

# Work related accidents in construction sites involving migrant population

**The Spanish actions to guarantee the safety in the construction industry**

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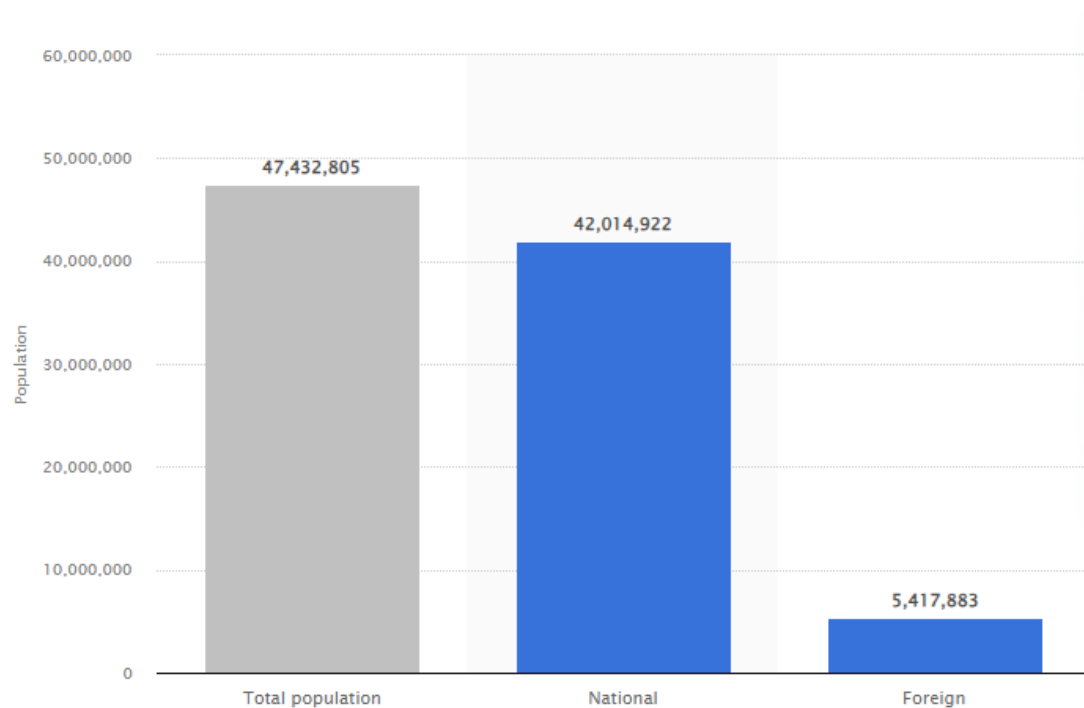




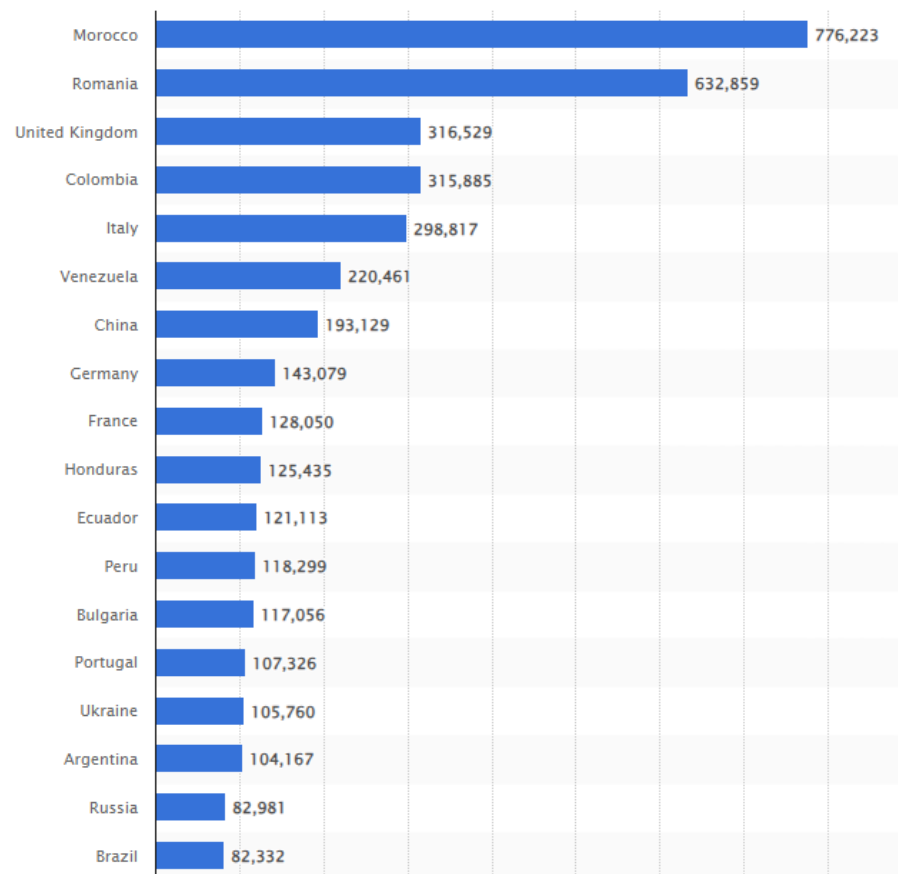
## Accidents at work in Spain in figures

- The construction industry is notoriously high risk for accidents, injuries, and deaths, particularly for non-national or migrant workers, who comprise a significant proportion of the workforce.
- In 2022 there were 631,724 occupational accidents, 10.4% more than in 2021.
  - 3,801 victims sustained serious or very serious injuries
  - 679 fatal cases
  - 1700 accidents at work per day

## Population of Spain in 2022, by nationality



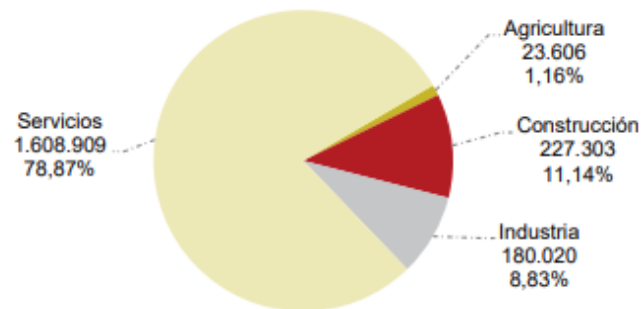
# Foreign population residing in Spain in 2022, by nationality



## Distribution of foreign enrolment

The majority of the group is in the services sector, which in December 2022 reached 78.87% of the total. The remaining percentages are distributed between 8.83 % in industry, 11.14 % in construction and 1.16 % in agriculture.

Construction: 227,303 foreign worker in 2022 / 11,14 %



# Most common types of accidents in construction

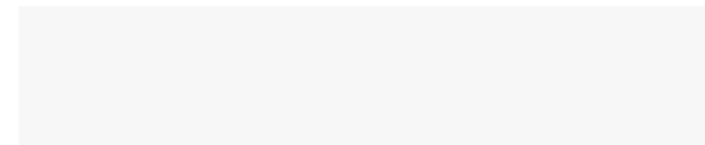
- *Falls*
- *Electrocutions*
- *Entrapments*
- *Knocks*
- *Impact and crushing between formwork panels*





# Challenges to ensuring the safety of migrant construction workers

- *Poor working conditions of migrant workers*
- *Influence of cultural aspects on migrant worker safety*
- *Language barriers for migrant workers*





## Opportunities for promoting safety at work

- *Safety training provisions*
- *Training in the native language*
- *Practical, hands-on safety training*
- *Training content to cover “soft skills”*
- *Safety conditions*



# Accidents at work under Spanish Law

## Regulation

- *Article 1089 Civil Code*
- *Law 31/1995, of 8 November 1995, on the prevention of occupational hazards*
- *Royal Decree 39/1997 of 17 January 1997, approving the Prevention Services Regulations.*
- *Royal Legislative Decree 5/2000, of 4 August, approving the revised text of the Law on Offences and Penalties in the Social Order.*
- *Royal Legislative Decree 8/2015, of 30 October, approving the revised text of the General Social Security Act*

# Accidents at work under Spanish Law

- A work accident is any bodily injury sustained by a worker due to or as a consequence of the job they perform as an employee.
- Therefore, in order for an accident to be considered as such, the following is necessary:

*The worker must have sustained a bodily injury. An injury is understood as any bodily harm or detriment caused by a wound, blow or an illness. Mental or psychological sequels or illnesses are understood as a bodily injury.*

*The accident occurs on the occasion of or as a consequence of the job, meaning that there is a direct cause and effect relationship between the job and the injury. The injury does not, in itself, constitute a work accident.*

# Accidents at work under Spanish Law

- The framework standard of reference is Law 31/1995 of 8 November 1995 on Occupational Risk Prevention
- Expressly establishes the **right of workers** to effective occupational health and safety protection, which means that **employers** have a corresponding **duty** to protect their workers from occupational risks.
- The rights of information, consultation and participation, training on prevention, cease of business activity in the event of a serious and imminent risk, and worker health monitoring are all part of workers' rights to effective protection as regards occupational health and safety.

# Principles of preventive action

Article 15 of the LPRL urges employers to apply measures that are part of the duty of prevention in accordance with the following **principles**:

*Avoiding risks.*

*Assessing risks that cannot be avoided.*

*Combatting risks at their source.*

*Adapting work to the individual.*

*Taking into account technical advancements.*

*Replacing the dangerous by the non-dangerous or the less dangerous.*

*Developing a prevention policy.*

*Giving collective protective measures priority over individual protective measures.*

*Giving appropriate instructions to workers.*

# Management of occupational risk prevention at a company

- Occupational risk prevention must be integrated in the general management system of a company, both in its work as a whole and at all hierarchical levels of the company, by implementing and applying an occupational risk prevention plan.
- This **occupational risk prevention plan** must include the organizational structure, responsibilities, functions, practices, procedures, processes and resources that are necessary for taking preventive actions at a company, under the terms set forth in the rules and regulations.
- The essential instruments for applying a risk prevention plan are the **occupational risk assessment** and **planning of the preventive activity**.

## An employer's responsibilities

- Employers, including the Public Administrations, have the duty to protect their workers from occupational risks, ensuring their health and safety in all work-related aspects, by integrating preventive activities at their company and adopting all the necessary measures.
- An employer will organize the necessary resources for developing **preventive activities** depending on the number of workers who are exposed and the magnitude and category of the risks, using any of the following arrangements:

*The employer personally takes on the preventive activity.*

*Designating one or several workers to do it.*

*Setting up an in-house prevention service.*

*Setting up a joint prevention service.*

*Resorting to an external prevention service.*



# Rights and obligations of workers

## Rights of workers

- *To be informed directly.*
- *To receive sufficient and suitable theoretical and practical training.*
- *To interrupt their activity and, if necessary, leave the workplace due to a serious and imminent risk to their life or health.*
- *To periodic monitoring of their state of health according to the risks inherent in the job.*
- *To have specific preventive measures available.*

# Rights and obligations of workers

## Obligations of workers

- *To use machines, tools, dangerous substances, equipment and any work tool appropriately.*
- *To use the protective means and equipment provided by the employer correctly and according to the instructions given.*
- *To use safety devices correctly.*
- *To report immediately any situation that, in the worker's opinion, might involve a risk to worker health and safety.*
- *To contribute to compliance with the obligations established by the competent authority.*
- *To cooperate with the employer so that the employer can guarantee working conditions that are safe and do not put workers at health and safety risks.*



# Main risk prevention infringements

## Minor Infringements

- Lack of cleanliness of the workplace that does not pose a risk to physical integrity or health.
- Failure to inform the labour authority of occupational accidents and minor occupational illnesses.
- Non-compliance with occupational risk prevention regulations, provided that they are not of serious significance.
- Others that affect obligations of a formal or documentary nature required by ORP regulations and that are not serious or very serious.
- The contractor does not have a Subcontracting Book at the construction site (art. 8 of the Law on Subcontracting in Construction).
- Failure of the contractor or subcontractor to have documentation or title accrediting possession of the machinery used.

# Main risk prevention infringements

## Serious Infringements (examples)

- Failure to carry out risk assessments, updates, reviews and periodic controls of working conditions and activity.
- Failure to carry out medical examinations and periodic monitoring tests of the state of health of workers.
- Failure to report serious, very serious or fatal occupational accidents and diseases to the labour authorities.
- Failure to carry out investigations in the event of damage to workers' health or evidence of insufficient preventive measures.
- Failure to record and file data obtained in assessments, controls, examinations, investigations or reports.
- Failure to plan preventive activities or to monitor them.
- Failure to comply with obligations regarding sufficient and appropriate training and information for workers.
- Failure to adopt the necessary cooperation and coordination measures for the protection and prevention of occupational risks.
- Failure to ensure that those who carry out activities therein receive information, instructions and protective measures.
- Lack of preventive resources when mandatory or failure to comply with obligations deriving from their presence.

# Main risk prevention infringements

## Serious Infringements (examples)

- Failure to observe the specific rules on health and safety protection during pregnancy and breastfeeding periods or the protection of minors.
- Failure to stop or suspend work that does not comply with the regulations on prevention with serious risk or to resume work without remedying the causes for stoppage.
- Failure to adopt cooperation and coordination measures for the protection and prevention of activities considered dangerous or with special risks.
- Failure of the promoter or the employer to adopt measures to ensure that others carrying out activities receive adequate information and instructions.
- Lack of presence of preventive resources or failure to comply with obligations in the case of hazardous activities or activities with special risks.
- Actions or omissions that prevent workers from exercising their right to stop their activity in cases of serious and imminent risk.
- Failure to adopt preventive measures applicable to working conditions from which serious and imminent risk to health and safety arises.

# Procedure of claim: Criminal Proceeding

- Serious injuries and/or fatal cases
- Article 316 & 317 of the Criminal Code:

*“Those who, in breach of occupational risk prevention regulations and being legally obliged to do so, do not provide the necessary means for workers to carry out their activity with the appropriate safety and hygiene measures, in such a way as to seriously endanger their life, health or physical integrity, shall be punished with imprisonment of six months to three years and fines of six to twelve months”*

- Complaint:
  - Police
  - Victim: Limitation period 1 year since the fatal accident or date of consolidation of the injuries
- In addition to incurring the aforementioned offence, for not complying with occupational risk prevention regulations, they also face offences, such as homicide following Article 138 of the Criminal Code Code; reckless homicide (Article 142 of the Criminal Code; intentional injuries in Article 147 of the Penal Code or reckless injuries in Article 152 of the Penal Code.

## Procedure of claim: Labour Proceeding

- Serious injuries and/or accidents as well as minor and moderate injuries
- Report from the official Work 's Inspection authority in cases of serious injuries and/or fatal accidents
- Limitation: 1 year since the date of death or consolidation of the injuries
- Claim against the Work 's Inspection authority as recommended pre-step before issuing proceedings
- Mediation as mandatory pre-step before issuing proceedings

## Insurance cover

Resolution of 21 September 2017, of the Directorate General for Employment, registering and publishing the General Collective Agreement for the construction sector:

*Mandatory Accident Insurance to cover compensations resulting from death and total incapacity*

*Non-compliance with the Law 8/1988 of 7 April 1988 on offences and penalties in the social order if the mentioned insurance is not in place. Penalties 3,000 – 90,000 €*

*Voluntary Insurance Cover beyond Accident Insurance to cover injuries which does not involve a recognition of permanent incapacity*

*Sublimit per accident /victim*

# Assessment of Damages

Law 35/2015 of the 22nd October amending the system for the assessment of damages resulting from road traffic accidents, the so-called Baremo, and the Royal Decree 8/2004 of the 29th October approving the Law on civil liability and insurance for motor vehicles:

- Generally admitted to be used as a guidance when assessing damages for personal injury resulting from non-road traffic accidents.

## Fatal accidents

- Bereavement Damages for the five categories of prejudiced parties

The widowed spouse or partner, ascendants, descendants, siblings and close relatives.

- Pecuniary damages

Expenses resulting from the death (travel, accommodation, etc).

Burial, funeral and repatriation of the deceased to the country of origin.

Loss of earnings can only be claimed by those prejudiced financially by the death of the victim.

# Assessment of Damages

## Personal Injury

### Non-Pecuniary Damages

*Compensation for permanent symptoms (Tables 2A and 2B) and  
Compensation for temporary incapacity (Tables 3A and 3B)*

### Pecuniary damages: Tables 2C and 3C

*Medical expenses up to and from the point of consolidation of the injuries  
Prosthesis and orthopaedic devices  
Rehabilitation, Technical devices, Adaptation to home, Mobility expenses  
Gratuitous care and paid care services, miscellaneous expenses  
Past loss of earnings (for temporary injuries)  
Future loss of earnings (for permanent incapacity)*



## Lack of security measures, supervision and training

*Fatal accident in Madrid*

*Rumanian worker - 55 years old*

*Buried by a beam when he was digging with electric hammer around that beam in the construction of a public parking area*

*The worked for a company which was subcontracted by a group of companies.*

*That group of two companies had been contracted by the Local Authority*

*Criminal proceeding is still ongoing but compensation was received by the prejudice parties.*

*The legal representatives of each of those companies, the supervisor, the manager of one of the companies as well as the technical manager has been accused for the comisión of a crime against the workers and homicide. The insurance companies are also part of the proceeding.*

*Compensation was obtained for the victim ´s Wife, son under 30 years old, son of 30 years old and 5 siblings*

*Total sum of compensation: 351,000 €*

## Conclusion

- Strict liability of the employer?
- Increased use of subcontractors extends the number of companies potentially responsible for the accident.
- More companies potentially responsible for the accident is equal to more insurance companies which may cover the accident.
- Notorious protection of the victim.
- Relevance of the report issued by the public work inspection 's body – generally in favour of the victim
- Relevant criminal and/or financial penalties to employers
- Liability is equal to the increase of public pensions up to the 50%. This increase is asumed by the company.

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