



Spain: equal treatment between women and men

After a year of drafting and parliamentary discussions, Spain now has a new law on equal treatment between women and men. This is a 'code of law', so-called as it refers to all areas of society, introducing amendments to 22 pieces of existing legislation and covering the public and the private sector. This briefing looks at the most important measures introduced by the law from an employer's point of view: measures against discrimination on grounds of sex, measures to promote equality within the private sector and measures to improve the balance between work life and private life.

The new law on equal treatment between women and men (the Law) entered into force on 23 March 2007. Among other things, this law implements two European directives on equal treatment, Directive 2002/73/EC on equal treatment between men and women as regards access to employment, vocational training and promotion and working conditions, and Directive 2004/113/EC implementing the principle of equal treatment between men and women in access to and the supply of goods and services.

The most important measures introduced by the Law from an employer's point of view are summarised below.

Principles and definitions

The Law applies to all persons and entities in, or acting in, the Spanish territory, regardless of their nationality, address or residence (article 2).

The principle of equal treatment between women and men is defined as the lack of any and all discrimination on grounds of sex, or any other condition or circumstance personally or socially linked to sex, whether directly or indirectly. This includes maternity, family obligations, and marital or familiar status, as well as any other ground that may give rise to additional discrimination, such as disability (article 3).

This right to equal treatment must be guaranteed, within both the private and the public sector, in: access to employment, including self-employment; professional training; professional promotions; terms and conditions

of employment, including remuneration and termination of employment; and membership of, and participation in, unions and employers associations, or any organisation where the members exercise a specific profession, including access to benefits provided by these associations (article 5). There is an exception for situations where it is essential that a job is performed by somebody of a particular sex, provided this is for a legitimate reason.

The Law sets out definitions of direct and indirect discrimination for the first time (article 6). Previously, the definitions were contained only in case law. The same goes for sexual harassment and harassment on grounds of sex (article 7). A specific reference is also made to discrimination for pregnancy or maternity, which would involve direct discrimination in all cases (article 8).

Special protection is provided against reprisal for raising a claim to prevent discrimination; this will also be considered discrimination on grounds of sex (article 9).

Any acts or clauses that are discriminatory or that give rise to discrimination on grounds of sex will be null and void. Liabilities may follow through a system that requires that any remedies and compensation must be real, effective and proportionate to the damage suffered. There is also a system of sanctions intended to deter the commission of discriminatory acts (article 10). In addition, the Law provides for the possibility of bringing a claim before the relevant courts even after the relationship that gave rise to the discrimination has

ended (article 12). The defendant has the burden of proving that there has been no discrimination (article 13).

Employment law and equal opportunities

Measures to improve work-life balance

The general principle set out by the Law is that men and women should take a balanced responsibility for family obligations (article 44).

The Law provides for paternity leave of 13 continuous days. If the employer agrees, this can be taken on a part-time basis. The government has committed to extend this progressively to achieve a paternity leave of four weeks within six years from entry into force of the Law.

In addition, there is a new provision giving employees the right to adjust the length and distribution of their working time to implement their right to balance their business and private life. This may be done in accordance with terms set out by collective bargaining agreement or by express agreement with the employer, as long as the relevant collective agreement is complied with.

The Law also includes the following entitlements for employees.

Equality plans

Companies with 250 or more employees are obliged to have an equality plan (article 45 *et seq*). This may be a stand-alone document or may be set out by collective bargaining agreement. The authorities may also impose the need to implement an equality plan in substitution of other sanctions (further to administrative proceedings against the relevant company for breach of law).

The equality plan should be a set of measures, taken after an assessment of the situation, aimed at achieving equality of treatment and opportunities between women and men and preventing discrimination on grounds of sex. It should include goals to be achieved, and the means to do so, and detail efficient monitoring systems to follow up these achievements.

The equality plan could cover issues such as: access to employment (eg use of numbered CVs, without personal details, to guarantee anonymity); professional classification, training and promotion (eg setting out the need to agree the criteria for a promotion before starting the assessment of credentials); remuneration (eg monitoring salaries, carrying out audits and guaranteeing transparency); and working time (eg improving the paid leave set out by law).

	Old legislation	The Law
Breastfeeding	One hour per day, or a reduction of half an hour per day	Same, plus the possibility of accumulating the hours in days off
Paternity leave	Two days	Leave of 13 continuous days
Maternity leave	16 weeks	Possibility of increasing by two more weeks if the child is disabled
Working time reduction	For children up to six years, reduction between one-third and half of the working time	For children up to eight years, reduction between one-eighth and half of the working time
Voluntary (unpaid) leave	Between two and five years	Between four months and five years
Leave for family care	Up to one year	Up to two years
Leave for child or family care	Necessary to take it in a single block	Possible to split it and take it at different times
Vacation days and maternity		Right to enjoy holidays after leave, even if the relevant holiday year has ended

Companies should also promote working environments that are free from sexual harassment or harassment on grounds of sex (article 48).

The Law also provides for the creation of a specific sign to show that a particular company stands out in its successful application of the principle of equal treatment between women and men. This can be used for publicity purposes.

Four years after the law's entry into force, the government will assess, together with unions and employers associations, the status of collective bargaining on equal treatment and take any necessary measures.

Information rights of works councils

The Law also expands the information rights of the works council, which will have the right to receive information, at least annually, on the company's application of the right to equal treatment and opportunities between women and men. This should include information on the percentage of women and men at the different professional levels, any measures taken to improve equal treatment and the application of the equality plan.

The works council has the right to monitor compliance with and application of the principle of equal treatment, as well as the right to co-operate with management in setting out and implementing conciliation measures.

Other changes

Equal treatment in access to goods and services

All individuals or entities, whether public or private, who provide goods or services to the public, must comply with the principle of equal treatment between women and men and must avoid any discrimination, direct or indirect, on grounds of sex. Notwithstanding this, different treatment will be permissible if it is justified by a legal aim and the relevant measures taken to achieve the aim are adequate and necessary (article 69 *et seq*).

The Law includes an express prohibition from entering into insurance agreements or financing agreements that, as a result of considering sex as a factor in the calculation of premiums and benefits, give rise to differences in

premiums and benefits of insured individuals. Secondary legislation could provide for specific situations where such distinctions may be made, but costs related to pregnancy and childbirth will in no circumstances justify those differences in treatment.

Apart from other legal remedies that might be available, anyone who suffers such discrimination will be entitled to compensation for damages and, in the case of insurance agreements, to claim that the premium or benefit is equal to those of the better treated sex.

Memberships of board of directors

One of the most controversial provisions set out by the Law is the fact that companies who are obliged to file ordinary annual accounts must *try* to include enough women in their board of directors to allow it to achieve a balanced membership of men and women within an eight year period. Any appointments made from the date of entry into force of the Law must take this into account.

Public procurement bodies will consider this issue when deciding who is granted a public contract.

For the purposes of the Law, 'balanced membership' means not more than 60 per cent and not less than 40 per cent of individuals of either sex.

Annual accounts

The annual accounts of companies will need to show the average number of individuals employed during the relevant financial year, set out by category, as well as personnel costs, and distribution by sex at the end of the financial year of the company's employees, split by category and level. This must include management, officers and directors.

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