CHANGES TO LABOUR LEGISLATION IN RELATION TO EQUAL TREATMENT AND WORKING HOURS

Spanish Royal Decree-Law 6/2019, dated 1 March, on urgent measures to ensure equal treatment and equal opportunities between women and men in employment and occupational matters ("**RDL 6/2019**") and Royal Decree-Law 8/2019, dated 8 March, on urgent social protection measures and measures to combat situations of precarious working hours ("**RDL 8/2019**"), make some important changes in relation to equality, salary and employees' right to reconcile their personal and professional life. We highlight the main legislative changes below.

Key changes

- Obligation to draft an equality plan in companies with more than 50 employees
- Establishes the right to receive the same pay for work of equal value
- Nullity of contract rescission during the trial period of pregnant employees
- Obligation to keep a record of average wages, grouped according to gender and professional category
- Right to request the adaptation of the duration, distribution and structuring of working hours for reconciliation purposes
- Progressive increase of paternity leave to 16 weeks
- Extension of nursing leave, for both parents
- Obligation to keep a daily record of working hours, noting the time each employee's workday starts and finishes

1. LEGISLATIVE CHANGES REGARDING GENDER EQUALITY PLANS

1.1 Companies required to apply this change

The number of companies required to implement a gender equality plan is now increased. Following this legislative change, companies with more than 50 employees are required to implement an equality plan (this obligation previously applied only to companies with more than 250 employees).

As has been the practice to date, firstly the company must prepare an analysis of the gender situation at the company. What RDL 6/2019 now establishes is that such analysis must be negotiated with the employees' legal representatives. As this analysis is to be done by the Gender Equality Plan Negotiating Committee, company management must provide it with all necessary facts and figures.

It is important to note that, according to the prevailing opinion of the Labour Divisions of the Spanish National Court and of the Supreme Court, not only must the gender equality plan be negotiated, but also "agreed" with the employees' legal representatives. In this regard, we can cite National Court judgment no. 143/2015, dated 16 September (confirmed by Supreme Court judgment no. 403/2017, dated 9 May), which declared the nullity of an equality plan that had been approved unilaterally by the company. Thus, when negotiating this plan, many SMEs will be "cutting their teeth" in the world of collective negotiations, since they will be required to reach an agreement on it.

However, the obligation to implement a gender equality plan is expected to be enforced gradually. Thus:

- Companies with more than 150 employees (and up to 250 employees): must draft and put in place an equality plan within one (1) year.
- Companies with more than 100 employees (and up to 150 employees): must draft and put in place an equality plan within two (2) years.
- Companies with between 50 and 100 employees: must draft and put in place an equality plan within three (3) years.

1.2 Registration of companies' Gender Equality Plans

A Registry for companies' Gender Equality Plans will be created, as part of the Registries for collective bargaining and other labour agreements, where companies will be required to register their plans.

Companies will be required to provide details on the registration of their Gender Equality Plans to the employees' legal representatives, as part of the general information provided annually to them on gender equality.

2 CHANGES TO THE NULLITY OF CONTRACTUAL TERMINATION

2.1 Nullity of contract due to wage discrimination

This is the first time that the concept of “work of equal value” and the right to receive equal pay for doing work having the same value is acknowledged and legislated.

If the employment contract is declared null due to wage discrimination by gender, the employee will be entitled to receive the remuneration corresponding to the same work or for the same value.

2.2 Nullity of contract rescission during a pregnant employee's trial period

Until now, both the employer and the employee were able to freely rescind the employment contract during the trial period. Thus, the rescission of an employment contract by a pregnant woman during the trial period was not expressly protected by objective nullity, but only with its declaration of nullity when the courts considered discrimination to exist.

However, with the entry into force of RDL 6/2019, an express provision is included whereby the option to rescind the employee's contract due to her being pregnant will be null, provided that such rescission occurs between the start date of her pregnancy and the start of her maternity leave (contract suspension period), unless the rescission is for reasons not related to pregnancy or childbirth.

2.3 Extension from 9 to 12 months of the protection period against a planned dismissal for employees reinstated at the end of their maternity, adoption, guardianship or foster care leave

The dismissal of employees returning to work at the end of their contract suspension periods due to childbirth, adoption, guardianship or foster care will be considered null, unless real causes for dismissal exist or unless more than 12 months have passed since that time (prior to RDL 6/2019, this period was 9 months).

3 AVERAGE WAGES RECORD

3.1 Obligation to keep a record of average wages, grouped according to gender and professional category

In order to ensure equal pay for men and women performing the same work, RDL 6/2019 requires employers to now keep a record of the average wages, salary complements and non-salary items, paid to their workforce.

The data in this record must be grouped according to gender and professional group, professional category and job posts of the same type or having the same value, and all company employees will have access, through their legal representatives, to this record.

RDL 6/2019 also gives employee legal representatives the authority to ensure equal treatment in terms of the employees' wages.

In any event, when, in a company with at least 50 employees, the average remuneration paid to employees of one gender is 25% or more higher than that paid to the other gender, taking as a reference the employer's total salary fund or the average of all salary amounts paid, the employer must include, in the wages record, justification that such salary difference is for reasons not related to the employees' gender.

4 RECONCILIATION OF PROFESSIONAL, PERSONAL AND FAMILY LIFE

4.1 Right to request the adaptation of the duration, distribution and structuring of working hours for reconciliation purposes

The right is established for any company employees to request the adaptation of the duration and distribution of working hours, the structuring of the workday and the manner in which work is performed, including remote working, in order to exercise their right to the reconciliation of family and working life.

This right to adaptation must be reasonable and proportional in relation to the needs of the employee and the organisational or production-related needs of the company, and may be granted until the employee's child (or children) reaches twelve years of age.

Pursuant to this, RDL 6/2019 introduces a new development consisting of the possibility for collective bargaining to establish the terms in which this right can be exercised, guaranteeing at all times the absence of discrimination between employees of one gender or another. In the absence of terms established via collective bargaining, the company, when faced with a request for the adaptation of the working hours, will open a negotiating process with the employee in question for a maximum term of 30 days. At the end of that term, the company will issue a written notice accepting the request, proposing an alternative or rejecting it, the latter justified with objective grounds.

In any event, any discrepancies arising between the company and the employee may be referred to the labour courts.

4.2 Progressive increase of paternity leave to 16 weeks

The duration of the leave periods for maternity, adoption, guardianship or foster care are made equal for both parents.

Specifically, in relation to maternity leave and leave for caring for children under 12 months, an increase in what was known until now as paternity leave (now birth leave) to 16 weeks is envisaged, on a gradual basis until 2021, as follows:

- In 2019: paternity leave will be 8 weeks, of which 2 must be taken on an uninterrupted basis immediately after birth. The biological mother can transfer up to 4 weeks of her non-mandatory contract suspension period to the other parent.
- In 2020: paternity leave will be 12 weeks, of which 4 must be taken on an uninterrupted basis immediately after birth. The biological mother can transfer up to 2 weeks of her non-mandatory contract suspension period to the other parent.
- In 2021: leave will be 16 weeks for both parents, of which 6 must be taken on an uninterrupted basis immediately after birth and on a full-time basis.

4.3 Nursing leave

Both parents are now entitled to benefit from nursing leave. Moreover, this leave may be extended to twelve months when both parents exercise this right with the same duration and regime, with a reduction of salary as of when the child reaches nine months of age.

4.4 Leave for care of children

An extension to the reservation of the job post is also envisaged in cases of leave for care of children up to age 18 months, when both parents exercise this right with the same duration and regime.

5 DISCOUNTS FOR HIRING

RDL 8/2019 introduces certain discounts for hiring the long-term unemployed. Specifically, a monthly discount on the employer's share of the Social Security quota of 108.33 euros/month is established for 3 years, in the case of male employees hired, and of 125 euros/month in the case of female employees hired, in the event the following requirements are met:

- The company must hire unemployed persons who have been registered at the employment office for at least 12 of the 18 months prior to their hiring;
- The company must employ the employee for at least 3 years;
- The company must maintain the level of job post reached in the company with the contract in question for at least 2 years.

Nevertheless, the requirement to keep the individual employed will not be considered to have been breached in the case of dismissals on objective grounds or disciplinary dismissals judged to be fair (in both cases), or when the termination is due to the death, retirement, total permanent disability (unable to work in the same capacity as before), "absolute" disability (unable to work at all) or complete incapacitation (third-person dependency) of the employee, the expiry of the term established for fixed-term contracts or the conclusion of the work or service, or when the contract is terminated during the trial period.

In the event the above requirements are not met, any discount received by the employer will have to be repaid.

6 RECORD OF WORKING HOURS

RDL 8/2019 establishes the obligation for companies to keep a daily record of working hours, which must include the time each employee's workday starts and finishes.

The organisation and documentation of this record will be determined by collective bargaining or company agreement or, failing that, by a decision of the company after consulting the employee representatives.

The record of working hours must be kept for 4 years and remain at the disposal of the employees, their legal representatives and the Employment and Social Security Inspectorate.

Any breach of the obligation to keep a record of working hours will be considered a serious infringement of labour regulations that may be sanctioned with a file of up to 6,250 euros.

These new regulations on keeping a record of working hours will enter into force within two months of publication of RDL 8/2019, that is, on 12 May 2019.

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