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FLASH REPORT

Country:	Spain
Title:	Spain approves the Royal Decree 6/2019, of 01 March 2019, of urgent measures to guarantee equality of treatment and opportunities between women and men in employment and occupation
Date:	18 March 2019
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<u>Context</u>	
Issue at stake:	Spain's Government approves a Decree on gender equality between women and men in employment and occupation
Grounds of discrimination:	Gender
Field of application:	Employment, Equal pay, Pregnancy and maternity, Parental leave, Social protection
Source:	Legislation
Applicable law:	Organic Law 3/2007, of 22 March 2007, for the effective equality between women and men; Royal Legislative Decree 2/2015, of 23 October 2015, that approved the Workers' Statute; Royal Legislative Decree 5/2015, of 30 October 2015, that approved the Basic Statute of Public Employers; Royal Legislative Decree 8/2015, of 30 October 2015, that approved the General Law Of Social Security; Law 2/2008, of 23 December 2009; and Law 20/2007, of 11 July 2007, that approved the Self Employed Statute

Content

Law: (*short summary of facts*) On 01 March 2019, the Spanish Government approved, through Royal Decree 6/2019, a package of measures aimed at guaranteeing effective equality between women and men in terms of employment and occupation. The Royal Decree affected the content of five important pieces of legislation: Organic Law 3/2007, of 22 March 2007, for the effective equality between women and men; Royal Legislative Decree 2/2015, of 23 October 2015, that approved the Workers' Statute; Royal Legislative Decree 5/2015, of 30 October 2015, that approved the Basic Statute of Public Employers; Royal Legislative Decree 8/2015, of 30 October 2015, that approved the General Law Of Social Security; Law 2/2008, of 23 December 2009; and Law 20/2007, of 11 July 2007, that approved the Self Employed Statute.

The main objective of the Royal Decree 6/2019 is to complement the Organic Law 3/2007, for effective equality between women and men to give it effectiveness in terms of employment and occupation. The Royal Decree introduces important developments in the following subjects:

- 1) In the area of equality plans:
 - a) The Royal Decree establishes that the companies obliged to carry out equality plans will be those that have more than 50 workers. Until now the companies that had this obligation were those that had more than 250 workers. This widens the number of companies that, from now on, must make equality plans.
 - b) A registry of equality plans is created, so from now on it will be easier to gain an overview of existing plans and control their effectiveness.
 - c) A series of subjects are established in the Decree that must be obligatorily addressed in the equality plans, which ensures that the relevant topics are not avoided in these plans.
- 2) In the area of fight against pay gap:
 - a) The Royal Decree establishes, for the first time in the Spanish legal system, the concept of work of equal value in the following way: "A work will have equal value related to other when the work or tasks effectively entrusted, the educational, professional or educational conditions, the training required for its exercise, the factors strictly related to its performance and the working conditions in which those activities are carried out are in fact equivalent".
 - b) It establishes the obligation for employers to keep a record of the average remuneration in the company, in relation to professional groups or jobs of equal value. Workers' representatives have the right to receive annual reports on this record.
 - c) The Royal Decree establishes the presumption that there is a prima facie case of discrimination when, in companies with more than 50 workers, the average remuneration of workers of one sex is at least 25 % higher than the salaries of workers of the other sex.
- 3) In the area of parental permits:
 - a) The royal Decree establishes a new permit "for the care of the infant who is in breastfeeding" that substitutes the "permission to breastfeed". In this way the character of parental permission of this permit that had already been established by the CJEU in the Roca Alvarez case is reinforced.¹
 - b) This new permit has the same characteristics as the old (consists of one hour of paid daily leave or, when enjoyed at the beginning or at the end of the day, half an hour of paid daily leave until the child is nine months old), but after the Royal Decree becomes a totally individual and non-transferable parental permit.
 - c) If both parents request it, the permit is extended to the age of twelve months of the child for one of the parents. This is a mechanism to encourage both parents to participate in care. In this case, the remuneration corresponding to the permit from the age of nine months of the child to the age of twelve months will not be paid by the employer but in the form of a social security benefit.
- 4) In the area of maternity and paternity leave:
 - a) The Royal Decree changes the name of the so-called maternity leave and paternity leave (granted to the "other parent" in order to include same-sex families as well), so that from now on, for both parents, it will have the name of "birth permit".
 - b) The new birth permit will have the same duration for both parents (16 weeks extendable in case of disability of the child or of multiple births). However, the equalisation in the duration of the leave between father and mother will only be reached in 2021, because the Royal Decree establishes a transitory period

¹ C-104/09 *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA* EU:C:2010:561.

in which the father's permission will be gradually increased. Immediately after the RDL the permission for the father (or the other parent) will increase from six weeks to eight weeks.

- c) As was previously envisaged for maternity and paternity leave, the new birth permit also applies in the case of adoption, legal guardianship or fostering.

5) In the area of protection against unfair dismissal of pregnant workers:

The Royal Decree establishes the nullity of the contractual termination without cause of the pregnant worker who was in probation period and also establishes the need that in case of collective dismissal due to a company crisis, the company specifies the specific cause for which each position must be suppressed. The first is a specific measure of protection for pregnant workers and the second is a general rule with special impact on pregnant workers, since they are protected by art. 10 of Directive 92/85 and, as the CJEU established in the *Porrás Guisado* case, the specific cause of the selection of the pregnant worker to be subjected to collective dismissal must be expressly stated.²

6) In the area of adaptation of the working day of people with care responsibilities:

The Royal Decree establishes the right of the worker with responsibilities for the care of children under twelve years of age or dependents for their working day to be adapted to their needs. A reasonable adjustment between the needs of the worker and the organisational needs of the company will have to be found and, in any case, the employer must justify his refusal. Before the Royal Decree, workers lacked the right to have their working day adapted to their needs in relation to their caring duties for children or dependents.

7) In the area of assistance to people who are exclusively dedicated to the care of highly dependent people:

The Royal Decree states that the State will pay their contributions for social security purposes.

Key points of analysis: The Royal Decree aims to be a transversal complement of the Organic Law 3/2007, of effective equality between women and men, but in reality its content is quite narrow because it is limited to establishing *ad hoc* corrections in labour regulations. Its most relevant contents are the new birth permit (which replaces the previous maternity and paternity leave) and the care permit for breastfeeding. Also interesting is the new formulation of the right to an adapted working schedule by workers who have dependents in their care. However, more encompassing measures are needed to ensure a more effective protection against gender discrimination in employment and occupation. Besides, the Royal Decree is a norm whose permanence is doubtful because it has been drawn up by the acting Government, alleging urgent necessity. The Royal Decree will apply or not depending on who wins the next elections, since it implies an increase in public spending that some parties consider that the State cannot assume. On the other hand, the argument of an extreme and urgent need has been contested by some parties, so they have announced that they will challenge the Decree before the Constitutional Court.

Internet link source:

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-3244 accessed 13 March 2019

² See C-103/16 *Jessica Porrás Guisado v Bankia SA and Others* EU:C:2018:99.