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VIDEOJUEGOS

Employment issues in video game development



Guide prepared by

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Introduction to the **Guide**

This guide will be of great use to you if you are in the video game industry, whether you are a publisher, a developer or work in marketing.

In the video game industry, success depends on many professionals working together. This guide is designed to help you optimise all aspects of team and process management within your company, ensuring a productive environment and compliance with employment legislation in Spain.

Specifically, this guide will be useful regarding the following:

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- Hiring employees and the concept of false self-employment: *How are employment relationships governed in the video game sector, and what legal and economic risks does false self-employment entail?*
 - Types of contracts and their correct execution: *Why is permanent employment the norm in Spain, and what are the consequences of using temporary contracts outside the legal requirements?*
 - Flexible organisation of work: *How are remote working and flexible working hours implemented in a video game studio, and how are working hours and the registration of these hours managed?*
 - Prevention of occupational hazards: *Why is it essential to prevent the crunch and protect the physical and psychological health of teams, and what are the legal obligations in terms of occupational risk prevention?*
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1. How are employment relationships regulated? How do they affect the video game sector?

In Spanish law, employment relations are regulated, fundamentally and in their most essential aspects, by the provisions of Royal Legislative Decree 2/2015, of 23 October, which approves the [revised text of the Workers' Statute Law](#) (better known as the “**Workers' Statute**”). The following guidelines are based on this text, which is directly relevant to the video game sector.

2. False self-employed workers: a risk to avoid

In the world of work, there are two main types of workers: self-employed workers (who work on their own account) and employees (who work for a company or employer). A self-employed worker offers his services or products and assumes the risks of his business; this means that if his business does well, he earns more, and if it does badly, he may lose money.

Video game developers of all kinds are often immersed in a highly dynamic and competitive environment. The need to adapt quickly to changes in technology, market trends and player demands can lead to situations where hiring self-employed workers becomes a strategic option.

⚠ Self-employed workers offer flexibility and specialisation, allowing companies to tackle specific projects with specialised skills without making long-term commitments. In addition, in the video game industry, where project cycles can be variable, hiring self-employed workers provides the ability to quickly scale up the team during periods of high demand and scale down when necessary. This agility in the management of human resources allows companies to optimise their costs and maintain a highly trained team, which is vital for success in a sector as dynamic as the video game industry.

However, as in other sectors, there are sometimes cases of *false self-employment*, which includes those people who, although they appear to be self-employed—in other words, they have signed a contract to provide commercial services—are not really self-employed because they provide their services in a regime of clear *dependence and subordination (ajenidad)* from their employer, and do not assume the risks and results of the business activity, as a true employee would do.

The key factors that Spanish courts have identified as characteristics of a hidden ordinary employment relationship are:

Dependency	Subordination	Highly personal nature and remuneration
This is usually manifested through a range of situations such as the existence of instructions and work orders, adherence to a full-time schedule and working hours, and the provision of services at the workplace, among others.	Among the most common indications of the concept of subordination is the provision of all the materials necessary for the performance of the work (such as computer equipment) to the worker.	Indications of an employment relationship include the payment of a monthly amount and the absence of differentiation between ordinary workers and false self-employed workers.

What risks does a studio or publisher take on when hiring a false self-employed worker?

A

The Social Security may claim the contributions that should have been paid since the beginning of the hidden employment relationship of a false self-employed worker -with a maximum time limit of 4 years -increased by a 20% surcharge.



B

The failure to apply for the initial enrolment or registration of workers entering their service is a serious infringement that can result in a fine of between €3,750 and €12,000 for each false self-employed worker, as well as a fine of between 100% and 150% of the amount of the contributions due as stated in the previous point, including surcharges, interest and costs.



C

It is important to note that, if the amount of unpaid contributions in the last four years reaches €50,000, having false self-employed persons can be considered not only employment fraud, but also a criminal offence (with possible criminal sanctions).



Let's imagine a video game company that is developing a new title and, to improve the game's narrative, decides to hire Marta, an expert in scriptwriting and storytelling. Marta is a highly qualified professional and has previously worked on different projects in the industry as a self-employed worker. However, in this case, the company asks her to collaborate during the entire development of the game, which will take approximately one year.

Unlike regular employees, Marta does not have a fixed schedule, nor does she work at the company's offices. In principle, she seems to have greater independence, as she only needs to deliver the scripts on the agreed dates. However, the company includes her in all team meetings, where she receives detailed instructions on the content of the script, the changes she needs to make, and the narrative approach to follow. In addition, the video game development team provides her with the specialised software she needs for her work, and she receives a fixed monthly payment, regardless of the number of scripts she has delivered or the time it has taken her.

In this scenario, although Marta does not physically work in the office or have a strict schedule, there are signs that she could be considered a false self-employed worker:

- (i) **Dependency:** Marta follows the company's guidelines and is part of the development team, receiving instructions and constant feedback.
- (ii) **Subordination:** The company provides her with the necessary software for her work, which shows that she does not take the typical risks of a self-employed worker.
- (iii) **Fixed remuneration:** The fact that she receives a fixed monthly payment, rather than variable payments according to the work performed, is another indication of a hidden employment relationship.

In this case, at first glance, it appears that Marta is self-employed, as she has a certain flexibility in her work. But, because of her integration into the team, the dependency, the control the company exercises over her, and the resources they provide her, she could be considered a false self-employed worker if the authorities were to investigate the situation.

3. What kind of employment contract? Different options

Under the Workers' Statute, the general rule in Spain is that employment contracts must be of an indefinite nature, i.e. they must not have an end date. This means that, in general, companies must offer stable employment. Therefore, temporary employment in Spain is the exception and must only be used in very specific circumstances and situations. There is nothing special about the video game sector in this respect.

Since the 2022 Labour Reform, fixed-term employment contracts can only be entered into in two very specific situations: (i) due to circumstances of production, or (ii) due to the replacement of workers.



A

Due to production circumstances

A contract may be entered into due to production circumstances when a company, for example, a publisher, finds itself having to cover:

- ✓ Unforeseen and non-recurring market needs, production backlogs or delays (although with a maximum duration of 6 months),
- ✓ Vacancies during holiday periods (with a maximum duration of 6 months), or
- ✓ Occasional, foreseeable situations of a short duration (a maximum duration of 90 days per calendar year).

Therefore, these types of temporary contracts may be used, for example, to cover staffing shortages resulting from annual holidays or to cover staffing needs arising from a new project that was not part of the annual planning.

B

Replacement of workers

Fixed-term contracts may be entered into to replace a worker who is entitled to return to their job, provided that the contract specifies the name of the person being replaced and the reason for the replacement.

For example, this type of fixed-term contract may be used to replace employees who are temporarily incapacitated or who are on leave for the birth and care of children, or to complete the reduced working hours of another employee.

⚠ It is important to remember that it is always necessary for the contract to state precisely and in detail the cause that justifies the conclusion of the contract.

4. What are the consequences of incorrectly entering into temporary contracts?

The hiring of workers on a temporary basis without meeting the legally established requirements may entail serious consequences for companies, in particular:

- (i) **Changing from temporary to permanent contract:** persons hired in breach of the regulations will acquire permanent status. This means that a company will not be able to terminate their contract easily, and must offer them job stability as if they had been employed indefinitely from the beginning.
- (ii) **Fines:** breaking the legal or agreed rules and limits regarding fixed-term and temporary contracts, through their use in the abuse of the law, is classified as a serious infringement, and can be sanctioned with a fine of between €751 and €7,500 for each worker affected.

5. How to regulate remote work in a video game company

Legislation regulating remote working was recently adopted and applies to all workers who provide services remotely for at least 30% of their working time during a reference period of 3 months. The [Remote Working Law](#) provides that remote working must be agreed voluntarily between the employer and the employee. However, this type of work can also be requested by workers in order to balance their family and working life.

Remote working agreements must include a number of specifications such as the timetable, the means of monitoring the activity and the duration of the remote working agreement. In addition, the Remote Working Law establishes that it is the employer's obligation to cover the costs of providing and maintaining all the resources (around €25-35 per month), equipment and tools necessary for employees to work remotely and grants workers the same rights as they would have if they worked from the office or workplace in person.

Why is compliance with remote working regulations important?

A

Avoiding serious sanctions

The failure to formalise a remote working agreement in accordance with the terms and conditions and in compliance with the legal and contractual requirements constitutes a serious infringement, which may be punished with a fine of between €751 and €7,500. Depending on the severity or recurrence of the infringement, these fines can represent a considerable cost for companies, affecting their financial stability and reputation.

B

Retroactive compensation

The failure to formalise a remote working agreement in accordance with the terms and conditions and in compliance with the legal and contractual requirements constitutes a serious infringement, which may be punished with a fine of between €751 and €7,500. Depending on the severity or recurrence of the infringement, these fines can represent a considerable cost for companies, affecting their financial stability and reputation.

6. Occupational risk prevention

Although the Workers' Statute is very broad, it does not cover all employment-related issues. There is other legislation that is also relevant to this sector, such as [Law 31/1995, of 8 November, on the Prevention of Occupational Risks](#).

The video game industry has experienced significant growth in recent decades, which has led to an increase in demand for professionals in this field. However, this rapid development has also raised concerns about workers' occupational health and safety. It is critical to implement effective occupational risk prevention measures to ensure a safe and healthy working environment.

Employers are the guarantors of health and safety in the workplace and must therefore take all necessary measures to protect their workers, both physically, socially and psychologically. Indeed, given the nature of the activity carried out, it is vital to pay particular attention to the *crunch*.

The *crunch* is defined as the period of time during the development of a video game, which can

last from weeks to months, during which workers dedicate a large number of hours to complete the project, or a component of it.

The *crunch* can lead to physical problems such as musculoskeletal disorders and cardiovascular problems. However, the most serious consequences are often psychological, such as anxiety, stress and, in the most extreme cases, even depression.

⚠ Employers have a duty to protect workers against occupational hazards, including work-related psychosocial risks.

In order to prevent the *crunch*, the law requires employers to implement the measures that form part of the duty of prevention in accordance with the following principles:



The prevention of occupational risks must be integrated into the general management system of the company, both in all its activities and at all hierarchical levels of the company, through the implementation and application of an occupational risk prevention plan.



Why is it necessary to comply with occupational risk prevention provisions?

- (i) Breaches of occupational risk prevention regulations are subject to the following sanctions:

Minor

Minor infringements carry a fine of between **€45 and €2,450**

Serious

Serious infringements carry a fine of between **€2,451 and €49,180**

Very serious

Very serious infringements carry a fine of between **€49,181 and €983,736**

The failure to comply with occupational risk prevention regulations shall be classified as a minor or serious infringement, depending on its seriousness.

- (ii) Furthermore, in the event of an accident at work due to the lack of adequate safety measures or due to a lack of diligence, i.e. acting without due caution and in breach of health and safety regulations, workers can file a civil claim against the company for the loss and damage suffered.

7. The daily working time record: Is it compulsory?

One of the ways of ensuring that the rules on working hours and rest periods are being respected and thus also reducing the occupational risks arising from the activity, so that there is evidence of the hours that the worker has worked, is to keep a record of the working day.

This **2019 Regulation** imposes an obligation on employers to have a daily record of the working day, recording the specific time at which each worker actually starts and ends their working day, in accordance with the Workers' Statute.

Employers must negotiate with their workers' representatives regarding the tool to be used, ensuring at all times that the system for recording working hours meets the requirements of being objective, reliable and accessible to all workers.

Why is it important for companies to have a system in place for recording working hours?

A

Avoiding sanctions

Breaching the rules and legal or agreed limits in relation to the recording of working hours is classified as a serious infringement, which can be punished with a fine of between €751 and €7,500.

B

A tool for internal management

Time recording can become a useful tool for companies to identify situations of stress and psychosocial risks within the workforce.

8. The irregular distribution of working hours

The irregular distribution of working hours is a flexibility mechanism which the Spanish regulatory system provides for in order to organise working time and allow companies to cope with peaks in activity while complying with the legal limits on working hours.

Through the irregular distribution of working hours, workers can exceed the maximum daily working time of 9 hours without having to work overtime. Therefore, irregular distribution is an extremely useful tool for companies when organising their activity, as it provides flexibility without incurring additional costs.

Irregular distribution is a fundamental resource in industries such as the video game sector, where it is often necessary to have a pool of additional working hours to meet market demands. In the absence of an agreement with the workers' legal representatives, the pool of working hours that may be distributed irregularly by the employer is 10% of the total working day. There are only two issues that companies must consider when using this system:

- » The use of irregular hours must be notified at least 5 days in advance.
- » This distribution must, in all cases, respect minimum daily rest periods (at least twelve hours between the end of one working day and the start of the next) and weekly rest periods (one and a half uninterrupted days, which can be accumulated over two weeks) as provided for by law.

9. Other obligations



Digital Disconnection Protocol

All companies with employees are required to have a digital disconnection protocol to guarantee the right to digital disconnection for all their workers.

Equality Plan

Companies with more than 50 employees are required to prepare an equality plan. Nowadays, not having an equality plan in place is considered a very serious infringement.

Whistleblowing Directive

In the private sector, setting up an internal whistleblowing channel will be compulsory for all companies with more than 50 employees.

Digital Media Use Policy

Companies must have policies in place that establish criteria for the use by workers of the digital devices made available to them for the performance of their duties.

Summary

Essential checklist



What type of employment contract do people working on the development of a video game have? Identify and document the number of employees with permanent and temporary contracts, as well as the criteria used to select each type of contract.



Regarding services provided by self-employed workers, identify and analyse how these services are being provided, taking into account the criteria mentioned in this guide.



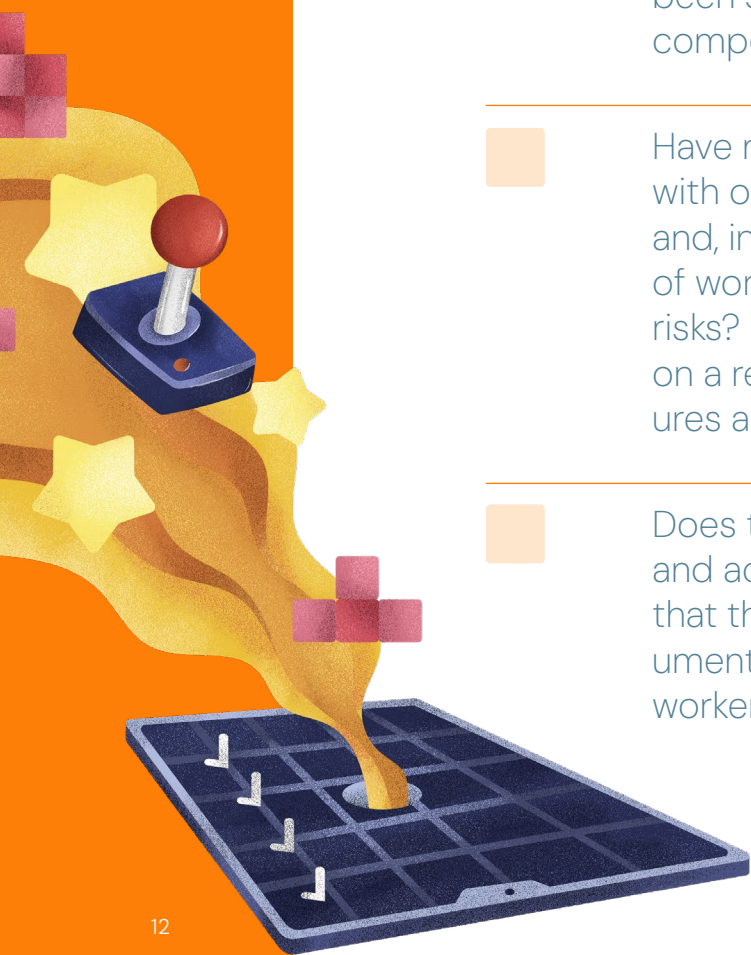
Are there workers who work remotely? If so, confirm that a remote working agreement has been signed and that it provides adequate compensation for expenses.



Have measures been implemented to comply with occupational risk prevention regulations and, in particular, to prevent the occurrence of work-related stress and other psychosocial risks? Check that risk analyses are carried out on a recurring basis and, consequently, measures are updated on a recurring basis.



Does the company have an objective, reliable and accessible time recording system? Check that the registration system effectively documents the clocking in and clocking out of workers.



Glossary of definitions

Accident at work	A sudden and unplanned event that occurs during the performance of work activities or on the way to or from the workplace, resulting in physical injury, illness or the death of the worker.
Commercial services contract	A legal agreement between two parties, usually companies or independent professionals, in which one party (the service provider) undertakes to perform a specific activity or service for the other party (the client) in exchange for financial compensation. This type of contract is characterised by its commercial and non-employment nature, which means that the service provider acts autonomously and is not subordinate to the client.
Provision costs	Provision costs are those expenses that a company must foresee and set aside to cover future employment obligations. These costs include severance payments, unused holiday time, bonuses, and any other benefits or compensation that employees are entitled to receive in the future.
Employment fraud	Any intentional action by an employer or employee that is intended to deceive or defraud in the workplace. This may include practices such as the falsification of documents, falsification of contracts, non-compliance with employment regulations, evasion of Social Security contributions, underpayment of wages, or the exploitation of workers.
Means of monitoring the activity	The means of monitoring work activity are tools and mechanisms that companies use to monitor and manage the performance and activities of their employees during working hours. These means may include time and attendance systems to monitor check-in and check-out times.
Publisher	The company or entity responsible for financing, distributing and marketing a video game and which generally owns its IP.
Surcharge	A financial penalty which is imposed on employers who fail to meet their obligations to pay Social Security contributions on time. This surcharge is applied to the amounts due and is intended to encourage timely compliance with tax obligations.
Whistleblowing	The reporting of illegal, immoral or non-compliant activities within an organisation, with the aim of exposing and correcting such irregularities.

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