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BRIEFING

Working conditions and pay transparency: new obligations for employers in Spain

Key aspects of Royal Decree-law 39/2026

23 November 2026



Royal Decree-Law (RDL) 39/2026 introduces new obligations for employers in relation to working conditions and pay transparency, and strengthens judicial protection and the sanctions regime. Companies will need to review their recruitment, information and pay management procedures in order to adapt them to the new requirements, taking into account the applicable transition periods, and without prejudice to the necessary parliamentary ratification of the legislation.

Key issues

1. The RDL is already in force and requires companies to adapt their procedures, subject to transition periods and pending parliamentary ratification.
2. Information requirements concerning employment conditions and the predictability of working hours are strengthened, alongside new rights to request changes to contracts or working hours.
3. Pay transparency begins at the recruitment stage, with information on initial pay to be included in job advertisements and a prohibition on asking about pay history.
4. Access by employees and their representatives to pay criteria and data is expanded, while pay register and pay audit obligations are strengthened.
5. Companies with 50 or more employees must report gender pay gap indicators, while pay audits must incorporate plans to correct unjustified differences within six months.
6. Protection against retaliation is strengthened, the limitation period for claims of pay discrimination is extended to three years, and new infringements are introduced.

Entry into force

The RDL entered into force on 19 November 2026. However, the following measures are subject to transitional arrangements:

- Pay audits must be adapted when the equality plan expires or when the audit is due to be reviewed; and
- Report on the gender pay gap to be notified to the Commission: the deadline is (i) 8 June 2027 for companies with 150 or more employees; and (ii) 8 June 2031 for companies with between 50 and 149 employees.

However, the RDL must be ratified by the Permanent Deputation of the Congress of Deputies (probably during the course of next week). If it is not ratified, it would cease to have effect.

Key developments

Transparent and predictable working conditions

- The company must inform both the employee and the employees' legal representatives ("**ELR**") in writing of the essential elements of the employment contract, at the outset and whenever they are amended. Previously, this obligation only applied in respect of employees with contracts lasting more than 4 weeks.
- Probationary period: the previously established maximum duration remains unchanged (six months for qualified technical staff and two months for all other employees, except in companies with fewer than 25 employees, where the period is three months for employees who are not qualified technical staff). These limits may only be exceeded where this is established and justified in the applicable collective bargaining agreement. In fixed-term contracts lasting more than six months, the probationary period may not exceed one month and is reduced proportionately for contracts of a shorter duration.
- Part-time contracts: supplementary hours must be subject to at least three days' prior notice. If this notice period is not observed, the employee may decline to work those hours without adverse consequences. If the company cancels the proposed hours, the employee retains the right to be paid for those hours not worked.
- Multiple employment: in the absence of an exclusivity agreement, restrictions on working for other companies are limited to cases of incompatibility based on objective grounds, such as health and safety, business confidentiality, the integrity of a public service or the prevention of conflicts of interest.
- Right to transition to a new form of employment: this new right is introduced, under which employees may request that their company (i) change their employment from full-time to part-time and vice versa, or increase their working hours if they are part-time employees; (ii) change from a temporary or training contract to a permanent contract, including a permanent seasonal contract; (iii) change from a permanent seasonal contract to an ordinary permanent contract; and (iv) make any other change that provides greater predictability, duration or stability, provided that they have been employed for at least six months. The company must provide a reasoned response in writing to each request

within one month (three months if the workforce comprises fewer than 10 employees). In addition, the company must inform employees and the ELR of any existing vacancies that would enable them to exercise this right.

- Protection against retaliation: the guarantee against retaliation is extended to include any decision made by the company in response to claims made to the company itself or to the ELR.

Pay transparency

- **Pre-employment transparency**
  - The principle of pre-employment pay transparency is established. Job advertisements must include the initial pay for the position, based on objective, gender-neutral criteria, and the applicable collective bargaining agreement.
  - Companies involved in employment intermediation or placement processes may not ask candidates about their current or previous pay history.
  - Vacancy advertisements and job titles must be gender-neutral and made available in a format accessible to persons with disabilities.
- **During the employment relationship**
  - The obligation to pay equal remuneration for work of equal value is extended to "the same work".
  - Job evaluation must also include gender-neutral criteria.
  - Obligations for all companies:
    - The company must make the objective and gender-neutral criteria it uses to determine remuneration and pay levels available to employees and the ELR. If they are included in the collective bargaining agreement, it will be sufficient to refer to the relevant specific provisions. If they are not, or if they relate to voluntary enhancements, they must be provided directly, kept up to date and made available in an accessible format.
    - Pay register: must include the annual and hourly mean and median remuneration.
    - A new requirement to retain the pay register and its supporting documentation for four years is introduced.
    - The ELR must have access to the pay register, even where the data makes it possible to identify individual remuneration, without prejudice to its duty of confidentiality.
    - Any employee may request in writing, either directly, through the ELR or through the Institute of Women, a breakdown of their remuneration by pay components and the annual and hourly averages, by gender, of employees performing the same work or work of equal value. The company must respond within a maximum of two months and, where clarifications are requested, within 15 days. It must also remind employees of this right at least once a year. This right may also be exercised by former employees during the year following the termination of their employment.

- Confidentiality clauses that prevent employees from disclosing information about their remuneration will be null and void.

- Obligations for companies with more than 50 employees:
  - The company must provide information on the criteria for pay progression.
  - The pay register must include a justification for any difference in pay between men and women of 25% or more, except for companies with more than 100 employees, for which the threshold is 5%.
  - Pay audit:
    - If the pay audit identifies differences that are not justified by objective and gender-neutral criteria, it must include an action plan to correct those differences within six months.
    - It must analyse at least the previous three years and include new content, such as the proportion of employees by gender in each group or level, the reasons for the differences determined jointly with the ELR (failure to reach an agreement does not exempt the company) and pay improvements following leave for birth, adoption or foster care.
    - It must be made available to employees and the ELR, as well as to the Commission, which must also be notified that the audit has been carried out.
  - New reporting obligation regarding the gender pay gap:
    - The Commission for the monitoring of pay transparency (the "**Commission**") must be provided with the following indicators: (i) the gender pay gap; (ii) the gender pay gap in pay supplements; (iii) the median gender pay gap; (iv) the median gender pay gap in pay supplements; (v) the proportion of female and male employees receiving pay supplements; (vi) the proportion of female and male employees in each quartile of the pay band; and (vii) the gender pay gap by categories, groups or groupings of jobs of equal value, broken down by pay components. The information must be provided after consultation with the ELR, which will have access to the methodology.
    - The indicator by categories or jobs of equal value must also be provided to the entire workforce.
    - The information must be submitted annually where there are 250 or more employees, and every three years where there are between 50 and 249 employees.
    - The first submission must be made by 8 June 2027 by companies with 150 or more employees and by 8 June 2031 by companies with between 50 and 149 employees.
    - If differences are identified that are not justified by objective and gender-neutral criteria, the pay audit must include an action plan to correct those differences within six months.

- **Judicial protection and sanctions regime**
  - The limitation period for claims arising from a breach of the right to equality and non-discrimination in relation to pay is extended from one to three years.
  - Failure to inform employees of the essential conditions of their employment, including vacancies, is reclassified as a serious infringement (with a fine of up to EUR 7,500, instead of EUR 750).
  - New serious infringements are introduced for failure to comply with obligations relating to the pay register, the provision of information to the Commission or the provision of information to job applicants.
  - A new very serious infringement is introduced regarding decisions by the company that result in unfavourable treatment of an employee in response to a complaint made within the company or to administrative or judicial action aimed at enforcing rights recognised under employment legislation.
  - Requesting prohibited information in any employment intermediation and placement process, as well as decisions constituting discrimination in access to employment, constitute very serious infringements.



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