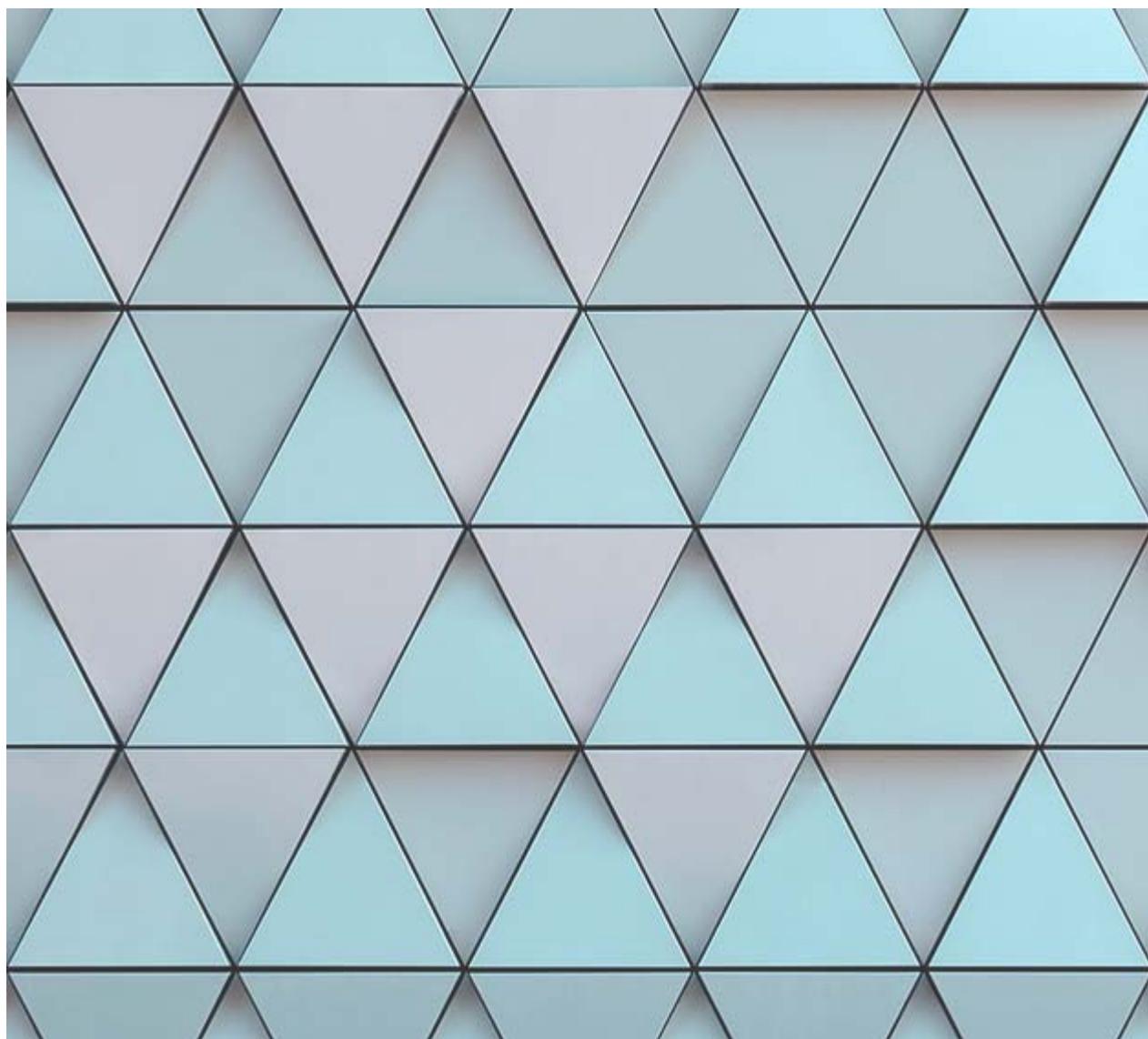


Spain - Labor and Employment Newsletter



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Organic Act 10/2022, on the comprehensive guarantee of sexual freedom

Organic Act 10/2022, of September 6, on the comprehensive guarantee of sexual freedom, came into force on October 7, 2022. It adopts important labor-related measures with the aim of (i) preventing situations of sexual violence in the workplace, and (ii) conferring the same labor conditions and rights on victims of sexual violence as those granted to victims of gender violence.

We highlight the following points:

➤ DUTIES AND GOALS FOR COMPANIES

Companies must establish specific procedures to prevent workers from committing offenses and engaging in other types of conduct against sexual freedom and moral integrity in the workplace, with a particular focus on sexual harassment and harassment based on sex, and also provide channels for complaints or claims brought by the victims of this conduct, specifically including harassment suffered through digital media.

The company is obliged to negotiate any codes of good practice, information campaigns, action plans and training programs it may develop and implement in this regard with the workers' legal representatives ("WLR").

Companies must include sexual violence in their risk assessment as an occupational risk faced by female workers in the different jobs they hold, and they must provide them training and information on this risk. They are also obliged to arrange the spaces in their work centers mainstreaming a gender perspective, so that all female workers can have safe access to them.

The WLR will carry out activities to raise awareness of this type of conduct and will inform the company's management of any conduct or behavior they are familiar with that may encourage gender-related transgressions.

➤ LABOR RIGHTS ARE EXTENDED TO FEMALE WORKERS AND ECONOMICALLY DEPENDENT SELF-EMPLOYED WORKERS THAT HAVE SUFFERED SEXUAL VIOLENCE

Victims of sexual violence will have the same rights granted to victims of gender-based violence, specifically:

- reduced working hours, flexible working arrangements and the option to work remotely;
- preference to fill another position within the same professional group or in an equivalent category, if the company has a vacancy in another work center, with a temporary reserved right to the previous job;
- suspension of employment contract; and
- protection against dismissal, which would constitute objective nullity.

Absenteeism or tardiness owing to physical or psychological health issues caused by sexual violence will be considered justified and will be paid when so determined by the primary care social services or health services, as appropriate, although the worker must inform the company of these absences as soon as possible.



➤ NEW SOCIAL SECURITY RIGHTS

Companies entering into replacement contracts—as long as the contract is entered into with an unemployed person who will replace a victim of sexual violence whose employment contract has been suspended or who has exercised the right to geographical mobility or to be relocated to another work center—will benefit from a 100% allowance on employer social security contributions for common contingencies during the whole period in which the replaced worker is suspended or for six months in cases involving geographical mobility or relocation to another work center.

➤ CHANGES TO THE CRIMINAL CODE

The Spanish Criminal Code is amended in order to impose a fine of between six months to two years on companies that have seriously breached their obligations to supervise, control and monitor their workers' activity and are liable for the offense in question.

Act 15/2022, for equal treatment and non-discrimination

Act 15/2022, for equal treatment and non-discrimination, in force since July 14, extends the scope of protection against discrimination, addressing the causes and potential forms of discrimination.

The main labor-related development is that it introduces as factors of discrimination illness, health condition, serological status and genetic predisposition to suffer from pathologies and disorders, as well as gender expression, language and socioeconomic situation. Therefore those factors are no longer required to be linked to a disability or a long-term illness to be considered discriminatory.

It forbids employers from asking job applicants about their health condition.

As regards forms of discrimination, as well as direct and indirect discrimination, it includes the following types:

- Discrimination by error: based on incorrect consideration of the characteristics of the person or persons discriminated against.
- Multiple discrimination: discrimination against one person on the basis of more than one ground.
- Intersectional discrimination: when several grounds operate simultaneously and interact in an inseparable manner, producing a distinct form of discrimination.
- The definition of indirect discrimination is extended and includes cases where the result could be harmful, although not necessarily so.

Discrimination also refers to denial of reasonable accommodation, harassment, incitement, order or instruction to discriminate or to commit an act of intolerance, reprisals or noncompliance with positive action, inaction, neglect of duties or breach of duties.



Insolvency Act

The Spanish Insolvency Act has been overhauled by [*Act 16/2022*](#), which came into force on September 26.

The reform fosters the use of a rather informal pre-insolvency procedure requiring very little court involvement so that companies are able to adopt corrective measures quickly through a restructuring plan changing company's financial structure, capital and debt by modifying the assets, liabilities and operating assets that are essential to ensure the company's viability before its financial situation worsens to the point where it has to file for insolvency.

See our [*Legal Flash*](#) for further information on the Spanish Insolvency Act.

Immigration regulations

[*Royal Decree 629/2022*](#) modifies the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration.

In force since August 16, this regulation addresses the need to reduce imbalances in the labor market owing to the shortage of migrant workforce, and pre-existing situations that previous regulations did not cover. Among other measures, it makes it easier for foreign students, startups and self-employed foreigners to obtain work permits, and for families to reunify.



Significant judgments

Can a dismissal for an employee's misconduct outside of working hours and the workplace be considered fair?

Supreme Court, Fourth Chamber, May 31, 2022 (judgment no. 494/2022)

The Supreme Court has declared fair the dismissal of an employee that physically assaulted and insulted his colleagues following Christmas lunch because his conduct breached basic co-habitation rules and indirectly damaged the company, without it being relevant the time or place where the incident took place.

Is the assignment of employees by a temporary work agency to cover a user company's permanent needs a serious or very serious infringement?

Supreme Court, December 2, 2021 (judgment no. 1206/2021); and June 29, 2022 (judgment no. 595/2022)

The Supreme Court considers that the assignment of employees by a temporary work agency to a user company to cover that company's structural or ordinary needs is a very serious infringement of the Labor Infringements and Sanctions Act, with fines of up to 225.018 €.

Following the Act on Data Protection and Guarantee of Digital Rights, can companies change their policies on the use of computer equipment without the involvement of the Workers Legal Representatives (WLR)?

Court of Appeals, Labor Division, July 22, 2022 (judgment no. 114/2022)



Companies may establish criteria on the use of computer equipment as long as the WLR take part in the process, in terms similar to those on consultation provided under article 64. 5 and 6 of the Workers ' Statute. As the company did not do so in this case, the Court of Appeals revoked the unilateral order given by the company on the use of computer equipment. The contingency is that the control the company may exercise due to the misuse of digital media as provided in the criteria it established may not be valid, meaning that any evidence would also be inadmissible.

Upcoming news

Given their impact on labor relations, we highlight the following developments, which are currently underway or will be published shortly:

- > *Draft bill* transposing EU Directive 2019/1937, on Whistleblowing, which is currently undergoing parliamentary processing and is expected to be approved and published before the end of the year. Once it comes into force, companies with over 249 workers will have three months to establish internal reporting channels. Companies with between 50 and 249 workers will have until December 1, 2023. Companies with fewer than 50 workers are not obliged to establish an internal reporting channel.
- > *Draft bill* transposing Directives 2019/1152 and 2019/1158 (transparency and work-life balance). The draft bill amends the Workers Statute in terms of information given to workers on automated systems and part-time employment contracts; it opens up further possibilities to request a change of position if there is a vacancy; it provides that there must be objective grounds to distribute work hours irregularly; and it extends the rights to work-life balance and cases where dismissal would constitute objective nullity if the worker is on parental leave or adjusting working hours.
- > *Draft General State Budget Act* for 2023.
- > *Draft bill* for the full and effective equality of transgender people and for the guarantee of LGBTI rights.
- > *Draft bill* to promote the start-up ecosystem, which is undergoing parliamentary processing with the Economic Affairs and Digital Transformation Commission of the Congress of Deputies. The act adopts measures to attract and retain the talent of entrepreneurs and location independent workers.
- > *Directive on adequate minimum wages in the European Union*, which has been approved by the Council of Europe and establishes procedures for the adequacy of statutory minimum wages, without specifying an exact amount.
- > *Proposal for a regulation* of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act).



For additional information, please contact our *Knowledge and Innovation Group* lawyers or your regular contact person at Cuatrecasas.



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