

Royal Decrees 901/2020 and 902/2020 of 13 October

15 October 2020

Royal Decree 901/2020 of 13 October

This past 13 October 2020, Royal Decree 901/2020 of 13 October on regulating equality plans and their registration and amending of Royal Decree 713/2010 of 28 May on the registration and deposit of collective labour agreements ("Royal Decree") was approved, and whose main measures are as follows:

All companies are obliged to respect equality of treatment and opportunities in the working environment and shall adopt, prior negotiation, measures that aim to avoid any kind of employment discrimination between women and men, as well as promoting working conditions which avoid sexual harassment and gender-based harassment.

Companies with fifty or more employees must address the development and implementation of an equality plan in accordance with the Royal Decree. The elaboration and implementation of such equality plans shall be voluntary for other companies, prior consultation or negotiation with the employees' legal representatives.

Companies that comprise a group of companies may draft a single plan for all or part of the companies of the group. This possibility does not affect the obligation, where applicable, of companies which are not included in the group plan to have their own equality plan.

The group equality plan must take into account the activity of each of the companies which comprise the group and the applicable collective bargaining agreements, and include information on the diagnostics of the situation in each of these, as well as justifying the convenience of having a single equality plan for several companies of the same group.

Quantification of the number of employees in the company:

In order to calculate the number of people that trigger the obligation of developing an equality plan, it will be necessary to take into account the total employee workforce of the company, whatever the number of work centres the company has established and whatever the form of employment contract, including people with permanent-discontinuous contracts, people with fixed-term contracts and people with temporary contracts. In any case, every person with a part-time contract shall be counted as one more person of the employee workforce.

For the calculation of the employees, fixed-term contracts will be added, whatever their type, which having been in force in the company during the previous six months, have been expired at the time of the calculation. One more person will be counted for every one hundred employees or fraction thereof.

Procedure for negotiating equality plans:

A maximum period of three months will be established from the moment in which the minimum staff number that makes it compulsory is reached.

In any case, companies must have their application for registration of the equality plan negotiated, approved and submitted within a maximum of one year from the day after the deadline scheduled for starting the negotiation procedure.

Equality plans should be subject to negotiation with the employees' legal representatives. As a general rule, the following shall participate in the negotiation committee on behalf of the employees: the work's council, the staff delegates, if any, or the trade union sections, if any, and if together they make up the majority of the work's council members, or the trade union sections if they so agree.

The negotiating committee shall have competence in: (i) negotiation and elaboration of the diagnosis, and regarding the measures that will integrate in the equality plan; (ii) preparation of the report based on the results of such diagnosis; (iii) identification of the priority measures and their scope, and description of the material and human resources required for the implementation; (iv) promotion of the implementation of the equality plan within the company; (v) definition of measurement indicators and information collection instruments to monitor and evaluate the degree of compliance of the measures established by the equality plan.

In companies in which there are no employees' legal representatives, a negotiation committee will be set up, constituted by, on the one hand, the company's representatives and, on the other hand, by the employees' legal representatives, composed of the most representative trade unions and trade unions representing the sector to which the company belongs and with the right to form part of the negotiation committee for the applicable collective bargaining agreement. This negotiation committee will be constituted by a maximum of six members for each part.

Content of the equality plans:

In a first phase, a diagnosis of the situation will be made, aimed at identifying inequalities, difficulties and obstacles that exist or may exist in the company to achieve effective equality between women and men. A summary of this analysis and its conclusions and proposals must be included in the equality plan.

The diagnosis must be extended to all job positions and work centres of the company, and must include, at least, reference to:

- Selection and recruitment process.
- Professional classification.
- Training.
- Professional promotion.
- Working conditions, including the salary audit between women and men.
- Co-responsible exercise of personal, family and working life rights.

- Under-representation of women.
- Remunerations.
- Prevention of sexual harassment and gender-based harassment.

If the result of the diagnosis reveals under-representation of persons of any gender in certain positions or hierarchical levels, the equality plan shall include measures in order to correct the issue.

The minimum content of equality plans shall include:

- Determination of the parties involved.
- Personal, territorial and temporal scope.
- Diagnostic report on the situation of the company or group.
- Results of the remuneration audit, as well as its validity.
- Definition of the qualitative and quantitative objectives of the equality plan.
- Description of the specific measures, implementation time and prioritization of them.
- Identification of the means and resources, both material and human, for the implementation, monitoring and evaluation of each measure and objective.
- Calendar of actions for the implementation, monitoring and evaluation of the measures of the equality plan.
- System of monitoring, evaluation and periodic review.
- Composition and functioning of the commission or joint body responsible for monitoring, evaluation and periodic review of the equality plans.
- Modification procedure, including the procedure to resolve any discrepancy that may arise in the application, monitoring, evaluation and review.

The period of validity or duration of the equality plans may not exceed four years.

However, the equality plans will have to be reviewed: (i) as a consequence of the results of the monitoring and evaluation; (ii) when it becomes evident that they do not comply with the legal and regulatory requirements or when it is manifested that they are insufficient as a result of the action of the Labour and Social Security Inspection; (iii) in cases of merger, takeover, transfer or modification of the legal status of the company; (iv) in the event of any incident that may substantially modify the employees' workforce of the company, its working methods, organisation or remuneration systems; (v) by a court ruling condemning the company as a consequence of direct or indirect discrimination based on gender or as a result of its failure to adapt the equality plan to the legal or regulatory requirements.

The monitoring and evaluation of the measures established in the equality plan must be carried out periodically as stipulated in the calendar of actions of the equality plan or in the respective regulation that governs the composition and functions of the commission in charge of monitoring the equality plan. However, at least one mid-term and one final evaluation shall be carried out.

The equality plans will include all the employees within the company.

Likewise, in the case of temporary work companies, the measures established in the user undertaking's equality plan will also apply to all temporary employees provided by the temporary work companies during the periods of provision of services.

It is compulsory the registration of the equality plans in the public register, regardless of their origin or nature, compulsory or voluntary, and whether or not they have been adopted by agreement between the parties.

The equality plans in force at the time of the entry into force of the Royal Decree must be adapted within the period established for their revision and, in any case, within a maximum period of twelve months from the enforcement of this Royal Decree.

Royal Decree 902/2020 of 13 October

On 13 October 2020, Royal Decree 902/2020 of 13 October on equal remuneration for both women and men ("Royal Decree") was approved, and whose main measures are as follows:

The purpose of this Royal Decree is to establish specific measures to give effect to the right to equal treatment and non-discrimination between women and men in respect of remuneration, whether full-time or part-time employees, by the development of mechanisms able to identify and correct discrimination in the area and to tackle it.

Principle of transparency of remuneration:

Companies and collective bargaining agreements must incorporate the principle of transparency of remuneration, understood as the principles that makes it possible to obtain sufficient and significant information on the value attributed to the remuneration and, therefore, to identify those situations in which, while carrying out work of equal value, a lower remuneration is received, without this difference being objectively justified.

The principle of transparency in remuneration shall be applied, at least, through the instruments regulated in this Royal Decree: the remuneration registers, the remuneration audit, the system for evaluating job positions in the professional classification contained in the company and in the applicable collective bargaining agreement, and the employees' right to information.

Obligation of equal remuneration for work of equal value:

This obligation is binding on all companies, regardless of the number of employees, binding as well on all collective bargaining agreements and arrangements. In order to do so, job positions must be assessed according to the criteria of adequacy, completeness and objectivity. Among other factors and conditions, hardship and difficulty, forced postures, repetitive movements, isolation or responsibility, both economic and related to the welfare of people, may be also relevant.

Remuneration register:

When access to the register is requested by the employee due to the absence of employees' legal representatives, the information to be provided by the company shall be limited to the percentage differences that exist in the average remuneration between men and women, which must also be disaggregated according to the nature of the remuneration and the applicable classification system, and the reference period shall generally be the calendar year.

The employees' legal representatives must be consulted at least ten days before the register is drafted up or amended.

Remuneration audit:

Consists of gathering the necessary information to verify if the company's remuneration system, in a transversal and complete way, complies with the effective application of the principle of equality between women and men in terms of remuneration. It must allow the definition of the needs to avoid, correct and prevent the obstacles and difficulties that exist or could arise in order to guarantee equality in remuneration, and to ensure the transparency and monitoring of said remuneration system.

Companies that elaborate a plan of equality will have to include in it a remunerative audit, which will have the validity of the equality plan of which it is part, unless a shorter term may be determined.

Content of the remuneration audit:

- Completion of the diagnosis of the remuneration situation within the company, which shall include (i) The evaluation of the job positions, both in relation to the remuneration system and to the promotion system; (ii) relevance of other factors that may trigger the difference in remuneration, as well as any eventual deficiencies or inequalities due to the design of the measures for conciliation and co-responsibility in the company, or difficulties in professional or economic promotion.
- Plan of action for the correction of retribution inequalities, with determination of objectives, concrete actions, chronogram and person responsible and entitled for its implementation and monitoring.

Peculiarities of the remuneration register of companies with remuneration audits:

- It must reflect the arithmetic averages and the median of jobs of equal value in the company, according to the results of the job evaluation even if they belong to different sections of the professional classification, disaggregated by gender and in accordance with the provisions of Article 5.2 of the Royal Decree.
- Where the arithmetical average or the median of the total remuneration in the company of the employees of one gender is at least 25% higher than the other gender, it shall include the justification that this difference is not related to reasons of the employee's gender.

Assessment of job positions in collective bargaining agreements:

The negotiating tables of collective bargaining agreements must ensure that the concurrent factors and conditions in each of the groups and professional levels respect the criteria of adequacy, completeness and objectivity, and the principle of equal remuneration for jobs of equal value under the terms established in Article 4 of the Royal Decree.

The Institute for Women and Equal Opportunities, in collaboration with the most representative trade unions and business organisations, will draft a technical guide for carrying out remuneration audits from a gender perspective.

The application of the provisions of this Royal Decree for remuneration audits will follow the same gradual application as for the application of the equality plans set out in the Organic Law 3/2007 of 22 March.

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