

New Spanish Employment Law Imposes Equal Opportunity Regulations and the Working Day Record

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The Spanish government's new measures addressing equality, social protection, and the working day record will have a significant impact on businesses.

Key Points:

- Equal pay for men and women
- Equality Plans
- Increased paternity leave
- Termination of employment during a probation period
- Working day record

Background

Last month, the Spanish government approved a series of Royal Decrees in quick succession. Most notable among these, from a labour standpoint, was Royal Decree No. 6/2019 of 1 March regarding urgent measures to guarantee equal employment conditions and opportunities for men and women, and Royal Decree No. 8/2019 of 8 March regarding urgent measures to ensure social protection and to combat job insecurity in relation to the working day. Both pieces of legislation were passed by the Spanish Parliament on 4 April.

Equal Pay for Men and Women

- Businesses are required to pay equal remuneration for “work of equal value” without any form of discrimination on grounds of sex. To that end:
 - Remuneration paid both directly and indirectly will be taken into account, whatever its nature (wage or additional remuneration).
 - Two roles are of “equal value” when there is equivalence between (a) the nature of the functions or duties; (b) the educational, training, or professional requirements for undertaking such functions or duties; (c) factors strictly relating to the performance of such functions or duties; and (d) the working conditions in which the functions/duties are carried out.

- Businesses are required to draw up a register of the workforce's average salary, disaggregated by sex and broken down into professional groups, job categories, or roles that are equivalent or of equal value.
- Workers will have the right to access the salary register through their legal representation in the company.
- Wage discrimination will be deemed to exist (rebuttable presumption) when, in a company with at least 50 employees, the average salary of employees of one sex is higher than that of the other by 25% or more, based on the total payroll or the average payment made. In such cases, the employer must prove that the difference does not relate to gender.
- Failure to implement the register may entail fines up to €6,250. In the event of proven difference due to gender, companies might be sanctioned with higher fines (up to €187,515) besides the legal actions that the affected employee may initiate.

Equality Plans

- Companies with more than 50 workers (the minimum was previously 250) will be required to draw up an equality plan, the content of which is set out in the legislation. Failure to implement the plan may entail fines up to €6,250.
- Transition periods for drawing up these equality plans have been established:
 - One year for companies with between 151 and 249 workers
 - Two years for companies with between 101 and 150 workers
 - Three years for companies with between 50 and 100 workers
- Companies must enrol their equality plans in the newly created Equality Plans Register.

Increased Paternity Leave

- Paternity leave has been unified with maternity leave (under the name "suspension of contracts after a birth") so that both parents have the right to suspend their employment contract for the same length of time.
- This change to the contract suspension period applicable to the parent who is not the biological mother will, however, be implemented gradually between now and 2021:
 - In 2019, the contract suspension period will increase to eight weeks.
 - In 2020, it will increase to 12 weeks.
 - In 2021, it will increase to 16 weeks.
 - The first two weeks (in 2019), four (in 2021), and six (in 2021) need to be applied immediately after childbirth.
- Similarly, there will be specific transitional arrangements for cases of adoption, custody for the purposes of adoption, and fostering.

Termination of Employment During a Probation Period

- The termination of the employment of a pregnant worker during a probation period would be null and void unless the employer demonstrates that "the motives are unrelated to the pregnancy or motherhood". Companies would therefore need to justify that the termination of the employment relationship is due to reasons totally unconnected with the pregnancy or maternity.

Working Day Record

- Companies must provide a daily record that includes the specific start and finish times of each employee's working day.

- The working day record will be organised and recorded through collective bargaining or agreement with the company or, failing that, through the decision of the company, subject to consultation with the workers' representatives.
- Companies must retain the working day record for four years. The record must be available to workers, their representatives, and the Spanish Labour and Social Security Inspectorate.
- This obligation will come into effect for companies on 12 May 2019.
- The government, subject to consultation with the most representative trade unions and employers' organisations, may grant extensions or impose limitations on the organisation and duration of the working day and rest breaks, and may create special provisions for working day record obligations for sectors, occupations, and professional categories depending on their particular characteristics.

Now What?

These new regulations have generated significant controversy owing to (a) the proceedings and timing of their approval (by means of Royal Decrees, with the government citing extraordinary and urgent legislative need, after Parliament had been dissolved prior to the elections) and (b) the problematic and incomplete rules introduced in relation to the working day record. Beyond this controversy, companies must wait to see the practical consequences of the regulations on equal pay, salary registers, and working day records. The implementation of the latter in certain sectors and industries in which flexible hours are a necessity, and in specific circumstances such as teleworking and flexible working, does not look to be a simple task.

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