

# THE VIEW FROM MIAMI

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## **{mosimage cw=100 popup=1}U.S. Employment law: A different world**

US employment lawyer, Mark E. Zelek, suggests that many companies with cross-border operations are surprised by the significant differences between US and Iberian labour practice.

Un creciente número de rights and benefits." empresas ibéricas están abriendo negocios y contratando a trabajadores en EEUU. Sin embargo, Mark E. Zelek apunta que muchos se sorprenden al descubrir las grandes diferencias en la legislación laboral. Si bien EEUU es una de las grandes potencias mundiales, con respecto a la protección legal y a los derechos de sus trabajadores se encuentra por detrás del resto del mundo. Mark E. Zelek considera que debido al incremento de las operaciones transfronterizas, en un futuro algunas de estas diferencias se igualarán. Esto convertiría a España y Portugal en destinos para el desarrollo empresarial más atractivos, y proporcionaría a los trabajadores estadounidenses una mayor protección laboral. An increasing number of Spanish and

Portuguese companies are doing business and employing workers in the United States and vice versa. Companies which have opened or are contemplating starting crossborder operations are often surprised to learn that the employment laws in these countries are entirely different. Although the United States is one of the world's most developed nations, it is behind much of the rest of the world in its legal protection of workers' rights and benefits.

The United States regulates its labour market much less than Spain and Portugal do. There is no comprehensive statutory labour law, like the Spanish Workers Statute or the Portuguese Labour Code, governing individual employment relationships. The terms of employment relationships are determined largely by the parties rather than imposed by the government. This is generally designed to encourage business development and has resulted in a lower rate of unemployment in the United States than in Spain and Portugal.

The two major distinctions between U.S. and Iberian employment law are in the areas of the termination of employment and employee benefits. The basic principle of individual labour law in the United States is the employment-at-will rule. Under employment-at-will, U.S. private sector employers can dismiss their non-unionised employees at any time for any reason or even no reason at all. Thus, unlike in Spain and Portugal, U.S. private employers do not have to demonstrate "just cause" for terminating an employee. Moreover, U.S. employers are not legally required to make severance payments to discharged employees, even if there is no cause for the termination.

In recent years, limited exceptions to the employment-at-will rule have developed where the reason for the termination is illegal. The most significant exception is the federal, state and local anti-discrimination law under which employers cannot terminate employees for discriminatory reasons, such as their race, sex, religion, national origin, age, or disability. The second major limitation is common law doctrine developed in some states which protect individual employees against wrongful dismissal. Under these judgemade doctrines, terminated employees may sue in court to recover damages when they can show that their terminations violated employer promises, jeopardised clear public policies or, sometimes, did not comport with good faith and fair dealing.

A second fundamental difference between U.S. and Iberian employment law is in the area of employee benefits. In the United States, employers are not legally required to provide any fringe benefits to their employees. For example, unlike in Spain and Portugal, there are no statutory requirements for paid vacations, holidays, or leaves of absence. Nevertheless, to attract and retain good employees, many U.S. employers do on their own provide such fringe benefits.

In sum, workers in the U.S. have fewer government-mandated labor rights than their Spanish and Portuguese counterparts. With the expansion of cross-border operations, I anticipate that there will be some levelling of these differences over time. This should allow Spain and Portugal to be more attractive for business development (with consequent lower unemployment rates) and U.S. workers to enjoy greater job protections.

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