



**THE GENDER PAY
GAP: ANALYSIS AND
UNION PROPOSALS
FOR COLLECTIVE
BARGAINING**



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FOR COLLECTIVE BARGAINING**

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LIST OF ACRONYMS

BOE: Official Spanish State Bulletin

ET: Workers' Statute

LOIEMH: Spanish organic law for the effective equality of women and men

REGCON: Register for collective agreements

RLT: Workers' legal representation

TJUE: European Union Court of Justice

TS: Supreme Court

UE: European Union



INTRODUCTION

This guide is the latest publication about the pay gap between men and women included in the ACCTIOON EQUAL PAY project, which the Secretariat for Women and Equality is carrying out under the Application of financial mechanism EEE2009-2014 in the “Gender equality and reconciling work and family life” programme, approved on May 31, 2013. The Equality programme has the long-term goal of helping to reduce economic and social inequalities in the European Economic Area by means of the objective, among others, of promoting equality between women and men in employment, paying special attention to reducing the pay gap.

The guide features the main contents and conclusions of the Study on the gender pay gap prepared in this same project, and is aimed at union delegates and members of negotiating committees. It emphasises different aspects that impact the pay gap, so as to provide mechanisms for detecting and correcting the pay gap by means of collective bargaining.

It is meant to be a simple document, so that those involved in collective bargaining or collective bargaining platforms can make the elimination of the pay gap a union priority, apart from drawing attention to certain aspects such as hiring, promotion, professional classification, pay schemes, training and reconciling work and family life that, making up the core of negotiation in companies, have a direct impact on the pay gap.

There are other initiatives for attacking the pay gap, such as public policies activating female employment or increasing co-responsibility, but we believed that it was best to focus on the closeness of the labour market, i.e. on companies, and we know that by changing women’s working conditions we can help to progressively close the pay gap.

This union Guide for union delegates presents the following in a systematic, orderly and accessible way:

1. The main contents of the Report on union action and Collective Bargaining against the gender pay gap.
2. Guidance for detecting factors that influence the pay gap in companies. This guidance is based on the contents of collective agreements.
3. CCOO's proposals for attacking the gender pay gap by means of union action and collective bargaining.



MAIN CONTENTS OF THE REPORT ON THE GENDER PAY GAP: IMPACT, COLLECTIVE BARGAINING AND UNION ACTION

WHAT IS THE PAY GAP BETWEEN MEN AND WOMEN?

The pay gap between men and women refers to the **difference that exists in the salaries received by workers of both sexes, calculated as the mean difference between the gross hourly income of all workers**¹.

On average, women in the UE earn about 16% less per hour than men. The pay gap between men and women is not the same throughout Europe; it is less than 10% in Slovenia, Malta, Poland, Italy, Luxemburg and Rumania, but more than 20% in Hungary, Slovakia, the Czech Republic, Germany, Austria and Estonia. Although the wage gap between men and women has decreased slightly in the last decade, it has increased in some countries (Hungary, Portugal).

The pay gap between men and women may refer to differences in hourly, weekly, monthly or annual income between men and women. Normally, the hourly pay gap between men and women is smaller than the weekly, monthly and annual one. This is due to the fact that women usually do paid work for less hours than men, since women still have more family and domestic responsibilities.

The pay gap between men and women covers differences in income between men and women, which includes: (a) remuneration in cash or in kind paid by an employer for work carried out, along with remuneration for time not worked; (b) net income from self-employment; or (c) total income.

1. As defined by the European Commission.

WHAT COSTS AND BENEFITS COME FROM APPLYING EQUAL PAY?

Equal pay has different benefits:

1. Better hiring and selection practices. Equal pay generates more efficient hiring and selection practices, more efficient ongoing training, an increase in new employee retention rates and better productivity on the part of new employees.
2. The identification of underestimated requirements in jobs dominated by women. Hiring that takes these requirements into account will result in greater quality of products and services, as well as internal flexibility. This is due to the identification of capabilities that can be transferred between jobs with a predominance of women and those with a predominance of men.
3. A better working environment based on principles of equality. This results in greater satisfaction and more commitment to the organisation.
4. An improved reputation for companies, making them more attractive. This results in lower hiring costs for qualified personnel and in jobs that remain vacant for less time, since they are more attractive.
5. Improved labour relations. Equal pay means less disputes, solving complaints and disputes more quickly, as well as more efficient negotiation of collective agreements.
6. Greater economic autonomy for female workers. This means more economic certainty for female workers and more women with suitable capabilities available to the company.
7. Smaller legal costs and fewer sanctions. Employers avoid being reported for wage discrimination and equal pay, which may result in substantial compensations and take up a lot of time. Equal pay may provide a certain degree of protection against a fall in the value of a company's shares, as well as improving its image and reputation.
8. A more consistent wage policy. A balanced wage structure based on the value of jobs saves time for the personnel managing the pay scheme and provides a more efficient distribution of the payroll among different jobs.

In general, women benefit from a fairer system of recognition and remuneration, their families benefit economically, employers benefit by having suitable people with ideal capabilities and society benefits from both social justice and productivity.

Some (slow) progress has been made on the road to a reduced pay gap between men and women. However, at the present rate it would take 75 years to make the

difference disappear. The gap is usually bigger in countries with a high rate of part-time employment, in which women are usually overrepresented, e.g. in the United Kingdom and the Netherlands.

DIFFERENCES IN EDUCATION AND TRAINING DUE TO GENDER

In general, the gap in education due to gender has decreased and women have attained notable educational achievements. However, in some countries women usually have fewer years of schooling than men. This is due to the consideration that education for girls is less useful or less beneficial from an economic point of view than that of boys. Furthermore, girls are usually the first to be taken out of school to take care of domestic work or look after sick relatives. These women therefore have access to fewer jobs, which are usually less qualified ones with lower wages. Sexist stereotypes and social pressure also usually channel boys, girls, men and women towards different types of education and training, which means that women have a smaller range of education and training opportunities.

□ Gender differences in the job market

Women work more intermittently than men. They often leave active occupation due to maternal responsibilities, although a growing number of women stay in the job market after giving birth. The loss of capabilities due to interruptions in employment penalises both women and men, but more so in the case of women. Unlike men, when women go back to work they usually lose access to jobs for which they are qualified.

□ Job segregation due to gender

Women work in sectors and jobs that are less varied and paid less than men. This is called horizontal professional segregation. Women work, for example, as secretaries, nurses or day carers, jobs that are normally paid less than those normally done by men such as, for example, lorry drivers, machinists and miners. This is often the result of sexist stereotypes regarding the type of jobs that are “suitable” for women.

Women are underrepresented in higher wage levels and are kept in lower posts. This is called vertical professional segregation. This is even the case in sectors in which most of the labour is female, such as the health and education sectors.

Jobs with a predominance of women (usually defined as occupations in which more than 60% of workers are women) are normally paid and valued less than jobs with a predominance of men. Lower wages discourage men from taking these jobs. As a result, women are mainly found in different jobs than men. This reinforces the vision that low wages are due to market factors and capability requirements rather than

undervaluing jobs. Women's capabilities are often undervalued since they are considered "natural" female characteristics, rather than having been acquired by experience or training. The classification of jobs as "qualified" or "non-qualified" also often hides gender-based prejudice.

□ Full-time and part-time work

Most part-time workers are women. In countries of the OECD, women account for almost three quarters of part-time workers, which may contribute to pay gaps. Discrimination can be direct, when the hourly wage of part-time work is less than that of full-time work, or indirect, e.g. when the lower wage limits established for National Insurance contributions go against part-time workers.

□ Size of the company and union membership rate

There are also differences between companies that hire women and men. Companies that mainly hire women are usually smaller than those that mainly employ men, and the union membership rate is also generally lower. Mean salary levels are usually lower in small companies and in those with a low union membership rate

What effects does the wage gap have throughout a person's life?

The wage gap impacts women since they obtain less income throughout their life, which leads to lower pensions and greater risk of poverty in old age. In 2012, 21.7% of women over 65 were at risk of poverty, compared to 16.3% of men the same age.

What employment differences are there between men and women?

The mean employment rate among women in Europe is 63%, compared to 75% of men ages 20 to 64.

Women make up the majority of part-time workers in the UE. 34.9% of women work part-time, compared to only 8.6% of men. All of this has a negative effect on women's professional careers, their training, their right to a pension and their unemployment benefits, which in turn affects the wage gap.

WHAT ARE THE MAIN CAUSES OF THE WAGE GAP?

The wage gap between men and women is a complex problem involving many causes that are usually interrelated. The fact that it still exists today is due to more extensive gender inequalities in economic and social matters.

1. Discrimination in the workplace

There are cases of men and women not receiving the same salary despite doing the same job or jobs of equal value. These cases may be the result of so-called “direct discrimination,” which simply consists in women being dealt with less favourably than men. Alternatively, they may be caused by certain policies or practices that, although not designed to be discriminatory, lead to unequal treatment between men and women. Both types of discrimination are forbidden by UE legislation but, regrettably, they still exist in some workplaces.

2. Different jobs, different sectors

Women and men do different jobs and often work in different sectors. In the healthcare sector, women make up 80% of all workers. Sectors with a predominance of women have lower salaries than those with a predominance of men.

The fact that women bear the burden of unpaid domestic work and childcare means that they tend to work fewer hours. Likewise, they generally work in sectors and occupations in which they can reconcile work and family life. As a result, women tend to work part-time and they have greater possibilities of being employed in low-paying jobs and of not being designated for posts of responsibility.

3. Labour practices and wage schemes

The same labour practices are not applied to women and men, e.g. in the fields of training and professional development. The different types of remuneration for employees (e.g. by means of extra payments, benefits and productivity bonuses), as well as the real structure of wage schemes, can lead to different remuneration conditions for male and female workers. This discrimination arises due to different cultural and historical factors that influence the way salaries are established. This “glass ceiling,” as it has been called, prevents women from attaining higher-paying jobs.

4. The undervaluing of women’s work and capabilities

Women’s skills and capabilities are often undervalued, especially in occupations in which they predominate. This results in worse remuneration conditions for women. When women make up most of the people working in a certain occu-

pation, they receive lower salaries. The opposite is true in the case of men: the higher their predominance in a certain occupation, the higher their salaries.

Women's capabilities are often undervalued because they are considered the result of "female characteristics," rather than acquired capabilities and skills. These factors may originate a gender-based predisposition when it comes to establishing salaries and evaluating the value of work done by men and women.

5. The scarce presence of women in leadership and top-level posts

Women have a low representation in the fields of politics and the economy. Only a third of European scientists and engineers are women. Even in sectors dominated by women, they are underrepresented in posts of responsibility, particularly in those of the highest level. In 2013, women only made up 17.8% of the boards of directors in Europe's main listed companies and they only occupied 4.8% of management posts in the said boards. The proportion of women in the post of managing director was even lower (2.8%).

6. Traditions and gender roles

Traditions and gender roles determine the role that women and men have in society, beginning at a very early age. Such traditions and gender roles may influence, for example, the studies that boys and girls choose. Such decisions are influenced by suppositions and traditional values regarding jobs that men and women can do. There are studies that show that women occupying high-level posts in female-dominated sectors receive considerably lower salaries than women at the top of typically male sectors.

7. Reconciling work and family life

Women work fewer hours, and often work part-time, in order to reconcile paid work and family responsibilities.

Women's opportunities for progressing in their jobs and receiving a higher salary are also affected by their family responsibilities.

The pay gap between men and women increases when women have children and when they work part-time.

Women spend more time than men in domestic work and looking after people, while few men take parental leave or work part-time. Although men spend more time than women in the workplace, if we add up a woman's hours of paid and unpaid work, the result is a considerably longer workday than that of men.

For more information on the pay gap in the European Union, Norway and Spain, as well existing international and national legislation, see the **Report on the gender pay gap: Impact, collective bargaining and union action**, which is found at the following address

http://www.coo.es/Proyecto_Acctioon_Equal_Pay

The monograph of “Trabajadora,” No. 54, which is available at the following direction:

http://www.coo.es/Proyecto_Acctioon_Equal_Pay



GUIDANCE FOR DETECTING FACTORS THAT INFLUENCE THE PAY GAP IN COMPANIES

Social partners have two main tools for minimising and/or eradicating the pay gap, namely, collective agreements and equality plans.

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COLLECTIVE AGREEMENTS

From January 1 to June 30, 2015, 57 agreements were published in the Official State Bulletin. Below we take a look at the content of such agreements in order to detect articles regarding areas such as hiring, promotion, training, salary... that can be improved and that are good examples, as regards their link with equality between women and men.

AREAS OF INTERVENTION:

COMMITMENT

- Agreement published in Official State Bulletin (BOE) No. 77 on March 31, 2015.

Article 46. Equal opportunities between men and women:

... "Collective bargaining may establish affirmative action measures to favour women's access to all professions. To that end, it may establish reserves and preferences in hiring conditions so that, in equal conditions of suitability, preference is given to employing the underrepresented gender in the corresponding group or professional category. Likewise, collective bargaining may establish this type of measures in conditions of professional classification, promotion and training, so that, in equal conditions of suitabil-

ity, preference is given to persons of the underrepresented gender to favour their access to the corresponding group, professional category or job.”

We must stress the importance of specifying, by means of affirmative action, the content that the Law’s Article 46 assigns to collective bargaining, over and above transcribing in the agreement what is established by law. This type of declarative clauses, which do not explain or specify how they will be carried out, prevents a subsequent evaluation of such, also resulting in a loss of opportunity, when negotiating the agreement, of introducing equality measures that influence hiring, promoting and training.

COMPANY SIZE

Example of positive text:

- Sectorial agreement published in Official State Bulletin No. 77 on March 31, 2015.

Article 44. Equal opportunities.

*“Companies with more than **150 workers** and one or more workplaces are obliged to prepare and apply equality plans contemplating the establishment of affirmative action measures. Other companies must, in the context of Organic Law 3/2007 for the effective equality of women and men, introduce affirmative action measures in order to contribute to the objective of equality and non-discrimination in companies, always in the context of what is determined by this Collective Agreement and negotiated with the workers’ legal representatives”.*

The extension of the obligation to negotiate Equality Plans in companies with a workforce of less than 250 is a good practice to include in collective agreements; it is especially important in sectorial collective agreements since what is mandated therein is binding on the sector’s companies.

This would partially overcome the absence of equality policies that may arise in companies that are not obliged to negotiate an Equality Plan. These clauses can be introduced into any type of agreement, being more frequently done in sectorial agreements.

HIRING

- Agreement published in Official State Bulletin No. 78 on April 1, 2015.

Article 18. Admission of personnel.

“When the Company needs to admit personnel, except in the case of managing personnel, this admission will be carried out in the following way:

...

5. After marking the exams and whenever there is a situation of equal qualifications, the post will be assigned in accordance with the **company's practices and customs**".

Collective bargaining can be used to influence decisive aspects of hiring, such as type of contract, or establish hiring preferences in accordance with the terms established in Article 17 of the Workers' Statute.

In order to improve the quality of female hiring and overcome horizontal and vertical segregation in companies, it is necessary to establish clauses that limit the discretionary nature of company decisions, since some of their practices and customs may perpetuate situations of inequality. Our actions should be aimed at avoiding gender-based discriminations in job offers, employment applications, professional exams... as well as establishing criteria for converting temporary contracts into permanent ones or part-time contracts into full-time ones.

PROMOTION

- Agreement published in Official State Bulletin No. 35 on February 10, 2015.

Article 27. Internal promotion.

*"Permanent personnel will have preference in covering permanent vacancies that arise in superior categories, as long as they certify the knowledge and skills required to occupy the said vacancy. In **equal conditions**, the performance or productivity of those selected should be **considered**".*

This article is not discriminatory, although its final phrase shows that the final selection is subject to a third-party decision. It would have been better to include, *"in cases of equal performance and/or productivity, the person of the underrepresented sex will be selected."*

- Collective agreement published in Official State Bulletin No. 36 on February 11, 2015.

Article 8. Promotions and dismissals.

*"Professional promotion in the Company will comply with criteria and systems that avoid situations of discrimination, with the **possibility** of establishing affirmative action measures to eliminate or compensate for possible situations of discrimination."*

In this case, the following text would have been more suitable: *Professional promotion in the Company will comply with criteria and systems that avoid situations*

of discrimination, adopting affirmative action measures to eliminate or compensate for possible situations of discrimination.

- Agreement published in Official State Bulletin No. 90 on April 15, 2015.

Article 14. Selection Board and Proficiency Tests.

“Qualification for promotions and covering personnel vacancies will be demonstrated by means of an exam, for which a Certification Board will be established...

*For the final score, the Board will only take into account the candidates’ **seniority in order to decide in cases of equal points**”.*

This method may involve indirect discrimination since men usually have more seniority in companies, thereby impeding women’s access to promotions.

- Agreement published in Official State Bulletin No. 102 on April 29, 2015

Article 14. Professional promotion.

*“1. Promotion will be carried out within each professional group by the **company management**, after consulting the workers’ legal representatives, taking as essential references **knowledge of the basic tasks of the job to be covered**, experience in the functions assigned to the said post or similar ones, **years of working in the company, suitability for the job** and the company’s organisational authority. The workers’ representatives may designate one of their members to participate in the selection process”.*

In this case, promotion is left to the company’s discretion. The characteristics that are examined to select the person fall within the fields of subjectivity and seniority. A person’s subjectivity can be influenced by gender stereotypes, thereby proving detrimental to women; we should therefore always strive to guarantee objectivity in promotion processes.

- Sectorial agreement published in Official State Bulletin No. 146 on June 19, 2015.

Article 71. Vacancies and promotions.

*“When a vacancy arises, it will be notified to the workers’ legal representatives, who will ensure that the selection process complies with objective criteria, specifically, merit, training and seniority. In the case of **equal qualification** between candidates, **seniority will be taken into account**”.*

Rather than seniority, priority should have been given to other criteria such as merit, capability for carrying out the tasks, required qualification, always with the

objective of guaranteeing a fair presence of women in all posts, categories and functions in which they are underrepresented.

Examples of positive texts:

- Agreement published in Official State Bulletin No. 49 on February 26, 2015.

Article 10. Admissions and vacancies.

“The personal requirements that may be demanded to cover posts will exclude any type of discrimination. In cases of internal promotion or by means of the Equality Commission, union representatives will have access to the necessary information, in order to ensure non-discrimination and respect for diversity”.

Participation of the Equality Commission, presence of union representatives in selection boards... are positive aspects when it comes to guaranteeing the principle of equality in promotions.

- Agreement published in Official State Bulletin No. 55 on March 5, 2015.

Article 53. Vacant posts.

“If there is a vacant post or a new post, in the case of equal merit and circumstances, priority will be given to company employees for whom this vacancy or job would involve promotion in their current professional category.

Therefore, the workers’ representatives should be notified about the existence of this vacancy so that any employee may apply for it”.

Although this text is good, it does not take into account the possibility of equal merit and circumstances but different gender. Affirmative action in favour of the underrepresented sex.

Promotion criteria should be as objective as possible (merit, training, professional life...), striving to promote the development of women’s professional career and their access to managerial posts.

TRAINING

In the period analysed, we did not find any clauses that boost women’s presence in training, aimed at promotion, imparted in companies. The direct link between training, promotion and professional classification make training one of the keys to overcoming the segregations that exist in companies.

Our actions should be aimed at ensuring women's participation in all training initiatives, even in the case of masculinised matters or functions.

SALARY

- Agreement published in Official State Bulletin No. 35 on February 10, 2015.

Article 47. Basic rights. Principle of equality.

"Both parties promise, in compliance with the AMAC and current legislation, to ensure equal pay for jobs of equal value and non-discrimination in all cases contemplated in the Spanish Constitution's Article 14".

In this case, although this is a common practice..., we believe it would be more correct to state, all current legislation, instead of just mentioning the Spanish Constitution.

We would consider mentioning in this case Article 28 of the Workers' Statute, as well as Article 46 of the LOIEMB, which refers to remuneration.

Clauses about remuneration should always be examined from a gender perspective, since their application could generate indirect gender discriminations, which operate under criteria of apparent neutrality even though they have an unequal impact on men and women.

- Agreement published in Official State Bulletin No. 78 on April 1, 2015.

Article 2.

"In accordance with what is stipulated in Art. 84.2 of the Workers' Statute and in view of the dispersion of criteria included in the different collective agreements applicable to each of the workplaces in which the company... operates, the principal criterion being equal pay and conditions for equal work, unifying criteria as well as rights and obligations between the company and its workers".

Article 28 of the Workers' Statute establishes equal pay for jobs of equal value, i.e. the concept of equal jobs is surpassed and equal pay is guaranteed. This means that the job done by men and women may be different with different qualification and capability requirements, but it is of equal value and should therefore receive the same remuneration.

This therefore requires the correct inclusion of what is established in the Workers' Statute, as well as evaluating jobs in an objective and neutral way that omits personal characteristics regarding who is going to occupy the post, focussing on the required functions and skills.

Article 8. Seniority bonus.

“As a result of the declaration of principles established in this agreement’s Article 2, equal pay for equal work, the non-existence of a seniority bonus is agreed”.

The objective is not to eliminate the seniority bonus but to establish remuneration mechanisms that compensate for the inequalities that may arise from this bonus.

Article 11. Attendance bonus.

“An attendance bonus will be paid for each day actually worked from Monday to Friday, establishing a fixed amount of 10 euros that is the same for everyone according to professional group within the workforce”.

Article 15. On-call bonus.

“It is defined as a bonus to which workers designated by the company are entitled in order to deal with possible emergencies requested by the company’s clients, as long as effective work is actually done for the client, amounting to 30 euros in addition to the corresponding hourly rate.”

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Bonuses account for a smaller proportion of women’s total remuneration than in the case of men, being an aspect with more possibilities of having an unequal impact on men and women.

The attendance bonus and on-call bonus mentioned here could give rise to unequal remuneration if suitable corrective mechanisms are not established.

The following questions arise in this regard:

- What about women during the six weeks of their compulsory maternity leave as established by law?
- What type of workers are designated to receive the on-call bonus? Is the fact that female workers have less availability to deal with emergencies, due to the social imposition of more care responsibilities, taken into account?

■ Agreement published in Official State Bulletin No. 40 on February 16, 2015.

Article 10.

“The Company will apply the general principle of equal professional category and equal pay for equal work and functions, without any gender distinction”.

We will always remind companies about the need for mentioning the LOIEMH law when speaking about Equal Opportunities between women and men, since it is the one that implements and defines this principle, apart from introducing the correct

concept of equal pay for work of equal value, as defined in Art. 28 of the Workers' Statute.

REFERENCE TO THE LOIEMH LAW

■ Sectorial agreement published in Official State Bulletin No. 29 on February 2, 2015.

Article 11, *Organisation of work*, mentions the fulfilment of the Law on Occupational Risk Prevention and the regulations implementing it, as well as *the promotion of equal treatment and opportunities between women and men*.

This agreement, despite considering Article 12, *General principle of equality and non-discrimination and reconciling work and family life*, does not mention the Law for effective equality between women and men.

Article 12.2:

- a) *Ensuring that both women and men enjoy equal opportunities as regards employment, training, promotion and their work.*
- b) *Ensuring that female workers are ranked equally with men in all remuneration aspects, so that women always receive equal pay for equal work.*
- c) *Job offers will be worded so as to indicate that they are not aimed exclusively for persons of one sex or another.*
- d) *Selection procedures that involve promotion will respect the principle of equal opportunities.*
- e) *In relation to hiring, the access of the underrepresented gender, in the corresponding professional categories, will be promoted in cases of equal merit and capability.*
- f) *In relation to training, the principle of equal opportunities will be promoted in access to training initiatives.*

These inspiring principles can be divided into two categories:

- Affirmative action: Principles **c** to **f**.
- Declaration of intent: Principles **a** and **b**. These two principles should have been worded as affirmative action.

Example of wording of principles **a** and **b**

- *Affirmative action measures favouring the underrepresented sex will be introduced, so that both women and men enjoy equal opportunities as regards employment, training, promotion and their work.*

- *Salaries will be analysed yearly (breakdown of basic wage, bonuses according to gender) to guarantee that female workers are ranked equally with men in all remuneration aspects, so that women always receive equal pay for equal work.*

■ Agreement published in Official State Bulletin No. 49 on February 26, 2015.

Article 37. Equality and non-discrimination.

"Both parties promise to ensure the fulfilment of principles of equality and non-discrimination as regards the recruitment, selection, distribution, promotion and other working conditions of the personnel affected by this agreement".

We should always mention the law on equality, which includes the principle of equality and non-discrimination, defining its scope and regulating affirmative action in order to eliminate situations of discrimination.

■ Agreement published in Official State Bulletin No. 79 on April 2, 2015.

Article 6. Non-discriminatory regulation.

*"2. All references made to workers, children, interested ones and any other that apparently refer to the male gender, will be so worded in order to attain the **greatest simplification in the wording of the text** and will be understood to be **gender-neutral**; i.e. also including the female gender, except in those cases that, as required by law, refer to women."*

Do not use language solely and exclusively in masculine. The neuter does not exist in Spanish. Wording solely in masculine is discriminatory, even if used in good will.

An example of good wording is transcribed below in relation to sectorial collective bargaining, which establishes the minimums to be followed in subsequent negotiations at company level.

■ State sectorial labour agreement published in Official State Bulletin No. 121 on May 21, 2015.

Article 45. Non-discrimination in labour relations.

...

The following are measures for the effective application of the principle of equal treatment and non-discrimination in working conditions between women and men, including those of affirmative action:

1. *Access to employment. Nobody can be discriminated against due to gender in access to employment. Job offers should be made, in all cases, to both men and women, without excluding, directly or indirectly, any male or female workers due to their gender. Personnel selection tests carried out by companies cannot establish any difference or advantage related to the applicants' gender. Job recruitment cannot be determined by a male or female worker's gender, except for the establishment of specific affirmative action measures in favour of the underrepresented sex that be established at company level.*

...

3. *Professional promotion. In relation to professional promotion, overcoming the deficit of women, if such exists, or of the underrepresented gender in the most qualified professional categories and groups will be promoted by introducing affirmative action measures.*

4. *Vocational training. A company's personnel will be guaranteed access to its training initiatives with absolute respect for the principle of equal treatment and opportunities between women and men. To that end, quotas, reserves or other advantages may be established in favour of workers of the underrepresented gender, in the field at which the vocational training initiatives are directed.*

5. *Remuneration. For the same job or for a job that has the same value, direct or indirect gender discrimination will be eliminated in all remuneration elements and conditions. Collective agreements in the Hotel and Catering sector, regardless of their scope, in relation to establishing wage remuneration levels, wage scales and determining all salary or non-salary bonuses, will particularly ensure the application of this principle of equal pay based on gender, particularly ensuring the exclusion of indirect discrimination. The non-sexist denominations of professional groups and categories included in this Agreement's Chapter II, which regulates the professional classification system, should be reproduced in lower-level collective agreements when establishing their remuneration levels and wage scales.*

6. *Work time. ... Workday and work-time flexibilisation measures will be promoted to facilitate the effective right to reconciling work and family life, stimulating the co-responsibility of male workers in domestic work and family care. ...*

7. *Other working conditions. When determining other working conditions, including those related to termination of the employment contract, the gender of the affected worker cannot be taken into account, unless it has been established as an express affirmative action measure, in order to facilitate the hiring or continuation of male or female employees whose gender is underrepresented, as long as this is reasonable and proportionate.*

EQUALITY PLANS

Equality plans are another essential tool for striving to eradicate the pay gap. Since Royal Decree 713/2010 of May 28, on the registering and depositing of collective labour agreements, came into force, equality plans have to be registered with the labour authority by means of the REGCON application. From January 1 to June 30, 2015, only 6 state equality plans have been registered. From these, we have selected a series of promotion and remuneration measures with highly positive wording:

PROMOTION

☒ Equality plan published in Official State Bulletin No. 29 on February 3, 2015

- *Specifically monitoring, by means of Human Resources, the promotions of part-time workers or those with a reduced workday to prevent the work time of such workers from impeding the promotion of women.*
- *Adopting the affirmative action measure of giving preference, in the case of equal merit, capability and suitability for a specific job offer, to persons of the underrepresented gender in promotion to jobs, professional categories or groups.*

☒ Equality plan published in Official State Bulletin No. 88 on April 13, 2015

- *In relation to hiring for highly qualified posts, in addition to applying principles of merit and capability, the incorporation of women will be favoured as long as underrepresentation exists in the corresponding category, area or department.*
- *... Consequently, professional promotions will continued to be governed by the worker's performance, merit and capability, mainly analysed in the skills evaluation procedure established in the Company. And in application of this approach, the following actions will be carried out:*
 - *Description of each job's categories and functions, with the objective of guaranteeing transparency in the companies' professional classification system.*
 - *Boosting women's participation in training linked to promotion.*
 - *Maintaining the policy of linking professional promotion processes to technical and objective criteria that do not exclude either gender and do not contain discriminatory criteria.*
 - *Avoiding any negative impact on professional development as a result of exercising rights to reconciliation.*

- ◻ Equality plan published in Official State Bulletin No. 132 on June 3, 2015
 - *Guaranteeing the filling of vacancies in posts of responsibility and management with internal promotion, only resorting to external selection when no applicant satisfies the requirements.*
 - *The promotion procedure will guarantee the same opportunities to the entire workforce, regardless of work time (full-time, part-time, reduced).*
 - *Specifically monitoring the promotions of part-time workers or those with a reduced workday to prevent the work time of such workers from impeding the promotion of women.*
 - *Adopting the affirmative action measure of giving preference to women, in equal conditions of suitability and capability, for promoting Middle Management and Directors.*

REMUNERATION

- ◻ Equality plan published in Official State Bulletin No. 88 on April 13, 2015
 - *Establishing a clear, transparent link between workers' performance in providing services and their remuneration (in any of its elements), without any gender discrimination.*
 - *When analysing the description of jobs done by women included in Section 2, the fairness of the remuneration policy applied to such posts will be studied and compared with the same ones done by men.*

- ◻ Equality plan published in Official State Bulletin No. 132 on June 3, 2015
 - *Analysing the repercussions for women due to certain variable remuneration criteria, to verify that they apply to both genders and do not systematically discriminate against one of them.*
 - *Analytically evaluating jobs, taking the gender perspective into account, starting from the description of such, for the effective application of the principle of equal pay for work of equal value.*
 - *Guaranteeing the objectiveness of all criteria defined in the company's wage structure and, therefore, establishing a transparent remuneration system, as well as guidelines for communicating such criteria.*
 - *Recognising wage scales over and above the agreement and preparing a protocol so that they can be accessed in accordance with objective, transparent and fair criteria.*

SOME MATTERS TO TAKE INTO ACCOUNT

How to calculate the wage gap?

The pay gap varies according to the analytical approach chosen: women's/men's salary, men's/women's salary. Although the pay gap is the same in quantitative terms (euros), it varies in qualitative terms. The perception of the pay gap is one of greater inequality, and also more real, when expressed in terms of men's salary compared to women's salary.

How is salary discrimination sanctioned?

In two ways, legally and administratively. Legally by action for protecting basic rights and administratively by lodging a complaint with the Work and National Insurance Inspectorate.

How can the union branch know if the company is discriminating against women in relation to salary?

Detecting the pay gap is a complex task since it involves a composite effect of less access for women to the job market, along with other determining factors that exist in the company and influence the pay gap. Union representatives should therefore carry out a diagnosis of the situation that contemplates the type of hiring, women's position in the professional classification, promotion mechanisms, the remuneration system and bonuses and parental leave. All of this data has to be broken down according to gender, giving rise to a quantitative and qualitative analysis of women's situation in the company.

Elements to be analysed by the union branch:

a) In relation to remuneration concepts	<ul style="list-style-type: none">• Basic wage• Annual variable remuneration• Job bonuses• Remuneration in kind
b) In relation to the workforce's personal characteristics	<ul style="list-style-type: none">• Distribution of workforce according to gender• Educational level• Age• Seniority in the company
c) In relation to the employment structure	<ul style="list-style-type: none">• Professional categories• Types of workday• Type of contract

What should the union branch do if it detects a gender pay gap?

The gender gap can be detected by means of the information to which it is entitled in accordance with the powers of the workers' committee (Hiring control, monitoring of National Insurance contributions and of information received regarding respect for and application of equal opportunities), in addition to information provided in the Equality Plan, if it exists.

Once detected, we have to analyse the specific reasons for such in order to implement a union initiative to correct it. It is necessary to inform the workers about this unfair situation and deal with its solution in the different labour frameworks.

These initiatives can be implemented at the same time:

- a) Initiating a campaign to inform the workforce using the obtained data, thereby raising collective awareness against female discrimination.
- b) Dealing in established negotiation frameworks (Collective bargaining in the company and in the sector, Equality Plan or affirmative action measures) with the report of specific discrimination situations, introducing measures to correct the situation.

It is also advisable to inform CCOO's Legal Department about any situations of discrimination detected, in order to prepare the corresponding legal action.

Does professional category influence the pay gap?

Yes, which is why the following has to be introduced into collective agreements:

- Do not include in collective agreements jobs or professional categories with gender differentiation.
- Clearly determine groups, divisions and, where applicable, professional levels.
- Definition of tasks and function, professional specialities and assigned responsibilities.
- Criteria for the assignment and limits of mobility inside and outside the group.
- Establishment of salary levels for each professional group.
- Regulate procedures with participation of the Workers' Legal Representatives (RLT) for individual claims in the case of disagreement with the professional classification assignment.
- Evaluate jobs from a gender perspective.
- Match salaries of feminised categories to their equivalent in masculinised categories.

What role can Equality Plans have in a company in order to correct the pay gap?

Equality Plans provide essential information in order to accurately analyse the company's remuneration system.

Correcting the pay gap should be an essential objective by introducing the following measures into the Equality Plan:

- Definition of a clear, transparent salary structure, which enables the arbitrary elements causing discrimination to be controlled.
- Incorporating as affirmative discrimination measures additional increases to eliminate the detected discrimination.
- Periodically analysing statistics on mean remuneration according to professional category of men and women in the company..

Why does the duration of the contract influence the gender pay gap?

Normally, those with temporary contracts are not entitled to promotion processes or other advantages that are enjoyed by personnel with stable contracts. Although some men also have temporary contracts, most of the latter are for women, who remain with such contracts for more time since they change jobs more often. They are therefore paid less.

Why is part-time work discriminatory?

Working fewer hours results in a smaller salary, which means that part-time workers earn less money than those who work full-time. Seventy-four per cent of part-time workers are women, not by choice but because this is the type of contract that they are offered.



CONTRIBUTIONS ON THE PAY GAP MADE BY UNION DELEGATES

This section includes the contributions made by those who participated in the questionnaires used to prepare the Confederation Secretariat for Women and Equality's Report on the gender pay gap: *Impact, collective bargaining and union action*.

These contributions are based on everyday experiences in companies, identifying the factors that impact the pay gap and proposing improvement actions to be introduced into collective bargaining.

These contributions also make this guide as practical and educational as possible.

BANKING SECTOR

This sector's delegates have made contributions regarding the processes of negotiating the equality plan and the clauses of collective agreements.

On equality plans:

"The first obstacle that we often come across is the fact that the company does not want to sign an explicit "commitment" regarding equality. They often comment that this is implied by the fact of sitting down to negotiate, which we know is not correct, because the equality plan is compulsory with more than 250 people."

A second obstacle, which is worse than the first in our opinion, is the fact that the company refuses to train those who are going to be in charge of negotiating the Equality Plan. And we believe that this is far more important since a lack of training, in the case of those negotiating the equality plan, can result in a disas-

trous one that does not fulfil its objective of bringing the company closer to real equality.

The third obstacle arises when the company has to provide the information for making the diagnosis. In this case, the company should provide well-stipulated, very specific information, since such information often proves to be insufficient to a greater or lesser degree. Therefore, obtaining the information required for the diagnosis is often fairly complicated.

After carrying out the diagnosis, the next problem we come across is making the plan's measures sufficiently specific. These usually involve a lot of digressing and vagueness. However, this problem would be solved if everyone negotiating Equality Plans had the necessary training."

On collective agreements:

SUBJECT	GOOD PRACTICE CLAUSE
HIRING	Employment quotas.
WORKDAY	Promoting a continuous shift workday that favours reconciliation and occupational health, and is essential for avoiding more discrimination.
REMUNERATION	Same category, same salary. Elimination of arbitrary, discretionary incentives... since they influence the pay gap
PROFESSIONAL CLASSIFICATION	Need for quotas in all categories, especially in higher ones.
PROMOTION	Establishing quotas to even out women's presence at all levels.
TRAINING	Carrying out training during the workday. Training aimed at changing jobs and promotion.
LEAVES OF ABSENCE	Awareness campaigns to encourage men to take legally established leaves.

PRIVATE SECURITY SECTOR

Women in our company only occupy categories of auxiliary services, a category that stands out as the one with the worst working (occupational health) and salary conditions (interprofessional minimum wage), although we are required, for example, to have a good command of English. Rest times between shifts are not respected, which makes it more difficult to reconcile work and family life. Such reconciliation is also hindered by the high volume of overtime. Short contracts are very frequent, only lasting hours or days. A limited proportion of women in certain categories; for example, there is only one woman out of a total of 40 in security vans used to transport funds.

CONSTRUCTION AND SERVICES FEDERATION

We point out some good practices, because the opposite is true in the sector's agreements.

In relation to hiring:

- Training those in charge of personnel selection in relation to equality and non-sexist selection processes. Training should be extended to the entire process, both in pre-selection and in subsequent interviews. It is likewise important to highlight in such training that no personal references should be made in selection processes. On the other hand, in order to evaluate equal opportunities, the participation of the workers' representatives in selection processes would be very useful.
- Establishing the use of blind curricula.
- In the case of a full-time job offer, this should be made first of all to female workers that are currently working part-time. The same criterion should be applied when a permanent contract is offered, since there are usually a greater number of temporary and part-time female workers.
- Promoting training, always during work time, aimed at helping female workers access categories and occupations that are mainly occupied by men.

In relation to reconciliation:

- Informing male workers about the leaves they can take in the case of birth or adoption.

In relation to remuneration:

- Clear and transparent wage scales. In relation to bonuses, absences due to maternity, breastfeeding leaves should not be considered absenteeism and should be counted as worked days.

INDUSTRY FEDERATION DELEGATES

The contributions are aimed at collective bargaining:

- Favours training enabling women to access categories and occupations in which they are underrepresented. Attention should be paid to the criteria for accessing these courses, as well as the contents and material that are imparted; training should always be carried out during the workday and considered as work time.
- Preparing a record of the training and studies carried out by the workforce.
- In relation to internal promotion, seniority should not be a determining factor since this is usually detrimental to women.
- In agreements and in practice, the definition and conditions of bonuses and extra pay should be clear. Any unjustified differences in salary due to gender should be eliminated.
- Carrying out campaigns and training aimed at men regarding the leaves to which they are entitled.
- Favours the use of flexitime for the beginning and end of the workday; promoting a continuous shift workday.
- An evaluation of physical and psychological occupational hazards should be made from a female perspective, especially those affecting pregnancy and breastfeeding. All of this should be included in an Occupational Hazard Prevention Plan.

PROPOSALS FOR INTERVENING IN COLLECTIVE BARGAINING TO REDUCE THE PAY GAP

HIRING

Article 64 of the Workers' Statute establishes the information and consultation rights, as well as the powers of Workers' Committees, indicating in point 2.c) the right to be informed three-monthly regarding the employer's plans to make new contracts, indicating the number of them and the types that will be used, including part-time contracts, overtime carried out by part-time workers and subcontracting conditions. The workers' committee will likewise be entitled to receive a basic copy of contracts and notification of the corresponding extensions and complaints within ten days of such.

Based on the above, it is indispensable for the Workers' Legal Representative to request this information from the company in order to obtain accurate knowledge regarding hiring and, after ascertaining the situation, establish criteria to improve such.

These criteria involve: Establishing limits for temporary hiring, in relation to their number and the time in which a worker can have this type of contract in a single company, while improving, naturally, the limits already contemplated in the law (e.g. after a year in the company, the contract will automatically become a permanent one); or establishing that every year a certain % of contracts will be converted into permanent ones, giving preference to women if they make up the majority of those with temporary contracts.

Sectorial or company collective agreements should improve the working conditions of part-time workers, establishing measures to facilitate their access to training, to the promotion and development of their professional career and to the advantages

established in the company regarding remuneration (nursery vouchers, supplementary welfare allowance, etc. ...), otherwise these would undoubtedly be indirectly discriminatory remuneration practices, as the TJUE has pointed out, since part-time hiring is much more common in the case of women.

It is likewise necessary to establish clear rules for converting part-time contracts into full-time ones, as well as regulating the conditions under which the company can make use of this type of hiring, ensuring that it is not mainly applied to women.

In relation to hiring, the employment of women should also be prioritised, in equal conditions, for those company posts or areas in which they are underrepresented, whenever they satisfy the corresponding suitability criteria.

It is also necessary to call upon companies to word job offers in non-sexist language, to make it clear that the offer is aimed indistinctly at persons of both genders.

Proposal of good practices based on our own preparation

“with the objective of establishing a stable system of labour relations, which benefits both persons and personnel, which eliminates inequalities that have been or may be established regarding women’s access to employment and working conditions, establishing as a hiring criterion the priority of permanent, full-time employment.”

“temporary or part-time personnel will be given preference regarding permanent, full-time employment whenever vacancies exist in their professional group.”

“In cases of equal merit and capability, preference will be given to part-time workers in order to access the company.”

“Part-time workers will have the same access to training as the rest of the workforce.”

PROFESSIONAL CLASSIFICATION

An analysis of companies reveals the frequent existence of departments or professional groups that are the result of a gender-based division of occupations. Many feminised occupations have less social prestige, are undervalued and paid less than masculinised ones, which explains that the pay gap is partially the result of this situation.

This requires considering the following aspects in negotiation:

- Do not include in collective agreements jobs or professional categories with gender differentiation.

- Clearly determining groups, divisions and, where applicable, professional levels.
- Definition of tasks and functions, professional specialities and assigned responsibilities.
- Criteria for the assignment and limits of mobility inside and outside the group.
- Establishing salary levels for each professional group, verifying the evaluation of labour categories to ensure equal pay for jobs of equal value.
- Regulating procedures with participation of the Workers' Legal Representatives for individual complaints in the case of disagreement with the professional classification assignment.
- Evaluating jobs from a gender perspective.
- Matching the salaries of feminised categories to their equivalent in masculinised categories.
- Avoiding the exclusively feminine denomination of certain jobs, professional categories or groups.
- Not using asymmetrical terms when naming or establishing professional categories or groups, such as the use of the masculine for more prestigious jobs and the feminine for jobs further down the hierarchy.
- Wording labour categories and the description of jobs using a denomination that represents both genders. The linguistic presence of women is important in trades, professions, posts of responsibility... in which they have been historically absent or hidden.
- Avoiding the exclusively masculine denomination (with a presumably generic value) of trades, professions and professional categories and the masculine denomination of trades, professions and professional categories, except in the case of some professions with a greater female presence, in which case exclusively feminine denominations are included (cleaning lady, seamstress, nurse...).

PROMOTION

Professional promotion is contemplated in Art. 24 of the Workers' Statute, assigning an essential role to collective bargaining when it comes to establishing promotion mechanisms in the company, demanding the absence of all direct or indirect discrimination between men and women therein, enabling the establishment of affirmative action measures aimed at eliminating or compensating for situations of discrimination.

However, in practice, we find that access to promotion or management posts is usually left to the company's free choice, which may result in situations of discrimination towards women.

Art. 64 of the Workers' Statute stipulates that the Workers' Legal Representatives are entitled to be informed annually regarding the application of the principle of equal treatment in the company and the presence of women in different professional levels. It is of interest to obtain this information and request information regarding the promotions carried out, in order to establish corrective mechanisms if discrimination is detected therein.

Arbitrary professional promotion procedures, without participation of the Workers' Legal Representatives therein or without transparency, that include requirements such as schedule availability, geographical mobility, etc... prevent, in effect, women's participation in promotion processes.

Collective agreements should include specific clauses to regulate professional promotion criteria in which specific promotion rules are established in accordance with criteria of transparency, merit and objective knowledge tests, giving less importance to criteria such as seniority and employer choice when it comes to establishing promotions.

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Another measure for favouring women's promotion to posts of responsibility is contemplating training and organising training-based promotions for women enjoying a leave of absence.

It is likewise necessary to establish quota systems or preferences for women in those functions or posts in which they are underrepresented.

Finally, companies must be called on to publicise promotion offers in a clear way, guaranteeing that information regarding requirements and working conditions reaches the entire workforce.

TRAINING

The Workers' Statute, in Art. 23.2, assigns to collective bargaining the establishment of the terms in which training and professional promotion should be carried out, always guaranteeing a lack of discrimination.

Training is one of the aspects most closely linked to promotion at company level; we should therefore guarantee that it reaches all workers, guaranteeing women's presence by implementing affirmative action initiatives to that end, in accordance with Art. 17.4 of the Workers' Statute.

Collective Bargaining guarantees greater participation of women in training. The following are measures favouring greater stability in women's professional career: enabling the attendance of women enjoying absence of leave or with reduced

workdays in company training programmes, imparting training during work time, establishing specific training for women to enable them to access posts in which they are underrepresented.

Some equality plans signed by CCOO enable women absent from the company, due to leaves of absence to provide family care, to access training, thereby ensuring the acquisition of knowledge required to carry out their task, or career recycling designed to facilitate their incorporation.

RECONCILING WORK AND FAMILY LIFE

Data shows that in Spain women are still the ones that “reconcile” their work and family life, since they are mainly the ones that take absences of leave and reduce their workday to look after minors and dependants.

Such leaves and workday reductions result in a decrease in women’s remuneration, influencing the pay gap between women and men and welfare systems such as future pensions.

Any proposals that are made regarding this matter should be aimed at co-responsibility in looking after minors and dependants, rather than consolidating sexist roles that have a negative impact on women’s employment, salary and working conditions. The use of reconciliation measures should be extended to men. We thereby avoid explicit and implicit stereotyped references.

We have to promote flexible work and rest times, ensuring that absences of leave to look after children and dependants are aimed at the entire workforce, both women and men, thereby highlighting co-responsibility.

In relation to the irregular distribution of work time, collective agreements should stipulate the percentage of the work time that can be distributed throughout the year, otherwise the 10% established in the Workers’ Statute will apply, establishing the necessary guarantees to safeguard individual reconciliation rights.

REMUNERATION: BONUSES

Collective bargaining or, in its absence, the individual contract will determine the wage structure, which should consist of the basic wage and, where applicable, bonuses established in accordance with circumstances regarding the worker’s personal conditions, the work carried out or the company’s situation and results, which will be calculated according to the criteria agreed on for this purpose.

Collective bargaining should guarantee equal pay for the same jobs, for the same professional category and for equivalent jobs with the objective of eliminating the pay gap.

A comparative analysis of remunerative components should be carried out in order to detect differences in bonuses and include women in bonus schemes. Experience shows that this is a complex task, due to companies' refusal to provide complete salary data that includes bonuses, and to the fact that not many companies have carried out a non-sexist or neutral evaluation of jobs, so that the gender of the person that has to occupy the said post is not taken into account.

On the other hand, inertias in collective bargaining or the discretionary way in which companies grant certain personal bonuses not included in collective bargaining, serve to perpetuate situations of unequal pay in everything related to bonuses. The weight of the latter in women's salary is smaller than in that of men, in other words, women do not receive the same bonuses.

Therefore, by taking action in this matter we can eliminate an important part of the pay gap.

Job bonuses amount to remuneration received according to workplace characteristics.

DANGER BONUS

This bonus is generally discriminatory because danger or hazard bonuses are generally paid for mainly masculinised jobs, e.g. operating machinery, and are not associated with the use of chemical products, as regards handling or inhaling such (cleaning, textile, footwear, healthcare sectors of pharmaceutical industry), which are normally feminised jobs.

It is therefore necessary to ensure, in collective bargaining, that this bonus is linked not only to those categories involving the use of machinery but also to those in which chemical products are used.

ABSENTEEISM BONUS

Women mainly assume family care, they are the ones that get pregnant and breast-feed, and they are/can be victims of gender-based violence. These situations result in absences from work, more so than in the case of men; this may lead to the company considering these situations as absenteeism and, therefore, penalising women by deducting this bonus from them.

Suspension due to maternity or paternity, breastfeeding leave, risk due to pregnancy or breastfeeding, as well as suspension due to gender-based violence and justified absences for this reason, enjoy complete legal protection and cannot be considered absenteeism. Another matter is absences due to looking after minors and sick relatives (accompanying them for medical treatment, school tuition, etc.), which are not contemplated as leaves in collective bargaining.

Measures to be included:

- Expressly include in any agreement this type of situations, indicating that they are protected by equality legislation and cannot be considered absenteeism.
- Include in any agreements leaves (educational and medical matters) that favour work and family life reconciliation and co-responsibility between women and men, avoiding prejudices that place women at the centre of absences due to assuming, sometimes exclusively, care.

A recent Supreme Court² sentence declared illegal considering the six weeks of compulsory maternity leave as paid absences or leaves with regard to receiving variable bonuses or remuneration, since only women are entitled to such, which places them at a disadvantage for receiving such bonuses compared to men.

NIGHTSHIFT BONUS

In the case of women that work nightshift, if this may result in a risk for their pregnancy and/or breastfeeding, the employer should change their job or function. Although by law they should still receive the remuneration of their original job, sometimes they are no longer paid this bonus since the company considers that they are not entitled to it.

In view of this situation, any agreement has to expressly stipulate that women in this situation (work-related risk for pregnancy or breastfeeding) will still be entitled to a nightshift bonus, otherwise this would amount to gender penalisation or discrimination.

Legal grounds

The Law on Prevention of Labour Risks, in Art. 26.2 and 26.4, stipulates that in the case of risk for pregnancy, working conditions or work time should be adapted. If such adaptation is not possible then the job should be changed. The job change will be subject to the conditions of functional mobility in Art. 39 of the Workers' Statute, with the worker being entitled to remuneration corresponding to the functions she carries out, except if such functions are inferior, in which case she will maintain the remuneration of her original job. In the last analysis, the assignment to different professional categories or groups will be carried out with the worker maintaining, in all cases and at the very least, her right to the total remuneration of her original job.

2. TS sentence, May 27, 2015

The following criteria should be taken into account as regards the measures to be adopted for eliminating the pay gap, as well as paying attention to bonuses³:

- Suppressing wage levels based on age.
- Eliminating permanent double wage scales and entry-level wages.
- Revising the conditions for receiving bonuses, allowances and social benefits in order to detect and suppress any inequalities due to type of contract or start date in the company.
- Revising the denominations of jobs and professional groups, as well as functions and tasks, in order to avoid sexual determinism therein.
- Increasing transparency in remuneration systems and the participation of the Workers' Legal Representatives in establishing such.
- Establishing a remuneration system based on non-sexist evaluation of jobs.
- The pay gap increases rapidly with variable remuneration, reaching 46.3% if we consider other remuneration concepts such as variable remuneration⁴; it is therefore necessary not to leave this type of remuneration to the companies' discretion but to establish mechanisms negotiated with the Workers' Legal Representatives regarding the criteria for accessing such.

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Other bonuses that should be considered are those related to effort, ability, attention and concentration.

USE OF NON-SEXIST LANGUAGE IN COLLECTIVE BARGAINING

The following type of clauses should be avoided:

“Neutral gender clause: the agreement’s text has used the male gender to encompass both male and female workers, without overlooking the existence of gender differences, with a view to avoiding complex wording.”

“The possibility that the use of non-sexist expressions, which guarantee women’s equality, may make the reading and understanding of this agreement more difficult, moves its signatories to declare that every expression defining an activity or condition, such as worker, businessperson, representative,

3. Proposals for union action in collective bargaining, CCOO Trade Union Confederation Secretariat for Union Action and Employment.

4. Determining factors of the Gender Pay Gap in Spain, Ministry of Health, Social Services and Equality, 2012.

member, etc., is used in the sense of encompassing both genders, except in those cases that, as required by law, refer to women.”

Being careful to word the collective agreement in non-discriminatory language is one more equality action that does not replace, substitute or exclude other equality actions and strategies.



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