

Spain

Wage guarantee in case of insolvency

Phase	Law 22/2003 (Insolvency Act 22/2003 of 9 July 2003), Royal Decree 20/2012 (Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budgetary stability and promote competitiveness), Statute of Workers' Rights (Royal Decree Law 2/2015), Royal Legislative Decree 1/2020, of 5 May, approving the revised text of the Insolvency Act.
Native name	Ley 22/2003, de 9 de julio, Concursal; Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad; Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores; Real Decreto Legislativo 1/2020, de 5 de mayo, por el que se aprueba el texto refundido de la Ley Concursal.
Type	Wage guarantee in case of insolvency
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 84, 90, 91 of Law 22/2003; Article 19 of Royal Decree 20/2012; Art 33 Statute of Workers' Rights (Royal Decree Law 2/2015); Art 243, Art 514 Art 541 Royal Legislative Decree 1/2020.

Description

There is a special insolvency state fund (Fogasa) addressed to workers whose employer has been declared insolvent or bankrupt, or who had to stop paying wages for certain economic reasons. Law 22/2003 defines insolvency as the situation in which a debtor company cannot regularly meet its required debtor obligations.

The insolvency law from 2003 establishes the workers' privilege as creditors in cases where the company becomes insolvent. The claims of the workers of the company (wages for the 30 days before the opening of the collective procedures; wages for work after the start of the collective procedures; economic compensation related to termination of the employment contract etc.) have the priority, ranking ahead of all other claims.

The wage guarantee fund only becomes active if there are not enough assets available.

Anyone providing services for an employer and receiving wage for this, including part-time and fixed-term workers, irrespective of the duration of employment is eligible by the wage guarantee fund.

Domestic servants employed by families, artists, partners of workers' cooperatives are exempted.

The guarantee covers wages, bonuses and fringe benefits as well as financial employee participation that arises up to one year before the insolvency.

In terms of wages pending to be paid, the fund pays an amount equivalent to the double of the daily National Minimum Wage per each unpaid working day. Since the Royal Decree 20/2012 entered into force, on the 15 July 2012, a maximum of 120 days can be covered with the fund. Before, it was 150 days.

In terms of severance pay, there is a maximum payment of 12 months per year worked. However, the wage taken into consideration in order to calculate the severance pay cannot be higher than the double daily minimum wage (the current national monthly minimum wage can be accessed [here](#)). FOGASA covers only severance pay acknowledged by a court sentence or deriving from a resolution of the Labour Authority, and when dismissal is applied because the company is considered insolvent or goes bankrupt.

The guarantee is administered by the Guarantee Institution Fogasa of the labour ministry and financed by employer contributions.

Commentary

For wage guarantee fund statistics, visit the [Ministry of Labour and Social Economy](#).

Additional metadata

Cost covered by Companies

Involved actors other than national government	Other
Involvement (others)	Guarantee Institution Fogasa
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

- [Law 22/2003 \(Insolvency Act 22/2003 of 9 July 2003\)](#),~~~ [Royal Decree 20/2012 \(Royal Decree-Law 20/2012, of 13 July, on measures to guarantee budgetary stability and promote competitiveness\)](#),~~~ [Statute of Workers' Rights \(Royal Decree Law 2/2015\)](#)~~~ [Royal Legislative Decree 1/2020, of 5 May, approving the revised text of the Insolvency Act](#),~~~ [FOGASA Annual Report 2021 \(in Spanish\)](#)~~~ [Annual Report Fogasa 2013](#)~~~ [FOGASA](#)~~~ [Real Decreto 231/2020, de 4 de febrero, por el que se fija el salario mínimo interprofesional para 2020](#),~~~ [Royal Decree 20/2012](#)~~~ [Royal Decree 1/1995](#)~~~ [Law 22/2003](#)~~~ [Boletín Oficial del Estado -27-12-2018](#)~~~ [FOGASA -Memoria de actividade 2017](#)~~~ Deutsch, A. (2011), Europäische Beispiele für die Insolvenzentgeltsicherung, Vienna, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF~~~ Sargant, M. (2007), Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC [protection of employees in the event of the insolvency of their employer], Human European Consultancy/Middlesex University Business School~~~ Watson Wyatt (2006), Employment Terms and Conditions Report Europe, Volume I, Brussels, Belgium~~~

Citation

Eurofound (2015), Spain: Wage guarantee in case of insolvency, Restructuring legislation database, Dublin