

THE APPLICATION OF ILO C.87 TO AUTONOMOUS WORKERS IN SPANISH LAW

FREEDOM OF ASSOCIATION

MAIN REFERENCE REGULATION

- ❖ C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948  
Ratified by Spain -April 1977. Arts. 1 and 11.
- ❖ C141 - Rural Workers' Organisations Convention, 1975  
Ratified by Spain -April 1978.
- ❖ Spanish Constitution 1978: Art. 28.1 recognises the right to freedom of association as a fundamental right of all to organize freely.
- ❖ Organic Act 11/1985, 2 August, of Freedom of Association: Art. 3.1. establishes that Self-employed workers who do not have employees at their service may join the trade union organizations constituted in accordance with the provisions of this Act, but not establish unions whose purpose is precisely the protection of their singular interests, without prejudice of its capacity to establish associations under the specific legislation.
- ❖ Act 20/2007, 11 July, Statute of Independent Work (LETA)

SUBJECTS

- ❖ AUTONOMOUS WORKER WITHOUT EMPLOYEES: Art. 1.1 LETA
  - ❖ TRADE: Art. 11 LETA:
- SIMULTANEOUS CONDITIONS:**
- a) Not being in charge of employees or hiring or subcontracting part or all of the activity.
  - b) Not to carry out its activity in an undifferentiated way with the workers that provide services on behalf of the client.
  - c) To have their own productive infrastructure and material means independent of those of their client, when in this activity they are economically relevant.
  - d) To develop their activity with own organizational criteria, notwithstanding the technical indications that they may receive from their client.
  - e) To receive an economic consideration based on the result of their activity, in accordance with the agreement with the client and assuming risk and venture of the latter.

Freedom of association

vs

Rights regarding work-life balance / leaves for birth, adoption or guardianship and protection of Health and Safety

TRADE

EXCEPTIONS TO THE PROHIBITION OF EMPLOYING

The hiring of a single worker will be allowed:

1. In case of risk during pregnancy and risk during breastfeeding of a child under nine months.
  2. During rest periods due to birth, adoption, guardianship for adoption and foster care.
  3. For the care of children under seven years.
1. For being in charge of a family member, by consanguinity or affinity until the second grade, in a situation of dependency, duly accredited
  2. To be in charge of a relative, by consanguinity or affinity until the second grade inclusive, with a disability equal to or greater than 33 percent, duly accredited.

ONE EMPLOYEE

TEMPORARY CONTRACTS

AUTONOMOUS WORKERS WITHOUT EMPLOYEES

BONUS IN SOCIAL SECURITY QUOTATION BY AUTONOMOUS WORKERS FOR REASONS OF WORK-LIFE BALANCE LINKED TO EMPLOYMENT (art.30 LETA)

- ART. 30. 2 LETA: The application of the bonus set forth in section 30.1 will be conditional on the stay in the Special Regime of the Social Security for Self-Employed or Independent Workers and the hiring of a full-time or part-time worker whose contract must be maintained throughout the period of bonus. In any case, the duration of the contract must be at least 3 months from the start date of the enjoyment of the bonus.
- ART. 30.4 LETA: Self-employed workers be entitled to the bonus provided that they do not have employees on the date of starting the bonus and during the twelve months prior to it. In this regard, worker hired by means of an interim contract for the replacement of the self-employed worker during periods of maternity, paternity, adoption or foster care, both preadoptive and permanent or simple foster care, risk during pregnancy or risk during breastfeeding will not be taken into consideration.

Conclusions and Proposals

-The union constitutes a privileged instrument of social dialogue, erected by the OIT in one of the four pillars of the Decent Work Agenda, which, as is well known, includes both wage labor and self-employment.

Certainly, the intervention of trade unions for the defense of the rights and interests of those who are self-employed is necessary, given that most legal systems offer insufficient social and safety and health protection, determining that this work does not meet the minimum standards of protection that the OIT requires. Hence the importance of the right to join a union recognised in Spanish regulations

- Under the protection of the C 87 OIT, and in accordance with the decisions of the Committee on Freedom of Association, based on the principles of freedom of association, the self-employed must fully enjoy the rights to organize, in particular, the right to join organizations that they choose.

- Spanish legislation denies the autonomous workers the right to establish unions, and limits their right of affiliation to those who do not have employees in their charge.  
-Recent legislative reforms encourage the hiring by self-employed worker of an employee on a temporary basis for reasons of work-life balance and health protection, which could negatively affect their already limited freedom of association in the light of the OIT.C87.

-The reforms introduced in the LETA by Law 31/2015, of September 9 and by Royal Decree-Act 6/2019, of March 1, have not envisaged the negative impact that the status of employer has on the right of affiliation  
- Employer status may result in the loss of rights derived from affiliation and could affect union representativeness

-A legislative amendment would be necessary in order to state the maintenance of the right of affiliation in these cases, given the limited duration of the employer status and that it involves the hiring of a sole employee.  
-Otherwise, the enjoyment of the fundamental rights to freedom of association, as well as to reconciliation of professional and family life, protection in cases of birth, adoption or guardianship and that of worker's health and safety, are not guaranteed