000, of August 4, which approves the consolidated text of the Law on Infractions and Sanctions in the Social Order[90].




89. Labor Judgment No. 424/2024, High Court of Justice of the Community of Madrid, Labor Chamber, Fourth Section, Rec. No. 296/2024, May 31, 2024.
90. Supreme Court Judgment, April 20, 2022 (Rec. No. 2391/2019) and Constitutional Court Judgment No. 247/2006, July 24, both among many others.

# 12. EPILOGUE



There are many issues we have not addressed and others that certainly deserve much more detailed treatment. In any case, this work is intended to serve as a reference guide for workers, employers, and professionals in the sector.

It will undoubtedly become outdated over time, but we will provide updates to the best of our ability as the people who make this work possible. We would like to note that in the last five years, significant progress has been made toward achieving equality for domestic and care workers, but much remains to be done.

The tiered contribution system is unfair and encourages under-contributions for workers, causing tremendous harm to their working lives and the contribution bases for future Social Security benefits. Live-in workers continue to perform work without oversight, pay, or contributions for the hours they are present and the overtime they work—all despite the fact that, as we have explained in this report, time tracking is mandatory.

One possible solution or reform for the sector could involve implementing the provisions of ILO Recommendation No. 201, which calls for expanding the information that must be included in employment contracts—a measure that could, for example, help mitigate the exploitation of live-in workers.

The severance pay of 12 days per year for justified dismissals is an utterly inadequate amount that equates such termination with the end of a temporary contract rather than with the 20 days per year provided for objective dismissals.

With regard to occupational diseases, a comprehensive list must be established to protect the health of domestic and care workers.

In accordance with paragraph 21 of ILO Recommendation No. 201, States should promote the implementation of adequate public resources such as:

a. Establish a national hotline, with interpretation services, for domestic workers who need assistance;

b. In accordance with Article 17 of the Convention, establish a system of pre-placement visits to households that will employ migrant domestic workers;

c. Create a network of emergency shelters;

d. Raise awareness among employers regarding their obligations by providing them with information on best practices concerning the employment of domestic workers, on legal obligations regarding employment and immigration as they pertain to migrant domestic workers, on enforcement measures and penalties for violations, and on the support services available to domestic workers and their employers;

e. Ensure that domestic workers have access to complaint mechanisms and the ability to file civil and criminal legal remedies, both during employment and after the employment relationship has ended, regardless of whether they have already left the country of employment; and

f. Establish a public assistance service that informs domestic workers, in languages they understand, about their rights, relevant legislation, and available complaint and recourse mechanisms—both with regard to labor laws and immigration laws—as well as legal protection against crimes such as acts of violence, human trafficking, and deprivation of liberty, and that provides them with other information they may need.

We hope this work will help improve the working conditions of domestic workers and also serve as a guide for employers who want to do things right, as well as for use by professionals.



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