



# New challenges for companies operating in Spain: equal pay and reinforcement of equality plans

October 14, 2020

The Spanish Government has approved two implementing regulations developing company obligations set in [Act 3/2007](#), of March 22, on Effective Equality between Men and Women (LOI) as modified by [Royal Decree-Law 6/2019](#) (RDL 6/2019) regarding equality.

First, [Royal Decree 901/2020](#), of October 13, on equality plans and their register (RD 901/2020), develops key aspects such as their negotiation, diagnosis, content, subject matters, follow-up and assessment, as well as salary audits.

Second, [Royal Decree 902/2020](#), of October 13 (RD 902/2020), on equal pay for men and women, regulates the new obligations for employers, including the salary register, with the aim of ensuring compliance with the obligation of equal pay for work of equal value.



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## Key points

- I. **Adaptation period**
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## I. ADAPTATION PERIOD

Companies will be required to comply with the new obligations as specified below:

OBLIGATION	AFFECTED COMPANY	REQUIRED
Salary audit	More than 150 workers	April 14, 2021
	Between 101 and 150 workers	April 14, 2021
	Between 50 and 100 workers	March 7, 2022
Salary register, pay gap justification, assessment of jobs	All	April 14, 2021
Diagnosis, negotiation, and content of equality plan	More than 151 workers	January 14, 2021
	Between 101 and 150 workers	March 7, 2021
	Between 50 and 100 workers	March 7, 2022

## II. EQUAL PAY

The purpose of RD 902/2020 is to identify and rectify those situations in which real salaries involve **differences in treatment, whether direct or indirect**, between workers, based on gender in the case of job positions of work of equal value.

To that end, it establishes the following obligations for companies.

### 1. Equal pay for work of equal value

- **Companies obliged:** all operating in Spain.
- There **cannot** be **different salaries** between men and women neither through collective bargaining agreements nor because of company's improvement of conditions, if the work is of equal value.
- **Jobs have the same value if they have the following aspects in common:**

- Nature of duties or tasks.
- Educational background.
- Professional and training background.
- Performance conditions and skills.

- For this purpose, the **assessment of the job positions** considering these aspects must be **adequate** (considering the relevant factors), **all inclusive** (without hiding or underestimating any condition that singles out the performance) and **objective** (avoiding stereotypical social considerations).

### 2. Salary register, including salaries of management staff

- **Companies obliged:** all operating in Spain.
- **Obligation to consult with the workers' legal representatives** 10 days before the register is prepared or modified.
- **Scope:** It must include the salary information of the whole workforce, including management positions.
- **Information:** Arithmetic average and median of what is really received in a calendar year based on salary base, supplements and each of the additional salary items, broken down by gender, professional group, professional category, level and position.
- **Access:** (i) Companies should provide at the request of the workers' legal representatives the average amounts effectively paid, who will provide the information to the workers. (ii) If there are no workers' legal representatives, the company will provide the workers who request information only with the differences between the average salary for men and women.



3. Salary audits

- > **Companies obliged:** Companies that prepare an equality plan, whether this is mandatory or voluntary.
- > **Purpose:** To obtain salary information to check compliance with the principle of equal pay and, if differences of treatment are detected, to identify action to be taken to avoid, correct and prevent any obstacles.
- > **Company obligations:** (i) Carry out a **diagnosis of the salary situation**, reflecting the assessment of the job positions and detecting the factors leading to salary differences. (ii) Establish an **action plan** to correct salary differences; set objectives, specific actions and a schedule; as well as appoint individuals to implement and follow up on the plan.
- > **Validity of audit:** The same as the equality plan unless the audit indicates an earlier expiry date.

4. Company liabilities

- > **In the case of salary differences:** When the arithmetic average and median of the total salaries in a company for workers of one gender is higher than the salaries of the other gender by, at least, **25%**, the register must include an **objective justification**. This justification does not preclude the difference being considered discriminatory.
- > **If the company breaches its obligations regarding the salary register, the salary audit, and the submission of information, or has salary differences that are not justified,** it could face **penalties** for existence of discrimination, which can be as much as €187,515, and additional sanctions such as losing aid and subsidies or being prevented from receiving them.

5. Deadlines

- > The obligations established in this regulation must be met in the **six months after its publication**, i.e., from **April 14, 2021**.
- > The **salary audit** obligation will have the same **gradual application** as the obligation to have an equality plan as established in the 2007 LOI (stated in section “Companies obliged to negotiate an equality plan”).

III. EQUALITY PLANS

- > Since the 2007 LOI, companies must detect cases of discrimination in the workplace, and adopt **corrective measures**, through a **mandatory negotiation with the workers’ legal representatives and establishing those measures in the equality plan**. After the reinforcement of the equality plan through RDL 6/2019, its implementing regulation is now approved through RD 901/2020:

1. Companies obliged to negotiate an equality plan

- > Companies must negotiate an equality plan depending on the **number of workers**, according to the following schedule:

TOTAL WORKERS	EQUALITY PLAN
250 or more	Mandatory since 2007
151 to 249	Since March 7, 2020
101 to 150	From March 7, 2021
50 to 100	From March 7, 2022

- > The new regulation specifies the rules to calculate the workforce to be included.
- > Also obliged to negotiate an equality plan, even if they do not reach the threshold of workers, are companies whose **applicable collective bargaining agreement** establishes this or because it is **imposed by the labor authority** due to penalty proceedings.



## 2. Negotiation and dialog at group and company level, and diagnosis of equality plan

➤ **Terms:** From when the company reaches the minimum threshold of workers or the collective bargaining agreement is approved, the company will have **three months to start negotiations** for the equality plan, which **cannot be prolonged for more than one year**.

➤ **With whom to negotiate:**

- **Company groups:** A single plan can be prepared for all or some company groups, negotiated by labor unions and representatives (or labor unions only). The particular features of each company must be considered and the suitability of having a single equality plan must be justified.
- **Company:** There are various hypotheses:
  - **If the company has workers' legal representatives:** authorized to negotiate the equality plan are (i) the works council or staff delegates; (ii) the union sections when this is agreed and they contain the majority of the works council members; and (iii) if applicable, the intercenters committee if it has powers to negotiate.
  - **If the company does not have any workers' legal representatives:** the negotiating committee will be made up of the most representative labor unions from a labor perspective and of the most representative labor unions in the sector to which the company belongs
  - **If some work centers have workers' legal representatives**

**and others do not**, the labor section of the committee will be made up of (i) the legal representatives of the workers at centers that have workers' legal representatives, and (ii) the union committee set up to represent the workers at centers that do not have workers' legal representatives..

- It will be possible to receive **external support and advice** specializing in equality in the workplace.

➤ **Negotiating committee:** Its tasks will be to negotiate the diagnosis and equality plan measures, prepare the diagnosis report, prioritize the measures, define measuring indicators and promote the first information actions, among others. Its members will have the same rights as the negotiators of collective bargaining agreements and will be subject to professional secrecy.

➤ **Diagnosis:** This is the committee's first duty, as well as the first phase of preparation of the equality plan. This involves collecting and analyzing the necessary information at all job positions and work centers, and at all hierarchical levels in the company, to measure and evaluate possible inequalities, using quantitative and qualitative indicators. The report will be part of the equality plan.

➤ **Negotiation procedure:** (i) In case of non-agreement, there may be recourse to the procedures and bodies relating to autonomous conflict resolution, if so agreed, ones the joint committee has intervened. If it is not possible to reach an agreement, the company can unilaterally apply the plan, but without the advantage of the "equality in the workplace" seal (Distintivo de Igualdad). (ii) If an agreement is reached, it will be submitted to and deposited with the labor authority for registry.



### 3. Scope of application, validity, follow-up and review of equality plan

- **Validity:** As established by the parties, up to four years.
- **Scope of application:** The equality plan will apply to the whole company, without prejudice to the special actions relating to certain work centers.
- **Follow-up and assessment:** The plan should include a body for supervising and following up on the plan, which will regularly assess the plan following the established schedule.
- **Review:** The equality plan will be reviewed (i) in accordance with the deadlines established in the plan, (ii) when the company considers it necessary to improve or re-orientate the plan, and (iii) when there is evidence that the plan is lacking or the context in which the equality plan was agreed on changes considerably.

### 4. Mandatory registry

- Equality plans, whether mandatory or voluntary, **must be registered** with the public registry, to which the public has access.

### 5. Deadlines

- The new obligations will be enforceable within a period of three months from the publication of the regulation in the BOE, that is, from January 14, 2021.
- Companies with existing valid plans will have to adapt them to the new requirements within 12 months of the entry into force of the regulation (until January 14, 2022).
- In the case of companies obliged for the first time, from when they reach the threshold of workers valid at the time, or the effective date the regulation, as stated in section “Companies obliged to negotiate an equality plan”.

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