
Guide for employers on how to handle the general strike called for in Spain on March 8, 2019

Legal flash Labor Law Practice

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As March 8 is International Women’s Day, Spanish unions have called for a nationwide general strike that will affect the public and private sectors.

Below are some practical tips and suggestions for handling this union pressure tactic—a fundamental right of employees under the Spanish Constitution—with greater legal certainty.

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Introduction

The **CGT** and **CNT** unions have called for a 24-hour general strike, from midnight on March 7 until midnight on March 8, while other unions, including the **CCOO**, **UGT** and **USO** have called for a general strike of two hours per shift, between 12 midday and 2:00 p.m. and between 4.00 p.m. and 6:00 p.m. on March 8. Below we summarize some practical tips and legal measures for handling this union pressure tactic.

Before the strike

➤ **Must companies receive addressed notice of the strike?**

It is not necessary in this case. As it is a general strike, it is enough for notice of the strike to be communicated to the association to which the company affected belongs (in addition to the labor authority).

➤ **Once companies have notice of the strike, can they require their employees to communicate whether they intend to exercise their right to strike beforehand?**

No. Employees are not obliged to inform companies of whether they intend to strike. However, companies can inform their employees of a possible contingency plan to handle incidents on the day of the strike, e.g., possible obstacles to entry and how to justify them.

➤ **Can companies adopt measures when it is impossible to know for sure which employees will join the general strike? What type?**

Yes. Companies can adopt measures to mitigate the effects of the strike. They can call on the legal limits on exercising that right and use any means already available to them, provided they do so in a lawful manner:

- ✓ They can establish security and maintenance measures and appoint employees to be responsible for those measures. Those measures are not aimed at keeping the company operating, but at making it possible to resume production once the strike has ended or to protect the company's assets. They can be established in an agreement with the strike committee, if one exists; otherwise, the company can establish them unilaterally (after consultation with the works council or staff representatives), in which case the decision is subject to review in court later.
- ✓ If the company provides a public service or services that are essential for the community, the government authority will issue a decree establishing the minimum

services (publication is still pending to date) to ensure basic functioning of those services. In that case, the implementation or performance of those minimum services and the appointment of the employees responsible for them will result from the agreement with the strike committee or the unions calling the strike, or from the company's unilateral and objective decision.

- ✓ In addition to the previous limits, companies can adopt other measures, e.g., functional mobility within the non-striking employees' professional group, to cover the absence of striking employees. However, this is only an option when the means and solutions the company employs are already available and are normally within its reach. It would be unlawful behavior to introduce them *ex novo* to cover the striking employee's absence.
- ✓ As this general strike **allows two ways to exercise the right to strike (two-hour strikes and a 24-hour strike)**, we advise companies to collect signatures or use a clock-in system for the day of the strike (without this involving more paperwork for the company) to check which employees joined the strike and how long they were absent.

During the strike

> Can companies unilaterally decide to close the work center on that day?

No, unless it is justified based on exceptional reasons such as evident danger of violence for people or serious damage to objects that cannot be mitigated through security measures; or if the number of absences or irregularities seriously hinder the normal production process.

> Can companies check attendance of employees that do not strike?

Yes, companies can collect signatures or clock-in details of the employees that go to work.

> How must companies act if the non-striking employees arrive late or cannot reach their place of work because of blocked access roads due to the strike?

In addition to asking non-striking employees to submit appropriate proof that the strike made it difficult for them to arrive at work, companies can do the following: (i) when possible, offer employees the possibility to work remotely; and (ii) when this is not possible, establish the date(s) and ways to make up for the hours not worked, and yet remunerated.

- **Can the striking employees occupy the work center to carry out their protests?**

No.

- **Can the striking employees, their legal representatives and unions hold meetings at the work center?**

Yes, if the meeting is peaceful and does not involve coercing other employees or infringing on their rights.

- **Must companies allow picketing?**

Yes, if picketing is limited to providing information and propaganda aimed at convincing the other employees to join the strike.

- **How must companies act if the picketing takes violent measures or measures that could damage the facilities?**

Companies must inform the labor authorities immediately and, where necessary, report the incidents to the police or the courts. We recommend using means to obtain proof of the events.

- **How must companies act if there is a breach of the security or maintenance services, or of the established minimum services?**

Companies can have other employees replace those absent from their workplace (their own employees not usually assigned to those duties, employees hired for this purpose or temporary employees). In addition, there is the possibility for companies to take disciplinary action against the infringing employees.

After the strike

- **Can companies take measures against striking employees?**

No, unless they have committed a serious labor offense during the course of the strike, a matter that would have to be evaluated on a case-by-case basis.

- **Are striking employees entitled to their salary?**

No. Exercising the right to strike entails suspension of the employment contract during the hours not worked.

➤ **What items must companies deduct from the striking employee's salary?**

Companies must deduct the amounts corresponding to the number of hours of absence from the base salary and additional salary items, and from any other salary payments exceeding the monthly salary amount, e.g., special payments. There will be no deduction from fringe benefits (e.g., currency devaluation, wear of tools and equipment, travel allowance), but there can be a deduction from other specific items such as tips. Deductions will not affect paid annual leave, its duration or its payment.

➤ **Are non-striking employees that cannot provide their services, whether totally or partially, because of the strikers' action entitled to their salary? Do they have to make up for the hours not worked?**

Yes, they are entitled to their salary. If there is proof of a justified absence or tardiness, employees may have to make up some or all of the hours.

➤ **What procedures must companies carry out regarding their social security obligations?**

Employees that have exercised their right to strike will be assigned a special registration status, meaning that both employer and employee will have their obligation to contribute for the hours of absence during the strike suspended. The company has five calendar days to inform Social Security of the striking employees' salary situation. In the case of a partial strike, the employees will contribute for the salary actually received, always applying the minimum base per hour of work established for part-time contracts.

➤ **If there are formal irregularities during the strike or in its exercise, could companies challenge the strike?**

Yes. Companies could file a complaint claiming a collective work conflict and requesting the strike be declared illegal or abusive, which must be studied on a case-by-case basis.

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