

## NEWSLETTER I / March 2019

### Update on legislation regarding equal treatment and opportunities for men and women for employment and at the workplace

#### SUMMARY:

The aim of this update is to compile the main novelties in equal treatment and opportunities introduced by way of **Royal Decree Law 6/2019, of 1 March, on equal treatment and opportunities for men and women for employment and at the workplace**, published in the Official Gazette ("BOE") on 7 March 2019.

Said Royal Decree Law contains 7 statutory articles which directly affect equality for men and women.

Please note that, although it has entered into force, it is still pending approval from the Spanish Congress.

- ***Amendment to Organic Law 3/2007, of 22 March, for the effective equality for men and women.***

#### Equality programmes

Extended **obligation to draw up and implement equality programmes for companies employing 50 or more workers**<sup>1</sup>.

Furthermore, the period for the approval of the equality programmes is gradual, depending on the total number of employees of each company, as follows:

- Companies with 50 to 100 employees: 3 years
- Companies with more than 100 employees up to 150: 2 years
- Companies with more than 150 employees up to 250: 1 year

At the same time, **significant modifications have been put in place for the drawing up of the Equality Programmes:**

- (i) **The contents of the diagnostic for the equality programme must include, at least**, the following subjects: Selection and hiring process, professional qualifications, training, promotion, working conditions, wage audits, responsible shared responsibility in personal, family and work life, under-representation of women, remunerations and prevention of sexual harassment situations.
- (ii) **The diagnostic must be made in agreement with the legal workers' representative and must be drawn up by an Equality Programme Negotiating Commission.**

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<sup>1</sup>Up until now, such implementation was mandatory only for companies with over 250 employees.

Furthermore, a **Register of Equality Programmes for Companies has been created**, in which the companies will have to register their equality programmes. The regulation for the constitution, characteristics and terms for registering and accessing the register **is yet to be developed**.

- ***Amendment of the consolidated text of the Law on Labour Infringements and Penalties by Royal Decree Law 5/2000, of 4 August("LISOS")***.

Section 13 of Article 7 LISOS, which classifies “the non-compliance with obligations regarding equality programmes and measures provided in Organic Law 3/2007, of 22 March, for the effective equality for men and women, in the Workers Statute or in applicable collective agreements” as serious offences.

- ***Amendment of Royal Decree Law 2/2015, of 23 October, approving the consolidated text of the Workers Statute Law ("ET")***

#### Contracting Measures. Probationary period

In internships, a provision is added by which, in such case where a situation of **gender-based violence** the calculation of the duration of the **contract** shall be **discontinued**.

In **part time contracts**, the company must guarantee that there is no gender-based discrimination.

**Resolution of the contract by the employer during the probationary period is expressly stipulated as being null and void if such resolution is based on the employee being pregnant**, from the moment of becoming pregnant to the beginning of parental leave, **or based on maternity**, save if other reasons concur which are not related to the pregnancy or the maternity.

Gender-based violence is classified as a basis for suspension of the probationary period (if agreed by the parties).

#### Equal pay. Salary register

**Companies must pay the same amount for equal work**, carried out directly or indirectly, whether such remuneration be part of the salary or not; no discrimination based on gender may occur with regard to any element or terms and conditions for said remuneration.

**Equal work is specified as:** those cases where the nature of the functions or tasks commended, the qualifications or training required, the factors strictly related to their carrying out and the work conditions of such activities are really equal.

Furthermore, **companies must keep a register with the average values of the salaries, bonuses and extra salary compensations of their staff, disaggregated by gender and by equal, or equal value, professional groupings, categories and posts**.

Employees must have access, via the legal representatives of the workers of the company, to the salary register of the company.

**In companies with 50 employees or more, where the average remuneration of the employees of one gender is greater by 25% or more**, as per the total payroll or the average remuneration paid, **the Salary register must include a justification as to such difference being attributed to reasons other than the gender of the employees**.

There is no transition period for the drafting of the salary register. Non-compliance would, in our opinion, be provided in Article 7.13 LISOS mentioned above.

Additionally, the **information provided at least annually**, regarding the implementation by the company of the right to equal treatment and opportunities, **to the workers' legal representatives** must include **the salary register** and **data on the proportion of men and women at the various professional levels in the company**.

Adjustment of worktime and forms of provision. Family life and work conciliation.

Employees have the right to request an **adjustment of the amount and allocation of their work hours and the forms of their provision, including working from home, in order to make conciliation of family life and work effective**. These adjustments must be reasonable and proportional with regard to the employees needs and those of the company's organisation and production.

Employees who **have children may make such requests until the children are twelve years old**.

**The collective bargaining process will agree on the terms for their implementation**, taking into account criteria and systems which ensure the exclusion of direct or indirect discrimination between employees of either gender.

**Failing a collective agreement**, the company shall, on request of a work day adjustment, **open a negotiation process with the employee of up to thirty days**, at the end of which the company shall notify, in writing, either the acceptance of the request or a suggestion of an alternative form of conciliation or the rejection of said request. In the latter case, the reasons for such decision must be specified.

**Should the parties not reach an agreement, the employee may file a claim before the Labour Court**, further to the special procedural regulations provided in Art 139 of the Labour Courts Regulatory Law (*Ley Reguladora de la Jurisdicción Social*).

Equal parental leave

Among the most relevant measures provided in the Royal Decree is that of **equal parental leave**.

**Paternal leave<sup>2</sup> goes from 5 weeks to 16 weeks, of which the first six must be taken without breaks**. After the first mandatory 6 weeks, both parents may distribute the remaining weeks as they wish, within the first 12 months after the birth.

The extention of paternity leave will be implemented gradually:

- **2019: as of 1 April 2019, 8 weeks.**
- **2020: 12 weeks.**
- **2021: 16 weeks.**

Furthermore, as of 8 March 2019, **paid leave for the birth of a child provided in Art. 37.3.b) ET is abolished**. Thus, such paid leave will only be applicable if included in the applicable Collective Agreement, or, failing this, in the individual employee's contract.

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<sup>2</sup>In the new legislation, in the case of biological offspring, the holder of this right is defined as "the parent who is not the biological mother".

Extension of “protection” period from dismissal

**Any dismissal of an employee returning to work after leave for birth, adoption, fostering or guardianship of a child shall be null and void unless a period of twelve months has lapsed** from the date of the birth, adoption, or fostering of the child (prior to the new law, the period of protection was 9 months).

- ***Amendment of Royal Decree Law 8/2015, of 30 October, approving the consolidated text of the General Social Security Law (“LGSS”)***

This includes, within the Social Security protective system, the new protected circumstances and their corresponding financial benefits.

**ENTRY INTO EFFECT**

This Royal Decree Law entered into effect, generally, on **8 March 2019**.

However, **the novelties concerning “parental leave”** entered into effect on **1 April 2019**.