



October 2020

**ANALYSIS OF ROYAL DECREE 901/2020, ON EQUALITY PLANS, AND ROYAL DECREE 902/2020, ON EQUAL PAY, BOTH PUBLISHED IN THE OFFICIAL STATE GAZETTE OF 14 OCTOBER 2020**

---

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

**1. When shall this Royal Decree apply?**

This regulation will come into force three months after its publication —i.e., **on 14 January 2021**.

However, the deadline provided for companies to review and adjust their existing Equality Plans is one year from the date when the Royal Decree (hereinafter, “RD”) comes into force — i.e., they will have until 14 January 2022 to conduct their review and make suitable modifications.

**2. Which companies are under the obligation to have an Equality Plan in place? What shall be the scope of these Equality Plans?**

Companies that employ 50 or more workers must have an Equality Plan. However, it should be taken into account that their implementation shall occur gradually:

- The deadline to approve their Equality Plans for companies that employ between 100 and 150 workers is 7 March 2021.

- The deadline to approve their Equality Plans for companies that employ between 50 and 100 employees is 7 March 2022.

Equality Plans shall apply to every single worker. In the case of workers that are hired out to companies by Temporary Employment Agencies, the measures provided in the user company's Equality Plan will likewise apply to them for as long as they are providing services in said company.

Equality Plans may include particular measures for certain establishments and specific companies within a group of companies (see below).

### **3. How to quantify the number of workers in a company for the purposes of the Equality Plan**

To calculate the number of workers, the company's entire workforce will have to be taken into account, irrespective of the number of establishments in the company where services are provided and the type of employment contracts under which workers are hired, including:

- Workers employed under a permanent intermittent employment contract.
- Workers employed under a fixed-term employment contract.
- Workers employed under a staffing services contract.

Additionally, it should be noted that individuals who perform part-time work shall be counted as workers, irrespective of the number of working hours established in their contracts.

Fixed-term contracts, regardless of their type, that expired at the time when the calculation was performed and had been in force for the previous six months, shall be added to the resulting number in the following manner: every hundred days of service, or fraction thereof, shall be counted as an additional worker. For the purposes described herein, the calculation shall be made on the last day of June and December of each year.

### **4. Is it possible to have a single Equality Plan for all the companies that comprise a corporate group?**

A single Equality Plan may be drawn up for all or part of the companies that belong to the same corporate group. However, a rational account of why it is desirable to have a single Equality Plan for different companies within the same group will have to be provided

The Equality Plan shall be negotiated under the rules for this type of collective agreement provided for in section 87 of the Workers' Statute, if so agreed by the agents that are entitled to partake in such negotiation.

Companies not included within the scope of the Equality Plan devised for the corporate group must have their own plan, where appropriate.

The Group's Equality Plan shall take into consideration the business of each of the companies that comprise it and the collective bargaining agreements that apply to them. It shall also include information on the diagnostic reports prepared for each individual company.

## **5. What are the deadlines for the negotiation of the Equality Plan?**

Negotiations shall commence three months after reaching the threshold number of workers required for negotiating the Plan, and shall not extend for a period longer than one year.

When the Plan's negotiation is to be conducted under the Collective Bargaining Agreement, then it shall be kicked off within the term established therein or, in the absence of a specific provision for such term, within the period of three months following the publication of the Collective Agreement.

## **6. What agents shall the Equality Plan be negotiated with?**

There are three different scenarios:

- a) The workers have legal representatives:

The agents entitled to take part in the negotiation are: the works council or staff delegates, trade union sections if so agreed and if they, as a whole, constitute a majority of the members of the committee, or, where appropriate, the inter-establishment committee, when it is entitled to negotiate.

- b) The workers do not have legal representatives:

In this case, the committee shall be comprised of the most representative trade unions, and the most representative trade unions in the industry where the company operates, which are entitled to partake in the negotiating committee for the applicable collective bargaining agreement. The negotiating committee shall have a maximum of 6 members for each side.

- c) The workers have legal representatives only in some of the company's establishments:

In this case, the committee shall be comprised of the workers' legal representatives from those establishments and the trade union committee (the most representative trade unions and the most representative unions in the industry), and established to represent workers in the establishments with no legal representation. The negotiating committee shall have a maximum of 13 members for each side.

## **7. Completion of the Equality Plan negotiation process:**

The negotiation process may come to an end:

- a) With the parties reaching an Agreement, which shall then be submitted to the Labour Authority to be registered and custodied.
- b) With the parties not having reached an Agreement. Separate dispute resolution procedures may be then adopted and, if no agreement is finally reached, the company shall unilaterally implement the Plan.

## **8. What are the matters to be covered by the diagnostic report conducted prior to the Plan's implementation?**

- Recruitment and hiring processes.
- Role grading.
- Training.
- Professional promotion.
- Working conditions, including an audit of salaries paid to women and men, pursuant to the provisions set forth in Royal Decree 902/2020, of 13 October, on equal pay for women and men.
- Co-responsibility when it comes to exercising rights pertaining to personal, family and work life.
- Under-representation of women.
- Remuneration.
- Prevention of sexual and gender-based harassment.

This diagnostic shall be extensive to all of the company's hierarchical levels, jobs and establishments.

## **9. What is the minimum content to be encompassed by the Equality Plan?**

Equality Plans, whether mandatory or voluntary, are required to include, at the very least, the following information:

- The parties that have agreed the Plan.
- The Plan's scope in relation to people, geographical area and term of application.
- A diagnostic report of the company (or, in the case of corporate groups, of each of the companies that comprise it).
- Conclusions of the pay audit, as well as its term of validity and how frequently it will be conducted (RD 902/2020, of 13 October, on equal pay for men and women).
- Outline of qualitative and quantitative objectives of the Equality Plan.
- Description of specific actions, their implementation period and their prioritisation, as well as the design of indicators that allow the evolution of each measure to be determined.
- Identification of the material and human means and resources required to implement, monitor and assess each of the actions and objectives.
- A timeline for the implementation, monitoring and assessment of the intended actions of the Equality Plan.
- A system to monitor, assess and periodically review such actions and objectives.
- Structure and operation of the committee or representative workforce-management body in charge of monitoring, assessing and periodically reviewing the Equality Plan.
- Amendment procedure, which shall include the course of action to be followed in order to tackle potential discrepancies with regard to its application, monitoring, assessment or review, insofar as the legal regulations, or those established in the collective bargaining agreement, do not require for the Plan to be adjusted accordingly.

## **10. Is it required for Equality Plans to be registered?**

Yes, the law requires that Equality Plans, whether mandatory or voluntary, be registered.

However, the delivery for custody purposes of the list of actions aimed at preventing discrimination between women and men, including the protocol on sexual and sex-based harassment, is discretionary.

#### **11. What is the term of validity for Equality Plans? Do they have to be reviewed?**

The Equality Plans shall be in force for as long as agreed by the parties thereto, but under no circumstances may their term exceed a period of four years.

In addition, Plans shall be reviewed as follows:

- When it is determined, through its monitoring and assessment, that a review is in order.
- When proceedings conducted by the Labour and Social Security Inspectorate reveal that it fails to meet legal or regulatory requirements, or that it is inefficient when it comes to achieving its intended purposes.
- In the event of the company's merger, takeover, transfer or modification of its legal status.
- In the event of any incident that substantially modifies the company's workforce, its working methods, organisation or remuneration schemes, including failure to apply collective bargaining agreements and material modifications to employment conditions or circumstances assessed in the diagnostic report on which the Equality Plan was based.
- When a court ruling finds the company guilty of direct or indirect discrimination on the basis of sex, or when it deems that the Equality Plan does not comply with legal or regulatory requirements.

Equality Plans shall provide for the creation of a monitoring and follow-up committee, whose structure and powers are to be agreed upon, but in which the company's management and workforce must be equally represented, and there should be a balanced number of women and men.

#### **12. It is worth reminding that:**

- All companies, irrespective of their size, shall adopt, subject to prior negotiation, measures aimed at preventing employment discrimination of any kind between women and men.
- All companies, irrespective of their size, shall promote working conditions that discourage sexual and sex-based harassment, and establish specific procedures to prevent it from happening and to handle complaints or allegations from workers who may have been victims of such harassing behaviour.

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

## 1. When shall this Royal Decree apply?

This regulation will come into force in its entirety **6 months after its publication** —i.e., on **14 April 2021**. However, some of the obligations established therein shall be enforced on different dates, as follows:

- Salary Register: Enforceable as of 14 April 2021.
- Pay Audit: Enforceable in accordance with the obligation to carry out Equality Plans and, therefore, the gradual implementation established by Royal Decree-Act 6/2019.
- Within a period of 6 months from its date of publication, the electronic Job Valuation System shall be approved by way of a Ministerial Order.

## 2. What do the pay transparency and equal pay for the same job principles refer to?

- Pay transparency principle: It should be understood as that which, when applied to the different aspects that determine the salary that workers are paid, and to the various components of said salary, allows for sufficient and significant information to be obtained on the value attached to such remuneration. This principle applies to all kinds of employees, including senior management.
- Equal pay for the same job principle: Two jobs shall be deemed to hold equal value when:
  - The functions or tasks assigned to the roles are equivalent. These functions or tasks are to be understood as those that constitute the essential purpose of the employment relationship.
  - The required academic qualifications, understood as official or formal education related to the activity performed by the roles in question, are equivalent.
  - The professional and training conditions are equivalent. This will be the case when the individual's qualifications, including professional experience and informal training related to the activity performed by the roles in question, can be ascertained.
  - Factors strictly related to their performance and employment conditions are relevant to the performance of the roles in question.

### OPEN LIST OF RELEVANT FACTORS

- Arduousness and difficulty
- Constrained or overreaching postures
- Repetitive motions
- Dexterity
- Thoroughness
- Isolation
- Responsibility
- Versatility
- Social skills
- Skills involved in personal aid and care
- Problem-solving and organisation skills

- The following three criteria shall be applied to correctly value the different jobs in the company:
  - Adequacy: Relevant factors to be considered should be those related to the activity performed by the role in question, including the necessary training.
  - Entirety: All the conditions that are distinctive to the role must be taken into account, trying not to overlook or undervalue any of them.
  - Objectivity: social assessments shall not replicate any gender stereotypes.

### **3. Salary Register**

#### **3.1. Which companies are required to have a Salary Register?**

All companies, regardless of their size, shall record the salaries of all employees on their payroll, including executives and senior managers.

#### **3.2. What does this obligation entail?**

The Salary Register shall record the average values of wages and additional salary and non-salary components of the staff, disaggregated by sex. For this purpose, the arithmetic mean and the median of what is actually paid for each of these items in each professional group, grade, position, or any applicable classification system, shall be determined.

#### **3.3. How can this information be accessed?**

- Companies where there are workers' legal representatives: access to the Salary Register shall be provided through these representatives, who are entitled to know the full content thereof.
- Companies where there are no workers' legal representatives: the information that may be provided shall be limited to the percentage differences in the average pay of men and women.

#### **3.4. What reference period shall be taken into consideration to comply with the Salary Register requirement?**

The reference period shall be one year, notwithstanding the fact that modifications might be made in the event of material variation of any of the items recorded in the Salary Register.

#### **3.5. What requirements shall be taken into account in relation to the negotiation with the Workers' Representatives?**

The Workers' Representatives must be consulted at least 10 days before the register is put together. This will also be the case if any modifications are to be made.

#### **3.6. What specific aspects pertaining to the Salary Register shall be taken into consideration by companies that are required to keep such register?**

In these cases, the Salary Register shall also reflect the arithmetic means and medians of the jobs grouped by their equal value in the company, even when such jobs belong to different grades within the professional classification, broken down by sex.

If the arithmetical mean or median of the overall remuneration in the company paid to workers of one sex is higher than that paid to the other sex, the Register shall include a reasonable explanation for such differences.

## **4. Pay Audit**

### **4.1. Which companies are required to conduct a pay audit?**

All companies that prepare an Equality Plan, whether legally required or voluntary, shall have to perform a pay audit.

The remuneration audit may be valid for the same term as the Equality Plan, although it may be given a shorter term if so agreed.

### **4.2. What are the implications of a pay audit?**

The pay audit involves two requirements for companies:

- To conduct a diagnostic assessment of the situation with regard to pay.
- The obligation to establish an action plan for the correction of pay inequalities.

#### **THE DIAGNOSTIC ASSESSMENT WITH REGARD TO PAY REQUIRES:**

- That jobs be evaluated by conducting an overall assessment of all the factors involved, and each of the tasks and functions attached to the role, irrespective of the type of contract under which the jobs are to be performed.
- That relevance of the factors causing pay differences, as well as deficiencies in the design or use of work/personal life balance and co-responsibility measures in the company, or other difficulties, be included.

### **4.3. The following are still pending:**

- A technical guide for conducting Pay Audits, which is to be drawn up by the Women's Institute
- The Job Valuation Procedure, to be approved by Ministerial Order

**Issued in Madrid, on 15 October 2020**