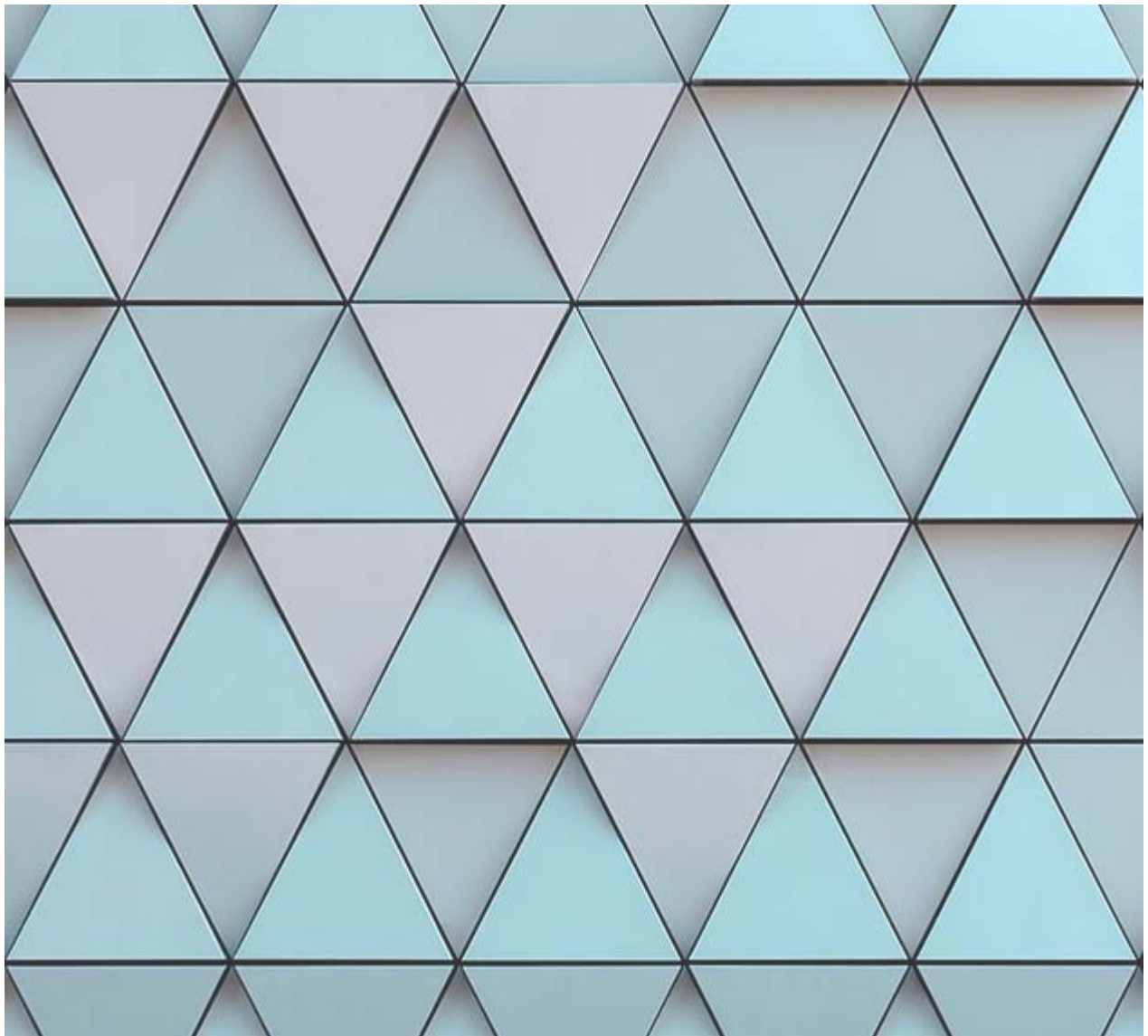


# Spain - Labor and Employment Newsletter



Second quarter 2023 | July 17, 2023



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# NEW WORK-LIFE BALANCE RIGHTS

- **Royal Decree-Law 5/2023, of June 28, transposing Directive 2019/1152, on work-life balance for parents and carers; and on the implementation and enforcement of European Union law**
  - The key developments in labor law on this regulation include the following:
    - The extension of the subjective scope of work-life balance rights to include common-law partners and their blood relatives.
    - The 15 calendar days' leave provided for marriage is extended to the registration of domestic partnerships.
    - The modification of the adjusted working day (without salary reduction) to include children over 12 years of age, spouse or common-law partner, family members up to the second degree of consanguinity, as well as other dependents when, in this last case, they live in the same house; as well as the modification reducing the negotiation period to 15 days and the assumption that it has been granted if the company does not provide a reasoned objection within that period. Also, the worker's right to return to the pre-adjustment situation is strengthened and the worker is protected against dismissal during the adjustment period.
    - Paid leave has been extended from two to five days for serious accidents or diseases, hospitalization or surgery without hospitalization requiring home rest for the spouse, the common-law partner, or any family member up to the second degree of consanguinity or affinity, including those of the common-law partner and cohabiting persons who require the effective care of the worker.
    - In the event of simultaneous requests by two workers of the same company for a reduced working day, breastfeeding leave or a leave of absence for legal guardianship, the company may limit the simultaneous exercise of the right, but it must offer an alternative plan.
    - Workers are given a new right to take time off from work for *force majeure* situations where necessary for unforeseeable urgent reasons related to family members or cohabitating persons, in the event of a disease or accident that requires immediate presence. This paid leave is given for a number of hours equivalent to four days per year, as provided under the applicable collective agreement, and the worker must provide proof of the reason for the absence.
    - A new ground has been approved for the suspension of the labor relationship (called parental leave) for up to eight weeks, which can be enjoyed continuously or with interruption, until the child or foster child reaches eight years of age. At the moment, this leave is unpaid.
    - Protection against dismissal is strengthened, as it includes grounds resulting from the enjoyment of the adjustment of working hours under article 34.8 of the Workers Statute, and other work-life balance rights.



# EQUALITY

> ***Directive (EU) 2023/970, of May 10, 2023, to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms***

- The key features of this Directive are listed below:
  - With regard to recruitment processes, employers' obligation to supply information on the remuneration in job offers, as well as the prohibition on asking questions concerning candidates' previous salary.
  - At the workers' request, the obligation to provide information on their salary level, the average salary level broken down by sex and by category of worker performing the same work or work of equal value.
  - Companies with 250 or more workers will have to report on the pay gap once a year. Companies with a workforce of more than 100 workers will have to report every 3 years.
  - The pay gap will have to be justified through a joint pay assessment in conjunction with the workers' representatives when the difference in pay between men and women exceeds 5% for the same category of workers and cannot be explained by gender-neutral factors (currently pay gap requiring justification is set at 25%).
  - If the company has not complied with the pay transparency obligations established in the Directive, the burden of proof will be shifted, without it being necessary to provide evidence of discrimination.
- The deadline for transposition of this **Directive is May 2026**; however, its content will serve as a guideline for adapting the processes of searching for candidates, recruitment, information and management of potential pay gaps.

# PUBLIC SECTOR CONTRACTS

> ***Act 11/2023, of May 8, on the transposition of European Union Directives, and amending Act 12/2011, of May 27***

- It amends Act 9/2017, of November 8, on Public Sector Contracts, to include among the prohibitions on entering contracts with the public sector persons who have been sanctioned due to having committed the very serious infringements provided for in Act 2/2023, of February 20, regulating the protection of persons who report regulatory infringements and the fight against corruption; or those sanctioned due to serious or very serious infringements affecting equal treatment and non-discrimination on grounds of sexual orientation and identity, gender expression or sexual characteristics, when the prohibition is ordered under



the terms provided for in Act 4/2023, of February 28, for the full and effective equality of transgender people and for the guarantee of LGBTI rights.

## COVID - 19

- > The health crisis in Spain caused by COVID-19 has officially ended (Official Gazette of the Spanish State dated July 5, 2023). Consequently, the measures established in Act 2/2021, of March 29, and particularly those that foresaw the promotion of remote working as a prevention measure—where the nature of the work made it possible—have expired.
- > It will, therefore, no longer be possible for companies to allow remote working under the exceptional regime set forth in Act 10/2021, on remote work. Companies have a 3-month delay to adjust their policies.

## SIGNIFICANT JUDGMENTS

### Business transfer and social security debts

Supreme Court (Judicial Review) May 16, 2022 (Judgment No. 595/2023)

Liability in business transfer extends to all the social security debts of the company transferred—including those that accrued to it because it belonged to a group of companies for employment purposes—and not only to the debts created by the activity specific to the company transferred (which includes, therefore, the debts corresponding to all the workers of the group, even if they were not engaged in the transferor's operating activity).

### Workers' legal representatives

Supreme Court (Plenary, Labor) 25 April, 2022 (Judgment No. 295/2023)

The Supreme Court confirms that workers' representatives who have been dismissed may not exercise their functions as such while the petition stage of the requested dismissal proceedings is being conducted.



## UPCOMING NEWS

- > Due to the calling of general elections to the Spanish Congress of Deputies and the Spanish Senate, to be held on July 23, 2023, both chambers were dissolved on May 29, 2023, and therefore there will be no further legislative activity until they are reconvened.
- > Despite the above, the deadline for transposing Directive 2019/1152, on transparent and predictable working conditions in the European Union expired in August 2022, and therefore its approval through a Royal Decree-Law cannot be ruled out.

For additional information, please contact our [\*Knowledge and Innovation Group\*](#) lawyers or your regular contact person at Cuatrecasas.



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