1. Does the regulation on working time establishes a daily, weekly and/or annual limit of working hours? If so, what is the maximum working hours?

The regulation on working time in the Spanish legal system establishes a daily, weekly and annual maximum working hours. Article 34 of the Workers' Statute (Estatuto de los Trabajadores – ET, hereinafter) states that working time shall be determined as provided in the applicable collective bargaining agreement or employment contract. Nevertheless, it sets a maximum working time that, in any case, cannot be exceeded by the collective agreement or employment contract. Specifically, it establishes an ordinary workday of maximum 9 hours per day and 40 hours per week on a yearly basis.

2. What is the regulation regarding daily, weekly and annual rests periods?

The Spanish regulation on rest periods distinguishes between daily, weekly and annual rest periods:

- Minimum rest of fifteen minutes within the working day when it exceeds six continuous hours and a minimum rest of 12 hours between the start of the previous working day and the beginning of the next (article 34.3 and 4 ET).

- Regarding weekly rest periods, article 37.1 ET provides that workers be entitled to a minimum weekly rest period of 1,5 days uninterrupted, which can be accumulated in periods of up to 14 days. As established in this article, generally the weekly rest will include Saturday afternoon or Monday morning and the entire Sunday.

- Finally, concerning annual rest periods, article 37.2 ET grants workers 14 paid holidays a year (Christmas, New Year, Labor Day, National Day of Spain, etc.) and article 38 ET recognizes workers 30 days per year of service of paid vacations.
3. Are there special regulations for working hours and rest periods in response to certain personal characteristics of workers (for example, age) or for certain professions? In this case, indicate these maximum working hours.

Yes, the Spanish regulation on working time establishes different maximum working hours in response to certain personal characteristics of workers or for certain professions or productive sectors. In this sense, even though article 34 ET establishes a maximum working day of 9 hours a day and 40 hours per week on a yearly basis, this is the regulation of maximum ordinary working day and there are different maximum working hours.

First, a different maximum working hours for minor workers, equivalent to 8 hours a day (article 34.3 ET) is established. This maximum of 8 working hours is an absolute maximum, as it includes the time spent on training as well as all hours worked by different employers. As for rest periods, minor workers are entitled to at least a thirty-minute break a day when the continuous working day exceeds 4.5 hours and two uninterrupted days of weekly rest. Furthermore, minor workers are not allowed to carry out overtime.

Second, night workers also have a stricter regulation of working time; specifically of 8 hours a day in a period of 15 days and are not allowed overtime (article 36.1 ET).

Third, paragraph 7 of article 34 ET empowers the Ministry of Employment and Social Security, after consultation with the most representative trade union and employers' organizations, to introduce extensions or limitations on the duration of working time and rest periods for those sectors and tasks, which as a result of their peculiarities, require a special regulation. In this context, Royal Decree 1561/1995, September 21, on special working time was adopted, which regulates working hours and rest periods for certain occupations. For example, this Royal Decree extends the maximum working time to 12 hours a day for guards and non-railway watchmen; workers in the agricultural sector when seasonal circumstances determine the need to intensify work; workers in the hotel industry; transporters and workers at sea; etc. For flight personnel this Royal Decree establishes a maximum of 2,000 working hours, of which flight time shall not exceed 900 hours. On the contrary, the Royal Decree establishes reductions in the maximum working time in cases of work involving exposure to harmful environmental hazards. For example, it is limited to 6 hours per day and 38 hours a week for field workers; 35 hours a week for work inside mines; weekly rest periods are extended to two days for underground work; etc.
4. Is overtime allowed? If so, what is the maximum annual limit of overtime? Are these hours included within the maximum working hours? How is overtime compensated?

Yes, the Spanish legal system allows workers to work overtime. However, this possibility, as will be discussed in Q. 8, is reserved to workers with full-time contracts. According to article 35 ET, overtime are those hours performed in addition to the maximum working time. Thus, overtime is not included within the maximum working time, but are added to it; in other words, the maximum ordinary working time can be exceeded with overtime.

Overtime can compensated by two means: (i) overtime can be paid with the amount established in the collective bargaining agreement or employment contract –the value of overtime can never be lower than the value for the ordinary working hour– or (ii) compensated with an equivalent rest period. The collective bargaining agreement or, in default, the employment contract will determine the form of remuneration or compensation of overtime. In the absence of such regulation, however, article 35.1 ET favors compensating overtime with an equivalent rest period. In this sense, this article establishes that in the absence of an agreement, overtime will be compensated with and equivalent rest period within four months of its completion.

The maximum number of overtime allow per worker is 80 hours per year. For workers with an employment contract with a lower duration, the maximum number of hours of overtime will be established in proportion to the contract duration. In any case, in this maximum limit of 80 hours a year of overtime, only hours that have been paid are taken into account; excluding, as a result, those compensated with an equivalent rest period. Even though it is not very common, overtime performed by workers to prevent or remedy accidents or extraordinary and urgent damages will not be included in the maximum amount of overtime, notwithstanding its compensation as overtime.

Performing overtime is voluntary for the worker. Nevertheless, when overtime has been agreed upon in the collective bargaining agreement or employment contract, then its performance is mandatory when required by the employer.

Finally, it is important to state that overtime is forbidden for part-time workers –there is a special regulation for complementary hours (see Q. 8), minor workers and workers that work in a night shift.
5. Does the regulation on working time allow the employer to unilaterally determine or alter the working hours of workers initially established? If so, determine under which circumstances and conditions.

Yes. The regulation on working time in the Spanish law gives the company the right to unilaterally determine or alter the working hours of its workers initially established in the collective bargaining agreement or employment contract.

Article 34.2 ET regulates the irregular distribution of working time. That is, this article allows the possibility to distribute working time unevenly or irregularly throughout the week, month or year. However, the concept of irregular distribution of working time regulated in this article is not just the possibility to distribute working time irregularly. Furthermore, it implies the possibility to exceed the maximum working hours of 9 hours a day and 40 hours a week.

To introduce an irregular distribution of working time, however, it must respect the following limits:

iii. 12 hours of rest between the end of one working day and the beginning of the following (article 34.3 ET).
iv. 1.5 days of uninterrupted weekly rest periods, which can be accumulated up to 14 days; therefore, this regulation allows workers to work for 11 consecutive days whenever they subsequently enjoy three uninterrupted days of rest (article 37.1 ET).
v. 40 working hours per week on a yearly basis, therefore allowing the possibility of exceeding this maximum of weekly working hours in certain weeks provided the annual average fit this 40-hour limit (article 34.1 ET).

The irregular distribution of working time may be introduced in the company by an agreement in the collective bargaining agreement or by agreement between the company and workers’ representatives. Nevertheless, the 2012 labor law reform introduced an essential change in the legal regime of the irregular distribution of working time conferring, as mentioned earlier, the employer the right to unilaterally introduce an irregular distribution of working time; that is, to unilaterally alter its workers working hours. Article 34.2 ET states that in the absence of agreement in the collective bargaining agreement or with workers’ representatives, “the company may distribute irregularly throughout the year ten percent of working time”. Thus, the employer has the capacity, for all employed workers, to introduce modifications to their working time and irregularly distribute their working hours, without need of an agreement with workers’ representatives or with the concerned employee. The company
has the ability to, in a given day, week or month, change the workers daily, weekly or monthly working hours to the extent to exceed the maximum working hours of 9 hours a day and 40 hours a week, provided that the above limits are respected. The only requirement is that the company must notify the worker with a minimum of five days of the new working hours. Remember that the employer’s capacity to determine or alter workers’ working time is limited—however important—to 10% of total working time.

Compensation for differences, over or under, between total working hours (after this irregular distribution of working time) and the initially determined working hours will proceed according to that established in the collective bargaining agreement or the agreement with workers’ representatives. In the absence of an agreement, the differences arising from the irregular distribution of working hours must be compensated within 12 months. That is, if because of this irregular distribution of working time a worker has worked more than the agreed working time, this excess must be compensated according to the terms of the agreement or, in absence, as established by the employer within 12 months.

In the absence of an agreement with workers’ representatives, any modification on working time that exceeds the limits of this irregular distribution of working time regulated in article 34.2 ET—because it exceeds 10% of working time or because the company wants to introduce a permanent change in working time—the employer does not have the capacity to introduce such change unilaterally. In this case, any modification will require (a) the agreement of the affected worker or (b) the use of the procedure of substantial modification of working conditions regulated in article 41 ET, which requires the concurrence of business reasons to justify any modification of working conditions.

6. According to the regulation on working time, do workers have the ability to unilaterally adapt, modify or reduce their working hours due to work-family balance reasons? If so, determine under which circumstances and conditions.

Yes and no.

Spanish law grants workers the ability to, in response to work-family balance unilaterally reduce their working hours; however, they do not have the right to unilaterally modify their working hours, which is subject to the regulation established in the collective bargaining agreement or the agreement achieved with the company.
First, the Spanish legal system recognizes situations in which workers to achieve a better work-family balance, have the unilateral ability to reduce their initially established working hours:

- Those workers that are responsible of the care of a child under twelve, a person with a disability or a dependent family members, are entitled a reduction in their working hours –with the proportional reduction in wage– between one eighth and one half of their working time (article 37.6 ET).

- In cases of childbirth, adoption and foster care, workers are entitled to one hour of time off work for nursing until the child is nine months of age (article 37.4 ET). This hour of absence can be divided into two fractions, replaced by a half-hour reduction in the working day or can be accumulated in full days in the terms established by collective agreement or the agreement reached with the company.

- In cases of birth of premature children or children who, for whatever reason, remain hospitalized after childbirth, workers are entitled to one hour of time off work and a reduction in working hours up to a maximum of two hours with the consequent proportional reduction in salary (article 37.5 ET).

- In cases of hospitalization and continued treatment of a child under 18 affected by cancer or another serious illness involving long-term hospitalization that requires direct, continuous and permanent care, workers are entitled –with a proportional reduction of salary– to a reduction of at least half their working time (article 37.6 ET, third paragraph).

The Spanish regulation recognizes workers these possibilities to reduce their working time due to work-family balance needs as individual rights for all workers, male and female. That is, workers are entitled to unilaterally determine the reduction, the period of such reduction and the new working hours within their ordinary working time (article 37.7 ET). That is, workers are entitled to unilaterally –the company cannot oppose– the number of hours of the reduction, the duration of such reduction and the new working hours, within –obviously– the legal limits.

There is now a doctrinal and jurisprudential debate regarding the concept of “ordinary working time” used in article 37.7 ET. That is, it is doubtful whether the reference to the worker's ability to determine its new working hours within its ordinary working time include the possibility to modify such working time. For example, if this right entitles workers to introduce changes in their shifts or modify their working time by changing their working days.
Regarding this matter, there are opposite court decisions. Some understand that this right to reduced working hours includes only the ability to determine the reduction and specify the new working hours within the workers normal working time, but does not include the ability to modify it (Decision of the Superior Court of Justice of C. Valenciana 12.7.2012 (AS 2012/2457)). Another jurisprudential position, however, takes into account the constitutional dimension of work-family balance rights and establishes that, even though workers do not have an individual right to impose a modification in their working time, the employer does neither have de faculty to reject a worker’s proposal without justification. In this regard, the Spanish Constitutional Court states that the company must “assess the specific personal and family circumstances attending the applicant worker, as well as the organization of work in the company... to consider whether the refusal to its claim to occupy the night shift is or not an unjustified obstacle for work-family balance”. (STC 14.3.2011 (RTC 2011/26)).

Note, however, that article 37.7 ET empowers collective bargaining agreements to establish criteria to determine workers working hours as a result of the reduction in working time; criteria that take into account the workers right to work-family balance and the companies’ production and organizational needs.

Second, article 34.8 ET recognizes workers the right to adapt the duration and distribution of their working hours to exercise their right to work-life balance. In order to facilitate such balance, this article promotes the use of continuous working time, flexible working time or other ways of organizing working time and rest periods that allow greater compatibility between work and life, as well as improve productivity in companies. Note that this article regulates a different right as article 37.6 ET, because this right to adapt the distribution of working time does not entail a reduction in working time.

This right, however, is not configured as an individual right, because it is subject to the “terms established in a collective bargaining agreement or in the agreement reached with the employer”. Thus, workers cannot impose a specific modification of the distribution of its initially agreed working hours, requiring a collective agreement or an agreement with the company.

As noted above, however, the constitutional dimension of work-life balance rights and the configuration of this article 34.8 ET as a worker’s right prevent the employer to refuse proposals made by workers to adapt the distribution of their working time without justification. “[T]he constitutional dimension... of all measures designed to facilitate work-life balance, both from the perspective of the right to non-discrimination on grounds of sex (art. 14 CE) of women workers and from the point of view of the
mandate to protect the family and children (art. 39 EC), must prevail and provide guidance for the solution of any interpretative doubt” (STC 15.1.2007 (RTC 2007/3)). Thus, it is necessary for the employer to balance the needs of workers and the organizational requirements of the company to determine if the worker has a right to enjoy the requested adaptation of its working time.

7. And due to work-life balance needs (for example, training or education)?

Yes, but not unilaterally.

As it noted in the previous question, article 34.8 ET grants workers the right to adapt the duration and distribution of their working time to exercise their right to work-life balance. This right is not subject to a specific situation –on the contrary to the right to reduction of working time that as subject to childbirth, care of a child or dependent family member, etc.–; therefore, this right entitles workers to adapt the duration or distribution of their working time due to personal needs, such as training or education. Note, however, that the constitutional dimension of work-family balance rights, reserved for family needs, does not protect this right. As a result, workers cannot impose such adaptation of their working time, requiring respecting the regulation included in the collective bargaining agreement or reaching an agreement with the company.

Furthermore, article 23 ET recognizes workers the right to adapt their working time to different situations related with training and education. In this sense, workers are entitled to (a) necessary time off work to attend exams and preference to choose shift, when the worker pursue studies to obtain an academic or professional degree and (b) adapt their working hours to attend training courses. Collective bargaining agreements will determine the terms of exercise of these rights, not allowing the worker, therefore, to determine unilaterally any adaptation or modification of its working time. Workers with more than 1 year seniority in the company are entitled to a paid leave of 20 hours a year (allowing for accumulation up to 5 years) for training related with the company’s activity.

8. What is the definition and legal regime of part-time work? Does the regulation of part-time work allow part-time workers to perform overtime?

In the Spanish legal system, part-time work is defined as the provision of services for a number of hours a day, a week, a month or a year lower than the working time of a comparable full-time worker (article 12.1 ET). In this sense, “comparable full-time workers” is a full-time worker that occupies a similar job post in the company, the full-
time working time established in the collective bargaining agreement or, in default, the maximum legal working time.

The contract for part-time work, regulated in article 12 ET, can be indefinite or fixed-term and must necessarily be subscribed in writing. Part-time workers have the same rights as full-time workers, only admitting the recognition of these rights in proportion to their working time in cases where it is appropriate give their nature (for example, salary).

The conversion of full-time work in a part-time and vice versa will always be voluntary for the worker and shall not, under any circumstances, be imposed unilaterally by the company (article 12.4.e) ET). As a way to favor voluntary mobility between part and full-time work, the Spanish legal system imposes the employer the obligation to inform workers of existing vacancies in the company. There is not, however, a preferential right of workers to occupy a vacant full-time or part-time position in the company.

As for the possibility of overtime, part-time workers cannot work overtime (article 12.4.c) ET). Nevertheless, they can perform supplementary hours. Even though, essentially, supplementary hours and overtime are hours performed by workers in addition to its ordinary working time, their legal regime is significantly different.

There are two types of complementary hours (paragraph fifth of article 12 ET):

- Complementary agreed hours. The employee and the company, at the time of the signing the contract or after, may agree to perform complementary hours, which in no case can exceed 30% of the ordinary hours or the percentage established in the collective agreement, which cannot be lower than 30% nor exceed 60%. Not all part-time worker can subscribe a complementary hours agreement, but only those with minimum 10 hours per week on a yearly basis. To ensure the workers real willingness to subscribe such agreement, the regulation requires that, in any case, the agreement be a specific agreement different that the employment contract, it must be formalized in writing and include the number of complementary hours whose realization may be required by the employer.

Once the worker has signed the agreement of complementary hours, he or she is obliged to work such hours when requested by the company. The worker may only waive the covenant when, after at least one year from its subscription, one of the following circumstances concur: (i) family responsibilities regarded in article 37.6 ET, (ii) training needs incompatible with work or (iii) incompatibility with another part-time contract.
Voluntary complementary hours. In addition to the complementary hours agreement, part-time workers with an indefinite contract and minimum 10 hours per week on a yearly basis can perform voluntary complementary hours—in addition, if so, that those regulated in the agreement. Section d) of article 12.5 ET states that in such cases, the company may offer workers to perform voluntary complementary hours, which may not exceed 15% of ordinary hours or 30% if agreed in the collective agreement.

As these complementary hours are not included in the agreement and can be performed even by workers that did not subscribe such agreement, their performance is not mandatory for workers. This article establishes that “[t]he worker’s refusal to carry out these hours shall not constitute punishable work behavior”.

Complementary hours are paid as ordinary hours. In any case, the performance of complementary hours must respect the limits on working time and rest periods. Furthermore, the sum of the ordinary hours and supplementary hours—both agreed and voluntary—cannot exceed the legal limit of part-time work; that is, must necessarily be lower that the working hours of the comparable full-time worker.

The difference between overtime and complementary hours is significant concerning the requirement of voluntariness in their realization. Although both are voluntary for the employee, the employer can impose overtime when overtime has been included in the collective agreement. By contrast, the employee must specifically and individually accept complementary hours, either by an agreement or by accepting the performing voluntary complementary hours.

9. Does the Spanish legal system recognized the so-called zero hour contract? This is, a contract that does not require the specification of working time and working hours are determined by the employer?

No. The Spanish legal system does not allow the so-called zero hour contract.

First, article 34.1 ET abovementioned states that the working time will be determined in the collective agreement or employment contract. Is imposed, thus, a specification of the number of working hours to be performed by the worker. Even in cases of contracts not formalized in writing, article 8.5 ET requires the company, when contract exceeds four weeks, the obligation to inform their employees in writing of the essential elements of the contract and the main terms of the provision of labor, among which working time is clearly included.
Second, the limit on the amount of overtime (article 35 ET) prevents zero hour contracts, as overtime is limited—remember—to a maximum of 80 hours per year for workers with full-time contracts.

It is certainly true that the legal framework of supplementary hours in the part-time contract (article 12.5 ET) introduce a high level of flexibility in managing working time by the company. Recall that supplementary hours, including both agreed and voluntary, can reach up to 45% of ordinary hours or even 90% where provided by collective agreement. This regulation, therefore, supports a scheme similar—though not identical—to the zero hour contract: the subscription of a contract with a reduced number of ordinary hours and supplement them with additional hours. However, it is not possible to identify the part-time contract in the Spanish law with a zero hour contract due to: (a) the limit of supplementary hours to contracts with minimum 10 hours per week, (b) the prohibition to reach the number of hours for full-time workers and (c) the worker’s willingness to accept supplementary hours. Nevertheless, in our opinion, it is highly questionable the excessive flexibility that arises from the part-time contract, especially when most workers use this contract to better balance work and life.

10. Has the evolution of the regulation of working time in Spain increased or decreased flexibility in managing working time?

From our point of view, the regulation of working time in the Spanish legal system has evolved—especially since 2012— in terms of increasing business flexibility in managing working time of its workers.

The possibility to compensate overtime with equivalent rest periods, the employer’s ability to irregularly distribute 10% of workers annual working time (Law 3/2012, July 6) and the legal framework of supplementary hours in the part-time contract (Law 1/2014, February 28) have exponentially increased the employer’s flexibility in the management of working time and the ability to adapt it to the company’s productive needs.

Note, however, that the rules governing worker’s right to work-life balance—especially the right to reduce working time regulated in article 37.6 ET—limit this business flexibility in the management of working time, as they are configured as individual rights and workers can unilaterally determine their reduction and new working hours within their ordinary working time.
References and judicial decisions

Regarding the Spanish regulation of working time, it is highly recommended to read the following references and judicial decisions:


Decision of the Spanish Constitutional Court of 14.3.2011 (RTC 2011/26), regarding work-life balance rights.

Decision of the Spanish Supreme Court of 16.4.2014 (rec. 183/2013), regarding the legal regulation of irregular distribution of working time.