

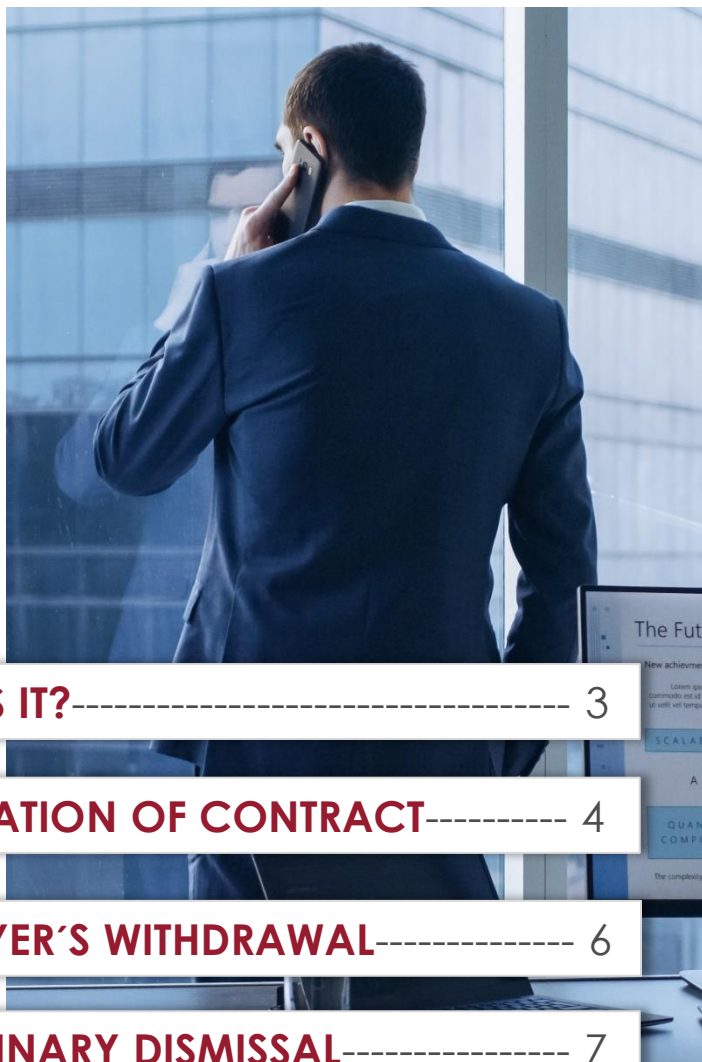


CECA MAGÁN
ABOGADOS

SENIOR MANAGEMENT DISMISSALS

2025

INDEX



| | |
|---|-----------|
| 1. WHAT IS IT? ----- | 3 |
| 2. TERMINATION OF CONTRACT ----- | 4 |
| 3. EMPLOYER'S WITHDRAWAL ----- | 6 |
| 4. DISCIPLINARY DISMISSAL ----- | 7 |
| 5. INSOLVENCY PROCEEDINGS ----- | 8 |
| 6. CAREER PLAN ----- | 9 |
| 7. CHALLENGING THE DISMISSAL ----- | 10 |
| HOW CAN WE HELP YOU? ----- | 11 |

1. Senior management contract. WHAT IS IT?

Senior management personnel have a **special labor relationship** with their employer that is governed by the specific provisions of the Royal Decree 1382/1985, of August 1, 1985, which regulates the special labor relationship of **senior management personnel**.

As announced in the preamble of the aforementioned regulation, this special relationship is characterized by the **reciprocal trust** that must exist between both parties, derived from the unique position that the manager assumes within the Company in terms of faculties, powers and responsibilities.

Art 2.1 RD 2/2015 WORKERS' STATUTE

In this relationship, the **agreement prevails** as the element configuring the content of the relationship.

However, the law has been concerned with defining the **causes and effects** of the termination of this type of contract.

This type of contract is characterized by:

- a) Absence of subordination in the **provision of services** (autonomy and full responsibility).
- b) Exercise of powers corresponding to **strategic decisions** for the company as a whole.

IT IS TERMINATED BY...

The lack of trust or deterioration of the relationship between the company and a senior manager, either by the will of the employer or of the manager.

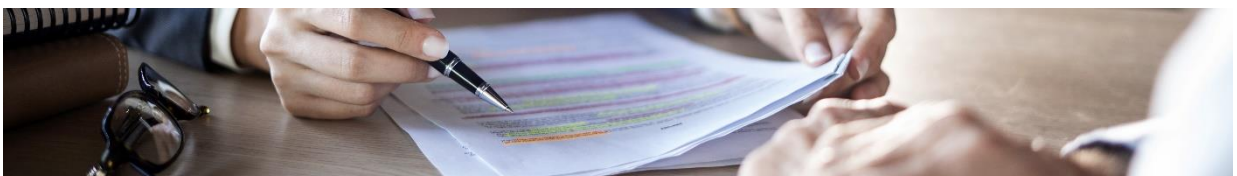
Special employment relationship

The so-called senior management contract is a special employment contract identified in section **a) of Article 2.1. of Royal Legislative Decree 2/2015**, of October 23, 2015, which approves the revised text of the **Workers' Statute Law** and which, as mentioned above, finds its regulatory development in **Royal Decree 1382/1985**.

2. TERMINATION OF THE CONTRACT

2.1 When the contract is terminated by **Will of the Executive**:

- The Executive must give **at least three months' notice**, which may be **extended to six months**, if so, established in writing in contracts entered into for an indefinite term or for a term of more than five years. The notice period need not be observed in the event of **serious breach of contract by the Company**. **Failure to comply with the notice** will oblige the executive to pay compensation equivalent to the salaries corresponding to the duration of the unfulfilled period.
- The senior executive may terminate the special employment contract with the right to the agreed indemnities, and in the absence thereof, those established for the case of termination due to withdrawal by the employer, based on the following causes:
 - a) **Substantial modifications** in the working conditions that are notoriously detrimental to the senior manager's professional training or dignity, or that are decided in serious breach of good faith by the Company.
 - b) **Failure to pay or continued delay** in payment of agreed wages.
 - c) **Any other serious breach** of its contractual obligations on the part of the Company, except in the event of force majeure, in which case the indemnities indicated above shall not be payable.
 - d) **Company succession** or significant change in ownership resulting in a renewal of the company's governing bodies or in the nature and purpose of its main activity, provided that the termination occurs within three months of the occurrence of such changes.



2.2 When the contract is terminated by the Company's Will:

The following situations must be distinguished:

a) Termination of the senior management contract due to **withdrawal** by the Company.

b) Dismissal of the senior manager based on a **serious and negligent breach**.

c) Apart from the aforementioned specialties (dismissal by the employer and disciplinary dismissal), senior management contracts may be **terminated** for **other reasons** provided for in the **Workers' Statute**, such as, objective dismissal (individual or collective), retirement of the executive, death of the executive, etc.



3. EMPLOYER'S WITHDRAWAL



Withdrawal requirements.

For the termination of the senior management contract due to withdrawal by the Company.

- The employer's withdrawal requires **written** communication.
- At least **three months' notice** must be given to the senior executive worker. This period **may be extended to 6 months** if so stipulated in writing in contracts entered into for an indefinite term or for a term of more than five years. Failure by the employer to comply with the notice generates the right of the senior executive to the payment of the amount equivalent to the salaries lost due to failure to comply with the notice (in the proportional part to the time in which the notice is not complied with).
- The senior executive will be entitled to the **indemnity agreed** in the contract or, failing that, to receive an **indemnity equivalent to seven days of salary in cash per year of service with a limit of six monthly payments** (this indemnity of seven days is considered as income exempt from Personal Income Tax (IRPF)).

4. DISCIPLINARY DISMISSAL

The disciplinary dismissal of the senior manager can only be based on the **serious and negligent breach** by the senior manager, and in accordance and compliance with the **procedural requirements** established in Article 55 of the Workers' Statute.

In this regard, it is required:

- **Written communication** of the dismissal with a full **description of the alleged facts** attributed to the worker, to ensure that the latter has full knowledge of them and can defend him/herself adequately.
- The letter of disciplinary dismissal must indicate the **effective date** of the dismissal.
- The additional **formal requirements** agreed in the Collective Bargaining Agreement applicable to the employment relationship must be complied with.
- Misconduct, whatever its nature, will be subject to the **statute of limitations twelve months** after its commission, or after the employer has knowledge of it.
- If the disciplinary dismissal is declared **unfair or wrongful**, the employer must **pay the amount** that would have been agreed in the contract; if no amount has been agreed, the employer must pay the amount of **twenty days' salary in cash per year of service and up to a maximum of twelve monthly payments**.

Dismissal declared wrongful or void

When the dismissal is declared **wrongful or null and void**, the employer and the senior manager will decide whether **to readmit the senior manager or to pay the economic compensation** referred to in the previous section (the compensation agreed upon or, failing that, twenty days).

In case of **disagreement** between the parties, it will be understood that **the payment of the corresponding indemnities** is chosen.

5. INSOLVENCY PROCEEDINGS

The Spanish **Insolvency Law** establishes the following special provisions regarding the contracts of senior management personnel:

1

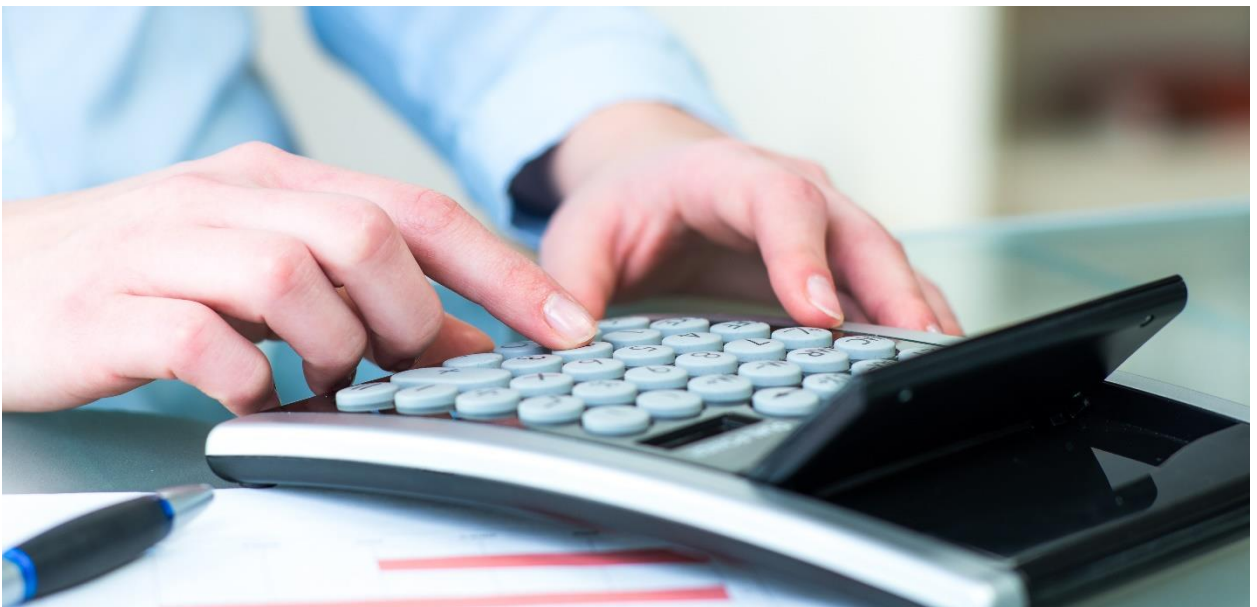
During the insolvency proceedings, **the insolvency administration**, on its own initiative or at the request of the debtor, may **terminate or suspend** the contracts of the debtor with senior management personnel.

2

In the event of **suspension** of the contract, it may be **terminated by the senior executive's will**, with **one month's notice**, and **retaining the right to receive compensation** under the terms set forth in the following provision.

3

In the event of the **termination** of the labor contract, **the judge of the insolvency proceeding** may **moderate the severance payment that corresponds to the senior executive**, in which case the severance payment agreed in the contract will be without effect, up to **the limit of the severance payment established in the labor legislation for collective dismissal**.



6. CAREER PLAN

Many companies support the **career plan** of their potential managers, so it is increasingly common in multinationals to become a senior manager, after the **internal promotion of workers linked to the company** (or companies in the same group) by a common employment relationship. When this happens:

- The senior management contract must be **formalized in writing**.
- It must be **specified** whether the **new special relationship replaces the previous common relationship**, or whether the latter is suspended. If nothing is said about it, it will be understood that the common employment relationship is suspended. If the previous common employment relationship is replaced by the special labor relationship, such novation will only take effect two years after the corresponding novation agreement.
- In the event of **suspension of the previous common employment relationship**, upon termination of the special employment relationship, the worker will have the opportunity to resume the original employment relationship, without prejudice to any compensation to which he or she may be entitled as a result of such termination.

An exception to this rule is made in the case of the termination of a **special senior management contract due to a disciplinary dismissal declared fair**.



7. CHALLENGING THE DISMISSAL

The communication of the dismissal of the senior executive **may be challenged** by the employee within the general expiration period of twenty working days following the date on which the dismissal takes effect.



20

Working days
After the effect occurs

The **labor law courts** are competent to hear disputes arising between senior executives and companies.

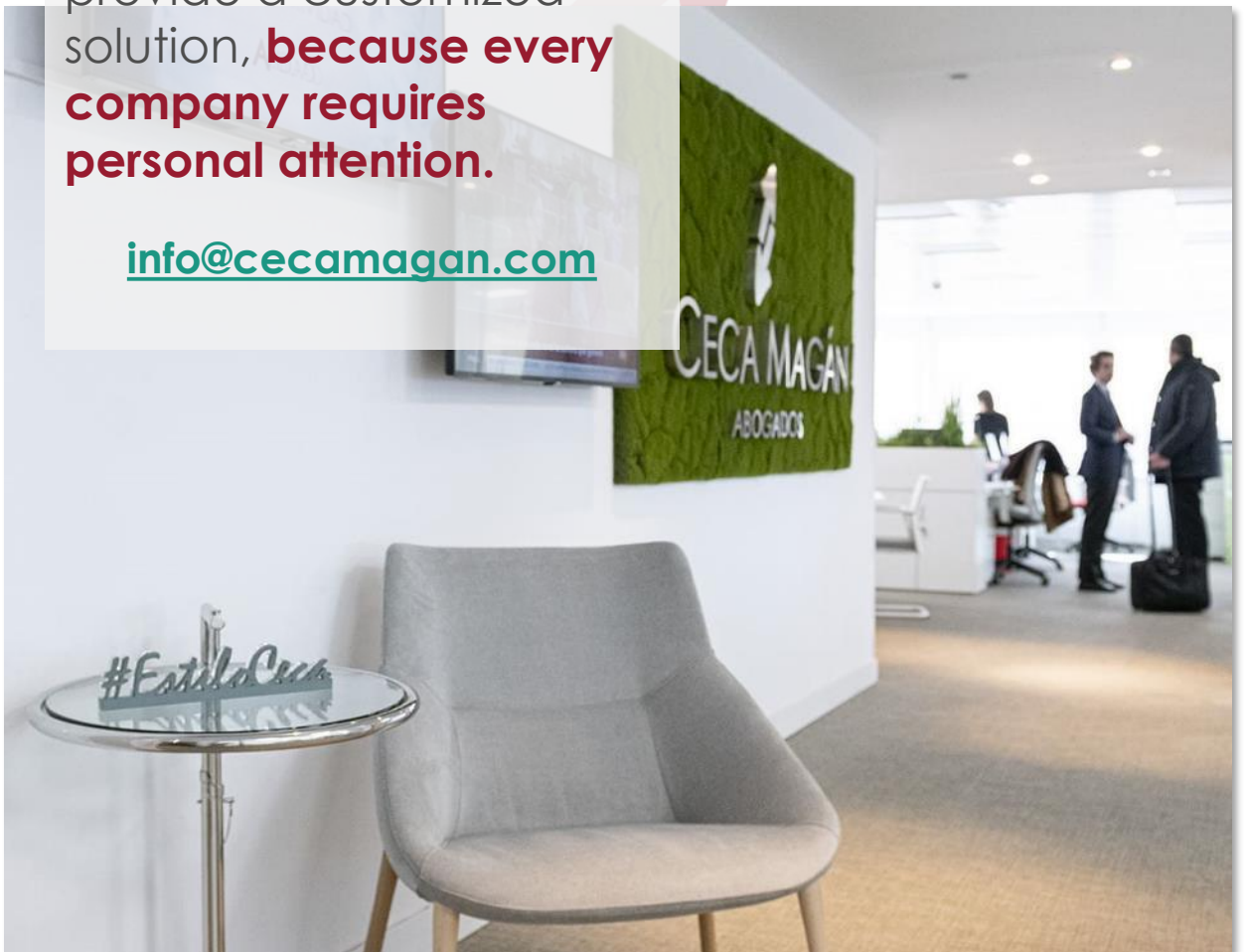


HOW CAN WE HELP YOU?

The process of dismissing senior executives is complex and requires experience and expertise. With 50 years dedicated to labor law, we offer quality, competitiveness and agility to carry out this measure.

Contact us without obligation and our **Labor and Employment Law team** will assess such performance and provide a customized solution, **because every company requires personal attention.**

info@cecamagan.com





CECA MAGÁN
ABOGADOS

#50AñosEstiloCeca



Contáctanos

(+34) 91 345 48 25

info@cecamagan.com

www.cecamagan.com