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25 key points of the equality reform in the workplace

Legal Flash: Labor Law

March 2019

The Official Gazette of the Spanish State, March 7, 2019 publishes Royal Decree Law 6/2019, of March 1, on urgent measures guaranteeing equal treatment and opportunities for men and women at work ("RDL 6/2019"), in force on March 8, with the main exception of the extension of childbirth leaves. RDL 6/2019 introduces significant changes to guarantee equal treatment for men and women, which directly affect the rights and obligations of companies and employees, as we examine in this summary.

As the Spanish parliament is currently dismissed due to the general elections on April 28, RDL 6/2019 will have to be approved by the Permanent Parliamentary Council within 30 days. Otherwise, RDL 6/2019 will have been effective only from its coming into force and up until the failure to approve it.

Main developments:

- The obligation to prepare equality plans is gradually extended to companies with 50 or more employee. These plans must be registered in the registry which will be created to that effect.
- Every company must register the disaggregated salary information by gender and professional classification. This register must be accessible to employees through their legal representatives.
- Companies must pay the same salary to employees carrying out equal value jobs, under the parameters defined by the law.
- Companies with 50 or more employees that identify a pay gap of 25% or more between employees of either gender must provide an objective and reasonable justification for it.
- Termination during the trial period of a pregnant employee's employment contract is presumed to be null and void.
- Objective dismissal in specially protected cases requires proof of the specific need to terminate the employee's contract.
- The suspension of the employment contract due to childbirth is extended to 16 weeks for each parent. It will come into force on April 1, 2019, and be gradually introduced until 2021.
- The right to adjust and rearrange working hours and the way of working to achieve a work-life balance, without having to reduce working hours and salary, is strengthened.

Introduction

The Council of Ministers' meeting held on March 1 approved Royal Decree Law 6/2019, on urgent measures guaranteeing equal treatment and opportunities for men and women at work ("RDL 6/2019"), which was published in the Official Gazette of the Spanish State, of March 7 and came into force on the day after its publication, March 8, 2019 (except for the extension of leave due to childbirth, which will come into force on April 1).

The approval of this reform through a royal decree law is justified by (i) the existing inequality in working conditions for men and women, particularly regarding the still existing pay gap; and (ii some changes due to European regulations, including Directive 2006/54/EC of the European Parliament and of the Council of July 5, 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, and the European Commission Recommendation of March 7, 2014, on strengthening the principle of equal pay between men and women through transparency.

RDL 6/2019 amends seven regulations that directly affect equality between men and women, and adapts their terminology to a non-sexist vocabulary: Act 3/2007, of March 22, on Effective Equality between Men and Women; the Spanish Workers Statute; the General Social Security Act; the Labor Infringements and Sanctions Act; the Act on the Statute of Self-Employment; the Basic Statute of Public Employees; and the Budget Act of 2009.

Below, we summarize the main developments in RDL 6/2019 as questions and answers regarding the following points:

- equality planning in companies
- obligation of equal remuneration for work of equal value
- adjustment and reduction of working hours for employees with children
- suspension of employment contract due to childbirth
- termination of pregnant employees’ employment contract

Equality planning in companies

1. Has the number of companies that must prepare, negotiate and apply an equality plan increased?

Yes. Companies with over 50 employees (until now the law only affected companies with 250 or more employees) must prepare and apply an equality plan in line with the Act on Effective Equality between Men and Women, after negotiating, as the case may be, with the employees' legal representatives.

This obligation will be gradually implemented in the following terms:

Number of company employees en la empresa	Transitional period to approve the equality plan
More than 150 and up to 250	Until March 7, 2020
More than 100 and up to 150	Until March 7, 2021
50 to 100	Until March 7, 2022

2. Have consequences been established for companies that do not meet this obligation?

Yes. Section 7.13 of the Labor Infringements and Sanctions Act has been amended to include, as a serious offense regarding labor relations, the failure to meet "the obligations regarding equality plans and measures established by Act 3/2007 of March 22 for Effective Equality of Women and Men, the Spanish Workers Statute, or the applicable collective agreement."

The sanction is a fine that may be as high as €6,250.

3. Must the equality plan diagnosis have a minimum content?

Yes. As opposed to the text in force until now, which established that equality plans could establish a number of measures listed as examples, the new regulation requires that the equality plan diagnosis—negotiated, as the case may be, with the employees' legal representatives– includes assessable measures aimed at removing the obstacles that hinder effective equality at least in the following areas:

- Selection and recruitment process.
- Professional classification.
- Training.
- Promotion.

- Work conditions, including the auditing of women's and men's salaries.
- Co-responsible exercise of the rights to a personal, family, and work life.
- Women's underrepresentation.
- Remuneration.
- Prevention of sexual and gender-based harassment.

The Government shall develop (within 6 months) the diagnosis, contents, areas, salary audits, and systems for monitoring and assessing the equality plans.

4. Must companies provide salary information during the negotiation of the equality plan?

Yes. Company management must provide the committee for the negotiation of the equality plan all the data and information required to prepare it and regarding the areas listed in the previous question, as well as the data in the salary registry established in the new section 28.2 of the Spanish Workers Statute (explained in question 10).

5. Is it mandatory to register equality plans with the public authorities?

Yes. All companies—regardless of their size–must register their equality plan with the new Companies' Equality Plan Registry, which will be created within six months.

Equal remuneration

6. Can companies pay different salaries to employees carrying out "work of equal value"?

No. Companies must pay the same remuneration—directly or indirectly and regardless of its nature (whether fixed, variable, salary or in kind)—for work of equal value, with no gender-based discrimination in any of the remuneration factors or conditions.

7. What does "work of equal value" mean?

According to RDL 6/2019, work of the same value as other work is performed when "*the nature of the functions or tasks actually entrusted; the educational, professional, and training conditions required to perform it; the factors strictly related to its performance; and the working conditions in which those activities are actually performed are equivalent.*"

8. **Can an employee claim remuneration for "work of equal value" in the case of invalidity to due salary discrimination?**

   Yes. The new section 9.3 of the Spanish Workers Statute expressly establishes this right.

9. **Does the definition of "work of equal value" have any impact on a company's professional classification system?**

   Yes. The definition of professional groups—reserved to collective bargaining—will comply with criteria and systems that, based on a correlative analysis of bias gender, work positions, and the criteria for assignment and remuneration, are intended to guarantee the absence of any direct or indirect discrimination against women or men. These criteria and systems must establish the same remuneration for work of equal value.

10. **Must companies justify the existing salary gap?**

    Yes. Companies with at least 50 employees that detect that the average remuneration of employees of either gender is higher than that of the other gender by 25% or more—considering all salaries or the average salary paid—must explicitly justify in the salary registry (defined in question 11) why that gap is not due to reasons related to the employees' gender.

11. **Must companies create a salary registry?**

    Yes. Companies must keep an internal salary registry of the average salary values, salary supplements, and non-salary compensation of their staff, disaggregated by gender and distributed by professional group, professional category, and positions that are equal or of equal value.

12. **Can employees access this salary registry?**

    Yes, although only through the employees' legal representatives.

13. **Must companies provide salary information to the legal representatives regularly?**

    Yes. The employees' legal representatives are entitled to receive information, at least once a year, regarding the implementation of the right to equal treatment and opportunities for women and men in the company. This must include the salary registry, the data on the ratio of women and men at the various professional levels, any measures taken to foster equality between women and men in the company and, if an equality plan has been established, information about its implementation.

Adjusting and reducing working hours

14. Can employees request the adjustment of their working hours, without having to reduce them?

Yes. For work-life balance reasons, employees can request the adjustment of the length and distribution of their working hours, the rearrangement of their working hours and form of work, including remote work. If the adjustment is requested for childcare reasons, the request may be made once the suspension due to childbirth has ended and until the child or children turn 12.

15. Are there are legal limitations on the adjustments of working hours without reduction?

Yes. Adjustments must be reasonable and proportional to the employees' needs and the company's organizational and production needs, which must be justified in each specific case.

16. What role does collective bargaining play in the configuration of this right? What happens if it is not possible to regulate it during collective bargaining?

Collective agreements may establish the terms of the exercise of this right, which will be based on criteria and systems that guarantee the absence of direct or indirect discrimination against employees of either gender.

If there is no regulation through collective bargaining, the employee and the company must reach an agreement in the terms given below.

17. If there is disagreement about the adjustment of working hours, can the company refuse without giving any justification?

No. In the absence of collective bargaining, the company must start negotiations with the employee for a maximum of 30 days, after which it will notify the employee in writing whether it accepts the request, proposes an alternative, or refuses, specifying the objective reasons for the refusal.

18. Can employees that have adapted their working hours return to their previous situation?

Yes. Employees will be entitled to request the return to their previous working hours or contract type at the end of the agreed period or when justified by a change in circumstances, even if the period agreed has not elapsed. No specific notice period is established.

19. Are there any new developments regarding the lactation period?

Yes. Once RDL 6/2019 has come into force, this leave will be known as “care of nursing infants,” and generates the right to a new social security benefit for “co-responsibility in care of nursing infants," equivalent to 100% of the regulatory base established for the temporary incapacity benefit, proportionally to the reduction in working hours.

The period for this benefit continues to be until infants are 9 months old, with the new development that it may be extended until infants are 12 months old—with a proportional salary reduction once they are 9 months old—when both parents, adopting parents, or foster parents exercise this right for the same period and under the same system.

20. What is the salary to consider in the case of the dismissal of an employee with reduced working hours due to care of a nursing infant?

In the case of reduced working hours due to care of a nursing infant, the salary to consider to calculate the compensation established by law (e.g., dismissal, substantial change and transfer) will be that paid to the employee without considering the reduction in working hours, provided that the legal deadline for that reduction has not elapsed.

Suspension of employment agreement due to childbirth (former maternity and paternity leaves)

21. Has the regulation of the leaves for the birth of a child been amended?

Yes. The two-day remunerated leave per childbirth has disappeared, while the paternity leave or the leave for the parent other than the biological mother is extended (technically, suspension of the employment agreement).

22. Has the suspension of the employment agreement due to childbirth, adoption, custody for adoption, and fostering been extended?

Yes. The term of the suspension of the employment agreement due to childbirth of the parent other than the biological mother is extended from 5 to 16 weeks, of which the 6 weeks immediately after childbirth will be mandatory, and must be uninterrupted and full time.

After the first 6 weeks immediately after childbirth, the 10 remaining weeks can be distributed as the parents wish in weekly periods, to be taken cumulatively or intermittently,

full time or part time from the end of the mandatory suspension after childbirth until the child is 12 months old. Each weekly period, or, as the case may be, the accumulation of those periods must be notified to the company at least 15 days in advance.

This suspension may be in full-time or part-time terms, once an agreement between the company and the employee is reached.

Likewise, suspension due to adoption, custody for adoption, and fostering has a 16-week term per adopting or fostering parent, 6 of which are mandatory and must be taken full time and uninterruptedly following the court or administrative ruling.

23. Is there a transitional system for these suspension situations?

Yes. The implementation of the extended suspension period for the parent other than the biological mother will be gradual, from April 1, 2019 to its full implementation from January 1, 2021, as specified below:

	From April 1, 2019 to December 31, 2019	From January 1, 2020 to December 31, 2020	From January 1, 2021
Biological mother			
Suspension	16 weeks, of which 6 weeks are mandatory, uninterrupted, and full time after childbirth		
Voluntary advance	4 weeks before date of birth		
Transfer	Possibility of transferring 4 weeks of non-mandatory suspension	Possibility of transferring 2 weeks of non-mandatory suspension	Not possible
Parent other than biological mother			
Suspension	8 weeks, of which 2 mandatory uninterrupted full-time weeks after childbirth	12 weeks, of which 4 mandatory uninterrupted full-time weeks after childbirth	16 weeks, of which 6 mandatory uninterrupted full-time weeks after childbirth

Terminating employment agreement of employees with children

24. Is the termination during the trial period of a pregnant employee's agreement assumed to be invalid?

Yes. Termination by the company is assumed to be invalid in the case of female employees due to pregnancy—from the date of the start of the pregnancy to the start of the maternity suspension period—unless there are reasons unrelated to the pregnancy or maternity (the burden of proving them falls on the company).

25. Has the justification of objective cause when a pregnant or protected employee is dismissed been reinforced?

Yes. Companies must prove that the objective cause for the dismissal specifically requires the termination of the affected individual's employment agreement.

Also, the period of protection against dismissal of employees that have suspended their agreements due to childbirth, adoption, custody for adoption, or fostering has been extended from 9 to 12 months from the date of childbirth, adoption, custody for adoption, or fostering.

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