Legal Briefing
October 2020

ROYAL DECREE 901/2020, OF 13 OCTOBER, REGULATING EQUALITY PLANS AND THEIR REGISTRATION AND AMENDING ROYAL DECREE 713/2010, OF 28 MAY, ON THE REGISTRATION AND FILING OF COLLECTIVE BARGAINING AGREEMENTS AND LABOUR AGREEMENTS

On 14 October, Royal Decree 901/2020, of 13 October, was published, regulating equality plans and their registration and amending Royal Decree 713/2010, of 28 May, on the registration and filing of collective bargaining agreements and labour agreements ("**RD 901/2020**"), the content of which comes into force on 14 January 2021.

1. Scope of application

All companies, regardless of the number of employees they have, are obliged to adopt the necessary measures to avoid discrimination in the workplace, sexual harassment and harassment based on sex, as well as to establish specific procedures to prevent it and to deal with any complaints or claims that may be made.

In addition, the following will be **obliged to implement and draw up an equality plan**:

(i) companies with more than 50 employees, taking into account the phased implementation of the obligation for companies to approve an equality plan[1];
(ii) companies which have fewer than 50 employees, but are obliged to as a result of the collective agreement applicable to them; and
(iii) when ordered to do so by the labour authority within the context of sanctioning proceedings in place of the corresponding penalties for the drawing up and implementation of the plan.

It will be voluntary for other companies, but must be done following consultation or negotiation with the workers' representatives.

For **groups of companies**, the **possibility of implementing a single equality plan** is foreseen when the diagnosis of the situation of the companies in the group leads to an identical result, and when this is agreed with the parties entitled to negotiate the plans. In this case, the justification for having a single plan for several companies in the group must be provided.

[1] Companies with 100 to 150 employees will have until 7 March 2021 to approve equality plans, and companies with 50 to 100 employees will have until 7 March 2022.

2. Calculation of the number of employees

How the workforce should be quantified for the purposes of calculating the number of employees in the company that gives rise to the obligation to draw up the plan has been clarified:

- the company's entire workforce must be counted, regardless of the number of workplaces and the type of contract; and
- fixed-term contracts that are in force, and those that were in force in the previous six months but have expired at the time of calculation, must be counted, so that every 100 days or portion therof worked will be counted as one more working person.

This calculation must be made twice a year (on the last day of June and of December).

Once the threshold has been reached, it is compulsory to negotiate and implement the plan, even if the number of employees subsequently falls below 50, once the negotiating committee has been set up and until the end of the period of validity of the equality plan.

3. Negotiation process for the implementation and formulation of the equality plan

(i) Deadline for negotiations

The **deadline for starting negotiations** with the workers' representatives will depend on the reason for the obligation:

- a deadline of 3 months will apply after the threshold of 50 employees has been exceeded;
- a deadline of 3 months will apply from the publication of the collective bargaining agreement establishing the obligation to implement the plan;
- the deadline set by the labour authority, when it is the labour authority that requires the plan to be drawn up.

Once negotiations have begun, the **plan must be approved and registered within a maximum of 1 year** from the day after the deadline for starting the negotiation process.

(ii) Parties entitled to participate in the negotiations and procedure

RD 901/2020 makes it compulsory to negotiate the equality plan with the workers' representatives or, failing that, with a negotiating committee.

In **companies with workers' representatives**, the works council, the staff delegates and, where appropriate, the trade union sections with a majority of committee members will be entitled to negotiate on behalf of the workforce.

In **companies with no workers' representatives**, a negotiating committee will be created which will be comprised of, on the one hand, the representatives of the company and, on the other, representatives of the employees, made up of the trade unions that are most representative and representative of the sector to which the company belongs and who are entitled to form part of the negotiating committee of the applicable collective bargaining agreement. However, this trade union committee will be validly composed of those organisations that respond to the company's notice within 10 days.

If some of the company's workplaces have workers' representatives and others do not, the employees' side must be composed of, on the one hand, the legal representatives of the employees of the workplaces that have such representation and, on the other hand, the trade union committee created in accordance with the previous paragraph.

A **gender-balanced negotiating committee** will be encouraged on both sides, as will its members having training or experience in the field of equality in the workplace.

Both sides must negotiate in good faith during the negotiation process with the **objective of reaching an agreement**, for which the agreement of the majority of the workers' representatives or, where appropriate, the representative committee, is required. In the event of disagreement, the possibility of resorting to independent dispute resolution procedures and bodies has been provided for, if so agreed, following intervention by the joint committee of the relevant collective agreement (if this is provided for in the collective agreement for such cases).

The members of the committee and any experts who assist them will have access to the documentation and information that is necessary for the purposes of drawing up and negotiating the plan, and they must in all cases maintain the duty of secrecy with regard to this documentation.

4. Content of the equality plan

(i) Diagnosis of the situation

The **diagnosis of the situation** is the first phase of drawing up the equality plan, its objective being to identify and estimate the magnitude of the inequalities, differences, disadvantages, difficulties and obstacles that exist or that may exist in the company, in relation to achieving effective equality between women and men. Therefore, the diagnosis **must consider all jobs and workplaces, and all levels of seniority**, including data disaggregated by sex for the different groups, categories and levels.

In particular, it **must refer to the following specific matters**: selection process, recruitment, training and professional promotion; professional classification, remuneration and pay audits; working conditions; the co-responsible exercise of personal, family and working life rights; under-representation of women and; sexual harassment and harassment based on sex.

From the results of the above analysis, a report which details the conclusions and proposed measures must be prepared, which will form part of the equality plan. Furthermore, in the event that the under-representation of persons of one sex is observed in certain positions or levels of seniority, it provides for measures aimed at correcting such under-representation being included.

(ii) Content of the plan

The equality plan must specify at least the following points:

- the parties thereto;
- the personal, territorial and temporal scope;
- the report on the diagnosis of the situation of the company;
- the results of the remuneration audit, as well as its validity and frequency under the terms established in RD 902/2020;
- the qualitative and quantitative objectives;
- the specific measures and priorities;
- identification of the means and resources necessary to implement, monitor and evaluate the measures and objectives;
- the schedule of actions;
- the periodic monitoring, evaluation and review system;
- the composition and functioning of the committee or joint body responsible for monitoring, evaluating and reviewing the plan; and
- the procedure for making amendments, as well as the procedure for resolving any discrepancies.

5. Duration

The duration of the equality plan **may not exceed 4 years**, and must be reviewed periodically when certain circumstances arise that warrant its amendment, including in the event of a merger, takeover or change in the legal status of the company.

6. Registration of equality plans

Lastly, RD 901/2020 makes it **obligatory to register equality plans in the Register of Collective Bargaining Agreements and Labour Agreements** within 15 days of signing the plan. This registration will allow the public to access the content of the plans with the exception, where appropriate, of the pay records.

In addition, for **plans that are in force** at the time of the entry into force of RD 901/2020, a **transitional period of 1 year** (from 14 January 2021) is established to review and, if necessary, adapt the content of such plans to the new regulation.

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ROYAL DECREE 902/2020, OF 13 OCTOBER, ON EQUAL PAY FOR MEN AND WOMEN

On 14 October 2020, Royal Decree 902/2020, of 13 October, on equal pay for men and women ("**RD 902/2020**") was published, the content of which will come into force six months after its publication. In other words, companies will have until 14 April 2020 to adapt to the provisions contained in this regulation.

1. The principle of pay transparency and the principle of equal pay for work of equal value

(i) Principle of pay transparency

The principle of transparency is defined as that which makes it possible to obtain sufficient and meaningful information on the value attributed to the remuneration of employees.

Companies and collective agreements must integrate and apply this principle in order to identify any discrimination (whether direct or indirect) that may exist using: (i) pay records, (ii) pay audits, (iii) a job evaluation system, and (iv) the workers' right to information.

(ii) Principle of equal pay for work of equal value

Before the publication of RD 902/2020, the Workers' Statute already provided for the obligation of all companies to respect this principle. In this way, work of equal value exists when the nature of the functions or tasks, the education, professional experience or training required for the performance of such functions or tasks, the factors related to their performance and the working conditions under which these activities are actually carried out are equivalent.

The development introduced by this RD 902/2020 is a broader definition of the parameters that must be taken into consideration to understand that work of equal value is being carried out.

All companies, collective bargaining agreements and collective agreements are bound by this principle. The negotiating tables of the collective bargaining agreements must ensure that the factors and conditions present in each of the groups and professional levels respect the criteria of suitability, completeness and objectivity, as well as the principle of equal pay for positions of equal value.

2. Remuneration register

All companies are obliged to have a **remuneration register for all staff** (including managers and senior executives) in order to ensure transparency in determining pay. The time period of reference for drawing up this register will be the calendar year.

In **companies with workers' representatives**, such representatives **must be consulted** at least 10 days before the register is drawn up.

For those that **do not have workers' representatives**, it is the **employees themselves** who can **request access to the register**, but to much more limited information. In this case, the company will only report the percentage differences that exist in the average salaries of men with respect to women, breaking down this information according to the nature of the remuneration and professional classification. In other words, averages in absolute figures will not be available.

The register must contain, broken down by sex, the arithmetic mean and the median of what is actually received for each of these items in each professional group, professional category, level, position or any other applicable classification system. In turn, this information must be disaggregated according to the nature of the remuneration, including basic salary, each of the supplements and each of the other benefits, specifying each payment separately.

Furthermore, in the case of **companies that are obliged to implement an equality plan**, additional content must be added to the register and such companies are obliged to carry out a pay audit. This means that registration must be carried out by grouping together jobs of equal value and, where the result shows a difference in pay between men and women of 25% or more, justification must be given that this difference is due to reasons which are unrelated to sex.

The validity of this remuneration audit will be linked to the validity of the equality plan (unless a shorter period is determined in the plan) and will contain a **diagnosis of the situation regarding pay** in the company and an action plan for the correction of the existing remuneration inequalities.

3. Equal pay for part-time employees

RD 902/2020 reinforces the concept of equal pay for part-time employees.

The principle of proportionality in the pay received by part-time employees must be respected where this is required due to the purpose or nature of such remuneration, and is established by law, regulation or collective bargaining agreement.

Thus, any proportional reduction must ensure that there is no negative impact on the enjoyment of rights relating to maternity and caring for children or dependants.

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