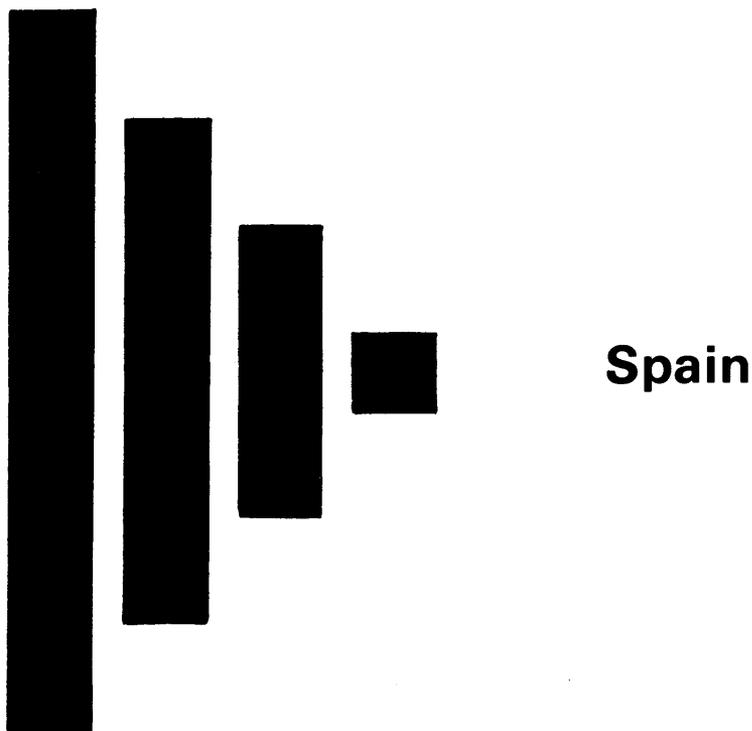


EUROPEAN COMMUNITIES

Social security for migrant workers



Guide

**concerning the rights and obligations
with regard to social security
of employed persons and self-employed persons
going to work in
SPAIN**

In your own interest
read this guide carefully

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This guide gives only general guidance.

It must not be treated as a complete and authoritative statement on the law in any particular case.

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Introduction: The structure of Spanish social security schemes

In Spain, compulsory social security for workers and members of their families is administered by the various public schemes which break down as follows:

1. Contributory schemes

1.1. Social security schemes (¹)

(a) General scheme

(b) Special scheme for employed persons: coalminers; domestics; railway workers; artists; matadors; professional footballers; commercial representatives

(c) Special schemes for self-employed persons and authors

(d) Special mixed schemes (self-employed persons and employed persons): agricultural workers, mariners

1.2. Special schemes for civil servants

(¹) The law on urgent reform measures in the field of social security provides for the abolition of the following special schemes: railway workers, artists, matadors, professional footballers, commercial representatives and writers. This law also provides for the integration of corresponding groups in the existing schemes.

2. Non-contributory schemes

In order to benefit from these schemes, it is not necessary to be an insured person or an employed person

2.1. At national level

(a) Benefits for handicapped persons

(b) Benefits for elderly people

2.2. At regional and local level:

social benefits in accordance with the denomination of the region in question (autonomous municipalities, provinces, communes)

Comment: of the schemes included in this breakdown, the most important are the contributory schemes, in particular the social security scheme, which form the core of the Spanish social security schemes. In comparison with the contributory schemes, the non-contributory schemes are of lesser importance.

PART I:

The social security system

1. Persons insured

1.1. Persons insured under the various schemes

(a) General scheme: covers all employed persons, except for those covered by a special scheme.

(b) Special scheme for self-employed persons: in general, this scheme covers all self-employed persons who usually pursue in a personal and direct manner an economic occupation of a lucrative nature, even in cases where such an occupation includes the services of salaried persons. This scheme also includes the members of the families of a self-employed person (including spouse and children) who participate in the professional occupation in question, except where they are paid for their services.

(c) Special scheme for the agricultural sector: this scheme includes all employed persons whose principal source of income accrues from their employment in agriculture, forestry or stock-farming. A distinction can be made between two main groups in this scheme: employed persons and small self-employed farmers (gentlemen farmers are covered by the special scheme for self-employed persons).

(d) Special scheme for seafarers: as a general rule, this scheme covers all employed persons and self-employed persons for whom the sea either directly or indirectly constitutes a main source of income: merchant navy, seafishing (inshore fishing and high-sea fishing), extraction of other sea products, stevedores, etc.

(e) Special scheme for domestic servants: this scheme covers persons who carry out domestic duties for a head of family.

(f) Special scheme for coalminers: this scheme covers coalminers.

1.2. Coordination of the schemes

The coordination is based on the following general principles:

- (i) an employed person cannot be insured with two different schemes for one and the same occupation.
- (ii) there is mutual recognition of insurance periods (where necessary they can be aggregated) between all the abovementioned schemes on condition that these periods do not overlap.
- (iii) the pensions awarded to one and the same person under the various schemes are cumulative unless it is necessary to aggregate the insurance periods, in the context of the various schemes, for the purpose of acquiring the right to a pension. In this case, the pension is paid by one single scheme.

1.3. Voluntary insurance

In Spain, the voluntary social security scheme is not open to all persons. The compulsory insurance scheme to which the person concerned was affiliated can be continued on a voluntary basis in respect of the general scheme and also the special schemes from the time that the person concerned is no longer employed. This continuation of the compulsory insurance scheme is carried out on the basis of a contract, known as the Convenio Especial (Special Agreement), concluded between the person concerned and the administrative body (Entidad Gestora) and either the Tesorería Territorial de la Seguridad Social (Provincial Social Security Fund) or the Dirección Provincial del Instituto Social de la Marina (Provincial Office of the Social Institute for Seafarers).

2. Insurance status

2.1. Registration, in insured employment or equivalent situation (alta) and not in insured employment or equivalent situation (baja)

Registration means the official inclusion of an employed person in social security. The registration is valid for all schemes and is for life (it takes place only once, on the occasion on which a person acquires the capacity of employed person for the first time, i.e. the moment at which the first period of insurance (alta inicial) commences). On registration, an employed person receives a certificate of registration (documento de afiliacion) containing the personal data concerning himself and members of his family and also a registration number.

After an employed person has been registered, changes may occur in his career (termination and resumption of employment, change of employment, unemployment, military service, etc.). These changes affect the insurance status: where the person concerned is employed (and consequently is also insured) he is considered to be enjoying active contributor (alta) status (period of employment, period of insurance); where this is not the case, he is considered to be not enjoying active contributor (baja) status (period not covered, period during which he does not work). These situations can occur frequently (simultaneously or successively): the situation changes each time the person concerned commences or terminates a contractual relationship with an employer; both of the abovementioned situations are different for all these social security schemes (general scheme, scheme for self-employed persons, agricultural scheme, etc.) and are usually of a temporary nature (it rarely occurs that a person spends his entire lifetime in the employment of one and the same company). A self-employed person is considered to be not enjoying active contributor status (baja) on termination of his self-employed activity and is considered to be enjoying active contributor (alta) status when commencing a self-employed activity.

In view of the fact that active contributor status is almost always a prerequisite for entitlement to social security benefits, the legislation provides for 'situations treated as insurance periods (alta)' during which periods an employed person is entitled to benefits although he has not pursued any professional activity. There are a considerable number of 'situations treated as such' and they differ from benefit to benefit; for example: voluntary insurance (see Item 1.3), the completion of military service, etc.

2.2 Payment of contribution

(a) Although the State participates to a considerable degree in the financing of the social security system, the contributions paid by employed persons and employers constitute the most important financial source. The amount of the contribution in respect of each employed person is calculated by multiplying the basis for the determination of the contribution by the corresponding rate (%) of the contribution.

(b) In the general scheme, the basis for the determination of the contribution corresponds approximately to the actual salary of the employed person. There is, however, a minimum basis (in the case of full-time employment, this is equal to the minimum wage (SMI); in the case of part-time employment it is reduced in proportion to the amount in question) and a maximum basis (equal to slightly more than five times the minimum wage).

(c) In the special scheme for self-employed persons, the persons concerned pay contributions only for non-professional contingencies (no contributions are paid for unemployment, accidents at work, etc.). The basis for the determination of contribution is determined at the discretion of the insured person himself at an amount between a minimum basis and a maximum basis (these two amounts are equal to the basis applicable in the general scheme).

2.3 Persons responsible for fulfilling insurance formalities (registration/active contributor status and contribution)

(a) Employed persons: the insurance formalities should be completed by the employer. An employed person's contribution is deducted at source by the employer in the same manner as the income tax is deducted from the gross salary.

(b) Self-employed persons should complete the insurance formalities themselves.

3. Institutions competent in the field of social security

3.1 Administration of the social security schemes

A. Administrative institutions

General Social Security Fund: this fund is responsible, inter alia, for the listing of companies, the registration/active contributor status of employed persons and the collection of contributions, the payment of all benefits and all social security expenditure.

National Institution for Social Security (INSS): this institution is responsible for the award and the calculation of all cash benefits (except for unemployment benefits) in respect of all schemes (except for the special scheme for seafarers).

National Health Institution (Insalud): this institution is responsible for the administration of medical treatment (it has at its disposal its own network of hospitals, in addition to which it can also call upon the services of other hospitals registered with the social security system). It is authorized to provide medical treatment over the whole of Spain, except for the following autonomous communities where the administration of health treatment is the responsibility of the following institutions:

(i) Andalusia: the social security network for healthcare in Andalusia (Rasssa) - Red de Asistencia Sanitaria de le Seguridad Social en Andalucia;

(ii) Catalonia: the Catalonian National Health Institution (ICS) - Instituto Catalan de la Salud. National Institution for Social Services (Inserso) - (Instituto Nacional de Servicios Sociales) provides benefits in kind, except for those which are of a purely medical nature (in particular services provided for elderly persons and handicapped persons). It is authorized to provide its services over the whole of Spain except for the following autonomous communities to which it has transferred the administration of these benefits: Catalonia, Andalusia, Galicia, the Canary Islands, Valencia.

National Employment Institution (Inem): this institution is responsible for the administration of unemployment benefits, employment exchange and the general employment policy.

Social Institution for Mariners (ISM) - (Instituto Social de la Marina): this institution is responsible for the administration of the special scheme for mariners and for the provision of assistance to mariners.

B. Ancillary bodies (private)

Undertakings. they cooperate with the administrative bodies in respect of the collection of contributions, transfer of authority for the payment of certain benefits (family allowances and cash benefits in the case of temporary incapacity for work and partial unemployment).

Employers' Fund for Accidents at Work and Occupational Diseases: they cooperate with the competent bodies in the administration of cash benefits and services to persons employed by the registered companies (for insurance against accidents at work and occupational diseases, private undertakings may choose between an employer's fund (Mutua Patronal) and the National Fund for Social Security (INSS)).

3.2 Jurisdiction

Conflicts between persons concerned and the administration (administrative bodies of the social security, ancillary private bodies, ministries) are resolved through the medium of the Labour Court. Appeals may be lodged with a higher court against judgments pronounced by a Labour Court, where necessary with the High Court (Tribunal Supremo). Prior to instituting legal proceedings, it is customary for the party concerned to submit a complaint to the relevant administration. If this claim is rejected or remains unanswered after a specific period of time (tacit refusal), the party concerned may then have recourse to legal proceedings.

4. Description of the Benefits covered by the various branches of insurance

4.1 Health benefits

A. General scheme

(a) Beneficiaries: insured persons (¹), pensioners and beneficiaries of periodical social security benefits (unemployment, temporary incapacity for work, etc.); unemployed persons who are no longer entitled to unemployment benefits can also claim health benefits provided that they are registered with an employment agency and that they are not in receipt of an income higher than the minimum wage. Also entitled to health benefits are certain members of the families of the persons mentioned above such as a spouse and descendants (who have not yet reached the age of 26 years or who are older than 26 years and incapable of working). No minimum period of contribution is required for the purposes of applying for health benefit.

(b) Acquisition and duration of entitlement: the right to health benefits is acquired for a beneficiary, and the spouse and children of the beneficiary on the day on which he or she registers with the scheme. This right remains valid as long as the beneficiary sets aside the conditions required and even for some time thereafter (this varies from case to case).

(¹) Registered employed persons or persons in a situation treated as such (persons who voluntarily stopped working are considered to be in such a situation for a specific period of time). They are entitled to these benefits even where the employer has not fulfilled his insurance obligations.

(c) Organization: health benefits are provided only by the social security health network or by the registered medical centres.

By way of exception, a beneficiary may apply directly in two cases to other health centres and apply thereafter to the social security scheme for reimbursement of the costs incurred: in the case where the social security health centre unjustifiably refuses to provide health benefits or in the case of emergencies.

(d) Formalities: in order to receive medical treatment, the person concerned must present a valid 'social security card' (also called 'medical benefit card' or 'certificate of registration') in his place of residence. In the case where the person concerned and/or members of his family move to another locality in Spain (as a tourist for instance) he will be required to present a 'travel certificate'.

(e) Types of health benefits

(i) benefits provided in the home;

(ii) benefits provided in a clinic: a patient can apply directly to certain doctors (general practitioner, paediatrician, gynaecologist, dentist and ophthalmologist); a doctor's note is required in the case of other medical specialities. In each medical zone, a patient may choose his or her own general practitioner, paediatrician and gynaecologist in so far as this is statistically acceptable; this choice is not binding and may be changed at a later date;

(iii) hospitalization: except in the case of emergencies, a patient requires a doctor's note for admission to hospital. Where it is not possible to transport a patient using the normal means of transport, transport costs shall be for the account of the social security scheme.

(IV) emergency treatment: each and every form of treatment requiring immediate removal to a health centre (with or without hospitalization) and treatment administered on Saturdays, Sundays, public holidays and working days between 16h00 and 09h00.

(f) Medical care: general medicine and the majority of medical specializations. Psychiatric help and stomatology are not completely covered (only removal of teeth and dental care are covered). Medical treatment is provided free of charge.

(g) Pharmaceutical products: medicaments are provided free of charge to certain beneficiaries (pensioners, persons entitled to cash benefits owing to an accident at work or to an occupational disease), and also to patients being treated in hospital. In other cases, beneficiaries pay a certain variable amount (as a rule 40 % of the price of the medicament, with the exception of a limited number of medicaments for which the standing charge paid by the beneficiary is much lower).

(d) Aids and appliances: the social security covers surgical and orthopaedic prostheses and also mechanically propelled vehicles for disabled persons; it does not cover artificial dentures and spectacles.

(i) Rehabilitation: rehabilitation training is provided in the case where the consultant doctor considers this to be necessary. Rehabilitation is free of charge and is provided either on the basis of hospital in-patient or out-patient.

(j) Health benefits provided in other Member States of the European Community for the account of the Spanish social security system: each person who is entitled to health benefits in Spain is also entitled to medical treatment in the case of emergencies during a temporary stay in other Member States of the European Communities. An insured person should apply for an E 111 form prior to departure to another Member State. Persons residing in a Member State of the European Community other than Spain who are family members of employed persons entitled to health benefits in Spain are also entitled to medical treatment. For this purpose they should apply for an E 109 form. These two forms together with detailed information concerning the rights and formalities laid down in the Community regulations can be obtained at the local offices of the National Institution for Social Security (INSS). Further information on this subject can be obtained from the social security guides for migrant workers published by the European Community.

B. Principal characteristics of these special schemes

There are special provisions for mariners in respect of illnesses and accidents on board ship and in foreign harbours (further information can be obtained from the social institution for mariners (ISM)).

4.2 Temporary incapacity for work (ILT)

A. General scheme

(a) Concept: temporary incapacity for work as a result of illness or an accident, accident at work, occupational disease or maternity.

(b) Beneficiaries: the general scheme covers employed persons who satisfy following conditions: (1) where the risk insured against occurs during insured employment (alta) or during a period considered as such (where the temporary incapacity for work is the result of an accident at work or of an occupational disease this is considered to be the case). (2) the minimum contribution period has been completed: where the temporary incapacity for work is the result of an ordinary accident, an accident at work or an occupational disease, no minimum contribution period is required. Where it is the result of sickness, 180 contribution days must have been completed in the previous five years. In the case of maternity, 180 contribution days are required during the previous year and the person in question must have been registered with the social security system at least nine months before the date on which she gives birth to the child.

(c) Waiting period: no waiting period is required where temporary incapacity for work is the result of an accident at work, an occupational disease or maternity. In other cases four days are required (a large number of concerns pay wages during this short period).

(d) Maximum period: the maximum period in the case of maternity is 14 weeks, eight of which after childbirth. In other cases, 12 months; where necessary this can be prolonged for a further six months. The right to benefits in respect of temporary incapacity for work ceases to exist as soon as the patient has been cured, after the maximum period or where the person concerned is classified as an invalid (see points 4.3 and 4.4).

(e) Amount: a percentage of the calculation basis

(i) calculation basis: in general the basis for the contribution of the previous month;

(ii) percentage: 75 % in the case of temporary incapacity for work because of an accident at work, occupational disease or maternity. In the case of temporary incapacity for work because of an ordinary accident or sickness; 60 % during the first 20 days and 75 % thereafter.

(f) Method of payment: in general, the allowance for temporary incapacity for work is paid to an employed person by his employer. Some concerns continue to pay the full wage to their workers (and accept responsibility for the difference between the wage and the benefit in respect of temporary incapacity for work).

B. Main characteristics of the special schemes

Special scheme for self-employed persons: the allowances in respect of temporary incapacity for work are paid in the case of sickness or accident from the fifteenth day following the day on which a self-employed person was no longer able to pursue his occupation for either of these two reasons. The allowance is in any case equal to 75 % of the calculation basis.

4.3 Temporary invalidity

General scheme

Benefits in respect of temporary invalidity are awarded as an exceptional prolongation of the right to an allowance in respect of temporary invalidity following the end of the maximum period during which benefits for temporary incapacity for work are awarded in the case where an employed person cannot resume work but is not expected to be definitively incapable of working. It is awarded during a maximum period of six years starting on the date on which the person concerned is declared to be temporarily incapable of working. Temporary invalidity ceases as soon as the patient has been cured, or has been declared to be an invalid or at the end of the maximum period (at the end of the maximum period, invalidity is consequently considered as being permanent).

4.4 Permanent invalidity

General scheme

(a) Concept: temporary invalidity is the situation in which an employed person who, having completed the prescribed course of treatment and having been certified as being medically cured, shows serious anatomical and functional disturbances which are probably permanent and reduce his capacity to work either partially or wholly. Temporary invalidity which continues after the end of the maximum period is also considered as permanent. The legislation makes no provision for maximum age for the award of invalidity benefits. On the other hand, invalidity benefits are not converted to an old-age pension as soon as the beneficiary has reached a certain age.

(b) Conditions

(i) The person in question should be in insured employment or equivalent situation (alta) at the time of invalidity: this condition is considered to be fulfilled in the case where the invalidity is the result of an accident at work or an occupational disease. This condition does not have to be fulfilled in the case of total permanent invalidity for any sort of work or in the case of severe disablement following a normal accident or illness provided that at least 15 contribution years have been completed, three of which fall within the 10 years preceding the date of the invalidity (this date is as a rule fixed by the consulting doctor).

(ii) Minimum contribution period (waiting period): no waiting period is required where the invalidity is the result of an accident at work, occupational disease or a normal accident. The following two conditions apply in the case of invalidity resulting from illness:

(i) for an employed person who is younger than 26 years when the invalidity occurs, the waiting period shall be half of the time elapsed between the date on which he reached the age of 16 years and the date on which the invalidity occurred;

(ii) for an employed person who is older than 26 years when the invalidity occurs, the waiting period shall be one quarter of the period elapsed between the date on which he reached the age of 20 years and the date on which the invalidity occurred (with a minimum period of five years). At least one-fifth of the waiting period should fall within the 10 years preceding the date on which invalidity occurs.

(c) Degree of invalidity and benefits:

(i) Partial temporary incapacity for work for the occupation usually pursued by the person in question: in the case of production of at least 33 % of the usual capacity for work the benefit paid is: an amount equal to 24 monthly payments of the calculation basis used for the purpose of calculating the allowance in respect of temporary incapacity for work (see point 4.2.A.e).

(ii) Total permanent invalidity for the occupation usually pursued by an employed person:

(as a rule, this is known as 'total invalidity' by the official authorities). Benefit: a pension equal to 55 % of the basis for calculation mentioned below in point (d). For invalids older than 55 years who are out of work, the amount of the pension is 75 % of the calculation basis where it is assumed that they will not be able to find new employment.

(iii) Total permanent invalidity for any form of employment (is usually known as 'total invalidity' by the official authorities). Benefit: a pension equal to 100 % of the calculation basis mentioned below in point (d).

(iv) Severe disablement: total invalidity, requiring constant attendance for ordinary everyday personal needs such as feeding, dressing, etc.; benefit: a pension equal to 150 % of the calculation basis mentioned below under point (d).

(d) Calculation basis: for the calculation of the benefits mentioned above in point (c), (ii), (iii) and (iv):

(i) invalidity resulting from an accident at work or an occupational disease: the average of the actual wage of the last year (where the person concerned has worked for less than one year the amount is determined by means of extrapolation).

(ii) invalidity as a result of an ordinary accident or sickness: there are two possibilities: ⁽¹⁾

(1) required period of insurance of eight years or more: in this case the calculation basis is equal to the quotient found by dividing the contribution bases of the insured person over the 96 months preceding the date on which invalidity occurred by 112;

⁽¹⁾ This new formula for the calculation of the calculation basis (in former times only the contribution bases of two years preceding the date on which invalidity occurred were taken into account) has been part of the legislation since 1 August 1985 but entered into force in its entirety on 1 August 1988. In the meantime transitory provisions are in force (for further information please apply to the INSS).

(2) Required insurance period of less than eight years: in this case the calculation basis is calculated in the same manner as described above in point 1, i.e. only the contribution bases which correspond to a number of months equal to the number of months required as period of insurance are taken as dividend as a result of which the divisor is consequently reduced;

(3) a nominal value is taken as a basis for the calculation of the contribution bases of the two years preceding the occurrence of invalidity; the contribution bases of the years preceding this period are calculated, however, in accordance with the trend in the consumer price index.

(e) Retraining benefits: benefits in kind awarded for the purpose of retraining invalids are for the account of the social security. During the period of retraining, invalids receive a benefit equal to at least 75 % of the calculation basis of the benefit in respect of temporary incapacity for work (see point 4 (2) (A) (e)). It is not possible, however, to allow this benefit to overlap with payment of salary.

4.5 Old-age (pension)

General scheme

(a) Concept: the pecuniary benefit consists of a life pension awarded as soon as the person concerned ceases to pursue the activity in question on attaining a certain age.

(b) Conditions:

(1) the person concerned should either be covered by an insurance scheme or be in a situation treated as such (for instance total unemployment with or without unemployment allowance).

Where the person concerned is not covered by an insurance scheme or by a situation treated as such, certain conditions must be satisfied: he or she must be able to provide proof of a minimum contribution period of 15 years and have reached the age of 65 years (in this case a pre-retirement pension is not awarded).

(2) Minimum period of contribution

(i) With effect from 1 August 1995, a contribution period of at least 15 years will be required. Until that date, 10 years are required plus half of the time elapsed between 1 August 1985 and the date of cessation of the professional activity pursued on attainment of a certain age: 65 years or less in the case where provision has been made for early retirement.

(ii) During the eight years immediately preceding the aforementioned date at least two contribution years must have been completed.

(3) Age: 65 years or less in the case of early retirement or partial retirement (see (d) below).

(c) Amount: for 10 years of contributions: 50 % of the calculation basis and 2 % extra for each additional year. Maximum = 100 % (for 35 years of contributions). Calculation basis: is equal to the quotient obtained by dividing the contribution bases of the insured person for the 96 months immediately prior to the date of retirement by 112. This new formula for the calculation of the calculation basis (in the previous formula only the contribution bases of two years preceding the date of cessation of the professional activity pursued were taken into consideration), incorporated into the legislation since 1 August 1985, will be applicable in its entirety only from 1 August 1988. In the meantime a transitory provision is applicable by virtue of which shorter periods are taken into consideration (for further information please consult the INSS). The contribution bases of two years preceding the date of retirement are taken into consideration at their nominal value; the contribution bases of the period preceding these years are adapted in accordance with the trend in the consumer price index.

(d) Early retirement and partial retirement: these two types of retirement can be based on the following formulae:

1. in the context of a transitory provision (only for persons who were affiliated to certain schemes - such as the schemes preceding the present general schemes - before 1 January 1967), retirement is possible between the ages of 60 and 65 years with a reduction of the pension of 8 % per anticipatory year;
2. special retirement at the age of 64 years (same amount as for retirement at the age of 65 years) with a 'replacement contract' (replacement of a retired worker by another worker);
3. early retirement with full pension in the case where the person concerned has been carrying out heavy, toxic, unhealthy or dangerous work (for instance, in mines or on railways);

4. partial retirement with a 'replacement contract' between the ages of 62 and 65 years. The insured beneficiary works half of a normal working day and receives half of the pension (and half of the salary). Another worker must be engaged for the duration of the partial retirement for a working time which is equal at least to that which is not carried out by the person on partial retirement.

4.6 Death and survivors' pension

General scheme

(a) Conditions which the deceased person should have fulfilled: the deceased person should have been affiliated to an insurance scheme or have been in an equivalent situation (retired, for instance). Minimum period of contributions required: none. In the case where death is the result of an accident at work, an occupational disease or a non-occupational accident; in the case of a non-occupational disease: 500 days during the five years immediately preceding the death of the employed person; no minimum contribution period required for persons receiving an old-age pension or a pension in respect of permanent or temporary invalidity.

(b) Death grants: a small amount is awarded towards funeral expenses.

(c) Old-age pension: where the deceased person has been married only once, the pension is awarded to the surviving legitimate spouse. Where the person concerned has been married more than once, the amount of a pension is divided between the surviving spouses in accordance with the duration of the respective marriages. The pension is awarded without distinction between male and female.

The amount of a pension is equal to 45 % of the calculation basis (see (f)).

For the acquisition of the right to a widow's pension, social security legislation requires not only the union of marriage but also cohabitation of the spouses. Nevertheless, the interpretation by case-law of the divorce law of 1981 does not accept this cohabitation as a condition for the right to a widow's pension.

(d) Orphan's pension: is awarded to a surviving spouse or to the children of the deceased insured person who are younger than 18 years or who are incapable of working. Entitlement to an orphan's pension ceases as soon as the child in question reaches the age of 18 years, except where the orphan in question is incapable of working. The amount of the pension is equal to 20 % of the calculation basis for each orphan. In the case where there is no surviving spouse, the widow's pension is added to that of the orphan. The total sum of the widow's pension and that of the orphan's pension may not exceed 100 % of the amount of the calculation basis.

(e) Life annuity and temporary allowances for other family members: under certain conditions (the absence of own pensions, insufficient own resources, the extent to which other persons are dependent on the deceased, etc.) benefits may be awarded to other family members of the deceased insured person (parents, brothers and sisters, etc.). The amount of these benefits is equal to that of that orphan's pension.

(f) Calculation basis of the benefits: in the case where the deceased insured person had been pursuing a professional activity, the calculation basis corresponds to the quotient obtained by dividing the sum of the contribution bases of the beneficiary over an uninterrupted period of 24 months in the seven years immediately preceding the date of the acquisition of the right to the benefit by 28 in the case where the death was the result of an ordinary accident or sickness; in the case where death is the result of an accident at work or of an occupational disease, the calculation basis corresponds to the monthly average of the actual wage of the deceased during the last year. Where the deceased had been entitled to an old-age pension or to a pension in respect of permanent invalidity, the benefits for survivors are calculated by applying the corresponding percentage (45 % or 20 %) to the calculation basis of the pension in respect of old age or invalidity; the result of the revalorizations between the moment at which the pension is calculated and the date of death is added to the basis obtained in this manner.

(g) Overlapping

Overlapping of the widow's pension with other sources of income or with a pension acquired in a personal capacity (old-age or invalidity pension) by the surviving spouse is permissible but entitlement to this pension ceases when the surviving spouse remarries. The orphan's pension obtained after the death of the father may overlap with the orphan's pension obtained following the death of the mother.

4.7 Accidents at work and occupational diseases

General scheme

(a) Contingencies covered: an accident at work means any bodily injury suffered by an employed person during or as a result of work which he carries out for a third party, as well as diseases which cannot be considered as occupational diseases but which are contracted while carrying out his working duties; accidents suffered on the way to or from the place of work are also regarded as accidents at work. An occupational disease means any disease appearing in the list of recognized occupational diseases.

(b) Medical benefits: these benefits are awarded to the greatest extent possible (they include provision of medicaments free of charge and all benefits in respect of rehabilitation training) (see point 4.1).

(c) Temporary incapacity for work: see point 4.2 above and points (g) and (h) below.

(d) Temporary invalidity: see point 4.3 above and also points (g) and (h).

(e) Permanent invalidity: (see point 4.4). Furthermore: permanent injury not giving rise to invalidity: injuries, mutilations and deformities of a definitive nature caused by an accident at work or by an occupational disease which result in bodily restrictions for an employed person without giving rise to permanent invalidity give entitlement in the case where they appear on an approved list, to a lump-sum determined by the aforementioned approved list.

(f) Death and survivors: in the case of death as the result of an accident at work or of an occupational disease, a special lump-sum is awarded in addition to the general benefit described in point 4.6: the surviving spouse receives six monthly payments of the calculation basis; in the case where there is no surviving spouse, the six monthly payments are divided among the orphans. Where there are no other family members entitled to the pension, the mother and the father receive 12 monthly payments of the calculation basis if both parents are still alive and nine monthly payments if only one parent is still alive (see points (g) and (h) below).

(g) Increase in benefits: all benefits received in respect of an accident at work or of an occupational disease (temporary incapacity for work, temporary invalidity, permanent invalidity and survivors) are increased by 30 % to 50 % where the contingency is caused by negligence on the part of the employer in respect of his obligations as regards health and safety at work.

(h) General conditions: all benefits in respect of an accident at work or an occupational disease are also awarded where the employer in question is found to be negligent in the observance of insurance formalities.

4.8 Family benefits

(a) Normal family allowances: a monthly allowance is awarded for each child who is either younger than 18 years or incapable of working, and is dependent upon an insured employed person or the person who receives regular benefits from the social security scheme. The amount of the allowance is PTS 250; for families of four to six children: PTS 313; for families of seven to nine children: PTS 325; for families of ten or more children: PTS 338.

(b) Family supplement for a dependent child: in order to be eligible for this supplement, the person concerned must satisfy the following two conditions: 1. he must be entitled to normal family allowances; 2. he must belong to one of the following categories: persons entitled to a pension (or to temporary invalidity benefits or rehabilitation training benefits), the amount of which may not exceed the minimum amount awarded to beneficiaries of an old-age pension with a dependent spouse; beneficiaries of an unemployment allowance awarded in the context of social assistance; unemployed persons who are not entitled to cash benefits but who are entitled to medical benefits. The monthly amount of the family supplement is PTS 1 050 per child.

(c) The family benefits are awarded to beneficiaries whose children reside in another Member State of the EEC as if they were residing in Spain.

4.9 Unemployment

General scheme

For the purposes of this guide, an unemployed person means an employed person whose normal working hours (or wage) have been reduced by at least one-third or a person who is capable of working and willing to do so but who has lost his job. This means that unemployment can be either total or partial. There are three different categories of benefits which may not overlap each other: benefits based on the payment of contributions, social assistance benefits and a third category which gives entitlement only to medical benefits and family benefits.

Administration: all unemployment benefits and also all employment exchanges are administered by the national employment exchange (INEM).

(a) Benefits based on the payment of contributions

1. Conditions

(i) the person concerned must be registered with an insurance scheme and be in insured employment or equivalent situation.

(ii) must have paid contributions for at least six months in the course of the four years preceding unemployment (contributions paid during a previous period for previous unemployment benefits are not taken into consideration);

(iii) notwithstanding the two previous conditions, employed persons whose employers fail to meet their insurance obligations are treated as insured persons;

(iv) must be registered with an employment exchange and have applied for unemployment benefit;

(v) not have attained the age (65 years) at which entitlement to an old-age pension is acquired (except where the minimum insurance period required for entitlement to the aforementioned pension has not yet been completed).

(vi) be legally unemployed: the most frequently occurring cases of unemployment within the meaning of the law are as follows: unfair dismissal; justified dismissal (only where this has been decided by judgment in a Court of law); in this case no unemployment allowance is paid for the first three months after dismissal; application for collective dismissal; dismissal for objective reasons; end of the agreed working period or termination of the employment for which a contract had been concluded.

2. Duration: the duration of the allowance depends on the period for which contributions have been paid (see table below):

Contribution period
From 6 to 12 months
From 12 to 18 months
From 18 to 24 months
From 24 to 30 months
From 30 to 36 months
From 36 to 42 months
From 42 to 48 months
48 months or more

Duration of allowance

- 3 months
- 6 months
- 9 months
- 12 months
- 15 months
- 18 months
- 21 months
- 24 months

3. Amount: total unemployment: from the first to the sixth month: 80 % of the calculation basis; from the seventh to the twelfth month: 70 % of the calculation basis; from the thirteenth month onwards: 60 % of the calculation basis. The calculation basis is equal to the average of the contribution bases for the last six months. Partial unemployment: proportional reduction.

Minimum amount: minimum wage (SMI in 1986 = PTS 40 140 per month). Partial unemployment: proportional reduction.

Maximum amount: insured person without dependent children: 170 % of the SMI; with one dependent child: 195 % of SMI; with two children or more: 220 % of SMI.

4. An unemployed person going to another EC country for the purpose of finding work there retains the right to allowances for a maximum period of three months. For that purpose, an unemployed person must be at the disposition of the Spanish employment office (INEM) for at least four weeks from the commencement of unemployment, have obtained the relevant certificate (E 303 form) from the employment office and should have registered as a person seeking employment in the country to which he has moved. He will continue to receive unemployment allowances in that country from the competent institution for the account of the INEM.

5. Other benefits: persons entitled to unemployment allowances are also entitled to medical benefits, to family benefits and to the payment of contributions corresponding to that period (these contributions are also taken into consideration for the other benefits, but not for unemployment allowances).

(b) §20 Social assistance

1. Beneficiaries: persons seeking work who are in receipt of a source of income which is lower than the minimum wage, are registered with the employment office (INEM) and have not refused suitable work offered to them by the INEM, provided that they find themselves in one of the situations listed in the legislation. The cases occurring most frequently in the legislation are: the right to benefits on the basis of the payment of contributions has ceased to exist where they have dependent family members; they have paid contributions during a period of three to six months where they have dependent family members (this is not the case where the person concerned has a dependent spouse, children or other predetermined dependent family members and where the income per head of family does not exceed the minimum wage); other beneficiaries are persons older than 55 years who, although they have no dependent family members, find themselves in one of the abovementioned situations provided that at the time of application for allowances they satisfy all the conditions required for obtaining an old-age pension, except for that of age.

2. Duration: for employed persons older than 55 years: up to the date on which they receive an old-age pension. Employed persons who have paid contributions during a period of three to six months: one month benefit per contribution month. Other cases: 18 months.

3. Benefits: this allowance is equal to 75 % of the minimum wage. The beneficiaries are also entitled to medical benefits and to family benefits. Employed persons older than 55 years are also entitled to payment of benefits for the old-age pension.

(c) Social assistance (concerns only medical benefits and family benefits)

1. Beneficiaries: persons who no longer are entitled to unemployment benefits based on payment of contributions and to supplementary benefits, who are registered with the employment office as persons seeking work, who have not refused suitable work, who are in receipt of an income which is lower than the minimum wage and who are not entitled to medical benefits on any other grounds.
2. Benefits: medical and family benefits.

4.10 Social services

The majority of the social services (benefits in kind) granted in Spain are not covered by the social security system, are awarded at different levels (State: at the level of autonomous communities, provinces or communes) and are not based on the payment of contributions.

Nevertheless, the social security system does provide certain benefits in kind (independent of the medical benefits and the rehabilitation training benefits).

Important note: for further information concerning the functioning of these social services (types of benefits, the conditions that have to be satisfied in order to be entitled to a benefit, etc.) please apply to the National Institute for Social Services (Inserso).

The social security system includes the following two social services:

A. the social service for the aid of elderly persons

This service provides homes for mobile elderly persons in service flats and for elderly persons who are no longer mobile or who need special care in geriatric centres; it has at its disposal services for home help, organizes holiday trips, and has set up a network of centres and clubs for retired persons. In view of the limited number of places available (this does not apply in the case of the centres and clubs for retired persons) certain selection criteria have to be applied, i.e. account is taken of the financial circumstances, age, state of health, social and family situation, etc.

the social service for persons who are bodily, mentally and sensorially handicapped

(a) Beneficiaries: employed persons with handicapped dependants who are covered by one of the social security schemes, pensioners, persons entitled to other regular benefits and the widow or widower of such persons.

(i) Family members in respect of whom there is a right to benefits: children of other descendants, brothers and sisters (in both cases of the main beneficiary as well as of the spouse).

(ii) Categories of handicapped persons: the blind, deaf mutes, paraplegics, hemiplegics, tetraplegics, oligophrenics (mental coefficient of 0,50), cerebral palsy, persons who have lost the use of two of the four members either partially or totally.

(iii) Monthly amount: PTS 3 000.

(b) Benefits in kind for rehabilitation training

There is a wide range of benefits in kind for handicapped persons: functional and psychotherapeutical rehabilitation, educational and vocational training, additional benefits (for instance reimbursement of transport costs during the course of treatment), etc.

5. Benefits: General

5.1 Revalorization of pensions - minimum pensions - SOVI pensions

(a) Revalorization: at the beginning of each year, revalorization of pensions and benefits in respect of temporary invalidity which, to this end, are treated as pensions takes place. The calculation of the revalorization takes place in accordance with the legal criteria which are laid down annually independent of the type of benefit and the amount thereof. If you wish to receive more information concerning your own specific case, please apply to the provincial office of the National Institute for Social Security (INSS) or to the Social Institute for Mariners (ISM).

(b) Minimum pensions: where the amount of the pension (or of the sum of the pensions received by one and the same person) is less than a specific amount ('minimum pension') a supplement is awarded which is equal to the difference between the aforementioned minimum pension and the pension received. Nevertheless, where the beneficiary also receives income from work and/or capital in excess of a certain amount, the supplement can be reduced to the minimum or be withdrawn. The minimum pensions are fixed at the commencement of each year in accordance with the legislation.

(c) SOVI (compulsory old-age and invalidity insurance) pensions: in order to be entitled to a pension, the minimum contribution periods which had to be completed in accordance with the social security schemes before 1967, the year in which the present scheme entered into force, were shorter than is at present the case. Where you do not comply with the requirements for entitlement to a 'new' pension, you will be entitled to an 'old' pension in the context of a transitory ruling (commonly known as a SOVI pension), so that the rights acquired are not lost. Apart from the special conditions which must be satisfied in order to be entitled to a pension in respect of old age, invalidity or widowhood, it suffices for the acquisition of a SOVI pension that proof is provided of five insurance years between 1939 and 31 December 1966 or of one insurance day between 1921 and 1939. A SOVI pension may not overlap with other pensions. The amounts in question are lump-sums and are fixed at the beginning of each year.

5.2. Effect of irregular family situations on social security benefits: separation, divorce, desertion of family

These family situations can present complicated problems in the field of social security. The best way of solving your problem would be to seek the services of the provincial offices of the administrative institutions (the INSS, ISM, INEM, etc. as the case may be) or of a lawyer or of a social assistance organization (social worker, women's institute, etc.). Where you are entitled to medical benefits as a beneficiary of the main beneficiary (usually your spouse) and where you no longer live together, you may in any event apply for a medical benefits card for yourself and for any of your children living with you; for this purpose you can apply to the relevant social security office. Orphan's pensions, family benefits, allowances for handicapped persons and, in general, all benefits granted to a minor or to a person incapable of working are paid in those cases where special family circumstances prevail, to the person on whom the minor or person incapable of working is dependent. For information concerning widowhood benefits see point 4.6 (c).

Part II

Other forms of social protection at national level as distinct from social security

1. Non-contributory benefits for handicapped persons

For this sector of the population there are a considerable number of non-contributory social provisions. If you, yourself, or a member of your family suffers from a physical, mental or sensorial handicap you can apply to your commune, provincial centre or autonomous commune for any advice you may need concerning the relevant social provisions. The most detailed information will, as a rule, be available from the National Institution for Social Services (Inserso). There are also national institutions for the provision of assistance to persons with special handicaps (for instance the Once for blind persons).

In the law of 7 April 1982 relating to the social integration of handicapped persons (Lismi) and the implementing provisions, a large number of protective social provisions are included, which are applicable to Spanish nationals and also to nationals of another EC Member State provided that the person concerned is living in Spain. These provisions (with the exception of those which are of a preventive nature) can be summarized as follows:

1.1. medical and pharmaceutical benefits

Medical and pharmaceutical benefits (free of charge) are provided by the social security scheme to all handicapped persons who are not entitled to any assistance under the last-mentioned scheme.

1.2. cash benefits

These are awarded to handicapped persons who are not covered by the social security scheme (lack of employment) provided that they do not receive any similar type of assistance from another public body and provided that they are not in receipt of an income in excess of a specific amount (70 % of the minimum wage for single handicapped persons, plus 10 % for each family member, up to a maximum amount which is equal to 100 % of the minimum wage).

The benefits in question are as follows (the amount indicated in pesetas correspond to the amounts paid out in 1986):

(a) guaranteed minimum wage: in 1986 this amount was PTS 14 000 per month and was paid out 14 times per year to handicapped persons older than 18 years of age, with a degree of invalidity of more than 65 %.

(b) allowance for assistance provided by a third party: this amounted to PTS 7 000 per month in 1986 and was paid out 14 times per year to handicapped persons older than 18 years of age, with a degree of invalidity of more than 75 % in the case where they were not able to carry out the most essential everyday functions (eating, dressing, etc.), provided they had not been admitted to a centre catering for special cases.

(c) allowances in respect of travel and transport costs: in 1986 this amount was PTS 3 500 per month. It was awarded to persons older than three years of age, with a degree of invalidity of more than 33 % provided they were not able to make use of public transport.

1.3. benefits in kind

These are the most numerous: functional and psychotherapeutic rehabilitation training, psychological treatment and guidance, general and special forms of education, occupational rehabilitation, etc.

2. Non-contributory benefits for elderly persons

This form of social assistance is paid out to persons older than 69 years of age to an amount of PTS 14 000 for a single person and PTS 28 000 for a couple 14 times a year where their income does not exceed a certain amount (PTS 196 000 per year for single persons and PTS 392 000 per year for a couple) provided they have no dependants who are legally obliged to help them and also capable of doing so (the amounts in pesetas correspond to the amounts paid out in 1986).

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(1) Social Security Fund
and National Social
Security Institution
(INSS)

(2) National Employment
Office
(INEM)

(3) Social Institution
for Mariners (ISM)

Defender of the people (Defensor del Pueblo)

(an institution created by the Spanish constitution for the defence of human rights of nationals which, with this object in view, is authorized to control the activities of administrative bodies) : c/ Eduardo Dato, 31; Madrid.

Employed persons who are of the opinion that their social security rights have been prejudiced (for instance where they have not been insured by their employer) and also in the absence of measures in respect of health and safety at work can apply to the Inspectorate for Employment and Social Security. There is a branch of this Inspectorate established in the capital city of each province; the address can be found in the telephone directory under the heading "Delegación Provincial de Trabajo" (Provincial Employment Office).

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