

Company in France and workers in Spain

As the European market is becoming more integrated, it is more common for European companies to have interests in other countries of the Union, which is particularly true in the case of France and Spain. When a French company wants to have employees working in Spain, it can choose between two options: either it moves its own employees for a determined period of time to Spain (in which case it can choose to keep the French Social Security), or it can hire them directly in Spain. In regards to the first option, it is worth reminding that the Spanish Immigration Law is applicable if the worker is not from the Community, given that the European Immigration Law is far from being uniform and valid for all Member states.

If the French company decides to hire employees directly in Spain, it has many alternatives. If the company wishes to have a very reduced number of workers with a lot of flexibility in terms of schedule, whose salary is dependant on the achievement of objectives (for instance, sales commissions), the best option is to sign a commercial contract. In that case, the Spanish Social Security forces the employee to register with them, thus having to pay national insurance every month. This option has evident advantages for both parties, since the commercial contract offers both parties a lot of flexibility, and it is obvious that it will be difficult for the French company to supervise the employment relationship, since it takes place at a great distance.

However, if the company wants to have a great number of workers in Spain, or even few employees whose employment relationship wants to be closely supervised, the best option is to set up a subsidiary company in Spain. Said company would have its own legal personality (it is advised the one called “sociedad limitada”, or “private limited company” in English), it would have its own Social Security number and it would hire workers directly, being of application the Spanish Social Security and the Spanish Labour Law. The Spanish law also allows a legal representative resident in Spain to hire the workers, but this formula is, in our opinion, less safe from a legal point of view and it is also less used in practice than the previous options we mentioned,

Finally, it is also possible that the company hires the workers directly from France, but in that case the contract would be an international employment contract, a type of contract which is more suited for senior executives whose transnational mobility is elevated and often causes trouble when determining which Law is applicable or which Courts should hear any issues they may have,

In any case, it is advisable to ask a Spanish Lawyer or a French Law Firm with Spanish Law knowledge before making any business decisions like the ones mentioned above.

Albert Toledo Oms

Employment Law Department

AGM Abogados - Barcelona

atoledo@agmabogados.com