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Spain Publishes Equal Treatment and Non-Discrimination Law, Including Employment-Related Discrimination

The new regulation aims to guarantee the protection of the right to equal treatment and non-discrimination.

On 13 July 2022, the State Official Gazette published Law 15/2022 of 12 July, which aims to guarantee equal treatment and non-discrimination (Law 15/2022) in Spain.

This Alert outlines the purpose and scope of Law 15/2022 as well as the aspects that directly impact employment, including what is covered by the new regulation, discrimination on grounds of disease, and remedies for causing discrimination.

Entry into force

Law 15/2022 became effective on 14 July 2022.

Purpose

The purpose of Law 15/2022 is to guarantee and promote the right to equal treatment and non-discrimination, as well as respect for the equal dignity of persons. Law 15/2022 regulates the rights and obligations of natural or legal persons, public or private, establishes principal for action by the public authorities, and provides for measures aimed at preventing, eliminating, and correcting all forms of direct or indirect discrimination in both the public and private sector.

Under Law 15/2022, any provision, conduct, act, criterion, or practice that violates the right to equality is prohibited. The following shall be considered direct or indirect acts of violation, by association and by mistake: multiple or intersectional discrimination, denial of reasonable accommodation, harassment, inducement, order or instruction to discriminate or to commit an act of intolerance, retaliation or failure to comply with affirmative action measures derived from regulatory or conventional obligations, inaction, neglect of duties, or breach of duties.

Subjective scope of application

Article 2 of Law 15/2022 establishes that, regardless of their nationality, whether they are minors or adults, legal residents or not, no person can be discriminated against on the grounds of birth, racial, or ethnic origin, sex, religion, conviction and opinion, age, disability, sexual orientation or identity, gender

expression, disease or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socioeconomic status, or any other personal or social condition or circumstance.

With this provision, Law 15/2022 expressly develops other personal conditions and circumstances for which a person may suffer discrimination with respect to those mentioned in Article 14 of the Spanish Constitution (birth, sex, religion, race, opinion, or any other personal or social condition or circumstances). Notably, the list is open to further inclusion of personal conditions and circumstances.

Finally, the new regulation establishes that a difference in treatment based on any of the aforementioned causes derived from a provision, conduct, act, criterion, or practice that can be objectively justified by a legitimate purpose and as an appropriate, necessary, and proportionate means to achieve that purpose (positive discrimination) shall not be considered discrimination.

Objective scope of application

Law 15/2022 has a generalised scope of application affecting all sectors and activities, including employment (employed or self-employed), education, health, transportation, culture, public safety, administration of justice, advertising and media, internet and social networks, sporting activities, etc.

Employment

Law 15/2022 regulates the following labour aspects:

- Prohibition to establish — either by the employer or through collective bargaining agreements — limitations, segregations, or exclusions by reason of the personal conditions and situations regulated in Law 15/2022 in the following circumstances:
 - Access to employment, public or private, including selection criteria
 - Training
 - Promotion
 - Remuneration, working hours, and other working conditions
 - Suspension, dismissal, or other causes for the termination of employment
- The Labour and Social Security Inspectorate will ensure compliance with Law 15/2022 by including in its annual integrated action plan the development of specific plans on equal treatment and non-discrimination in access to employment and working conditions.
- Companies with more than 250 employees may be required by regulation to publish the wage information necessary to analyse the factors of wage differences according to the conditions and circumstances that may lead to incidents of discrimination.
- Collective negotiations may establish positive action measures to prevent, eliminate, and correct all forms of discrimination in the field of employment and working conditions. Likewise, targets and mechanisms for information and periodic evaluation may be established jointly by companies and legal employees' representatives.

- Employees' representatives and companies must ensure compliance with the right to equal treatment and non-discrimination through affirmative action measures and by achieving their objectives.

Special protection against discrimination on the grounds of disease

Law 15/2022 grants specific protection to situations of illness by expressly including this condition as one of the causes or conditions potentially subject to discrimination. Moreover, section 3 of Article 2 states that “the disease may not cover differences in treatment other than those arising from the treatment process itself, from the objective limitations it imposes for the exercise of certain activities or those required for reasons of public health”.

The interpretation of Article 2 in relation to the prohibition contained in Article 9 (“limitations, segregations or exclusions for the causes provided for in this law (...) may not be established in the dismissal or other causes for termination of the employment contract”) may entail the dismissal of an employee in a situation of temporary disability (*incapacidad temporal*) to be declared null and void, regardless of its foreseeable duration. Therefore, with the entry into force of the Law, and until this aspect is clarified by case law, companies are advised to clearly justify the termination decision objectively, reasonably, and in a manner that is unrelated to the employee's disease.

Finally, and regarding the health of employees, Article 9 of Law 15/2022 establishes that employers are prohibited from asking job applicants about any possible health conditions.

Remedies for discrimination

Law 15/2022 establishes a direct presumption between a discriminatory action and the existence of moral damage. Thus, the natural or legal person who causes discrimination will be obliged to repair the damage caused by providing compensation and restoring the victim to the situation prior to the discriminatory incident, when possible.

From an employment perspective, this protection is reinforced by stating that employers will also be liable for the damage caused when discrimination, including harassment, occurs within their organisation or management and they have not adopted detection methods, preventive measures, and adequate measures to end discriminatory situations.

Finally, the burden of proof is reversed when the plaintiff alleges discrimination and provides well-founded evidence of its existence. In these cases, and in the labour context, employers and employees accused of committing discriminatory acts must provide an objective and reasonable justification, sufficiently proven, of the measures adopted and their proportionality.

Other relevant measures

The Independent Authority for Equal Treatment and Non-Discrimination is an independent authority responsible for protecting and promoting equal treatment and non-discrimination of persons both in the public and private sectors.

Law 15/2022 incorporates a regime of infringements and sanctions in matters of equal treatment and non-discrimination, although in the social order there is no modification as the applicable regime will continue to be the Law of Infractions and Sanctions of the Social Order approved by Royal Legislative Decree 5/2000 of 4 August 2000.

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