

SPANISH CONTEXT ABOUT GENDER EQUALITY IN THE LABOUR MARKET AND ACADEMIA

Gender Equality in the labour market and in academia

Spain's has a population of over 47 million people in July 2020 and a **labour market** of more than 19 million people, with a 57,83% employment rate, according to the National Statistical Institute (INE) for the third trimester of 2020. There is a high percentage of unemployment (16,26%), especially among young workers (55,93% for workers between 16 and 19 years, 37,18% between 20 and 24 years and 24,76% between 25 and 29 years). Furthermore, the Spanish labour market registers a high percentage of fixed-term workers (24,2%) and part-time workers (13,8%).

Regarding **differences between women and men in the labour market**, it is important to note that women have a lower employment rate (52,53% for women vs. 63,44% for men), a higher unemployment rate (18,39% for women vs. 14,39% for men), higher rate of fixed-term contracts (25,6% for women vs. 22,9% for men) and part-time work (22,3% for women vs. 6,8% for men). There are also significant differences between women and men regarding salaries. While the average gross salary for men is 26.738,19€/year, it is 21.011,89€/year for women.

The **SARS-CoV-2 pandemic** heavily affected the Spanish economy and job market. Since the Covid-19 outbreak, the unemployment rate has increased from 15,33% during the second trimester to 16,26% in the third trimester of 2020. Nonetheless, a significant impulse to the economic recovery is expected as a result of the about 70 billion Euros of EU funds that Spain is going to receive from the Recovery and Resilience Facility of the NextGenerationEU plan.

According to the **Gender Equality Index 2020**, Spain overall resulted 8th¹ on the EU28 countries². The areas with more equality between women and men are those concerning health related aspects (health status, health behaviour and access to health services), where Spain scored 7th on EU28 Member States, and economic situation/access to financial resources. Conversely, room for improvement was detected, mainly, about allocation of time spent doing care and domestic work and social activities.

About **knowledge attainment and participation**, the indicator measuring equality between women and men in tertiary graduates and participation in formal and non-formal education and training, Spain resulted 9th on the EU28 Member States in 2020. From a gender-based point of view, 54,8% of university students in 2018/2019 were women, and 45,2% men. **The presence of women and men was similar in the different**

¹ European Institute for Gender Equality (2020), *Gender Equality Index 2020. Spain*.

² For data collected before 1 January 2021, the United Kingdom is still included in the sample of EU countries.

levels of studies, with a higher presence of women. Women represented 55,2% of Bachelor students, 54,4% of Master students and 50,1% of PhD students.

An analysis based on field of studies shows significant imbalances in the distribution of women and men. For instance, the presence of women is very high in Bachelor programs in Medicine and Health Sciences (70%), while very low for Bachelor programs in Engineering and Architecture (25%).

The most recent detailed and comprehensive data regarding researchers, academic and administrative staff in Spanish universities refers to academic year 2017/2018. The data illustrates how **Spanish universities clearly exhibit a situation of horizontal segregation, with more women as administrative staff and more men as academic staff and researchers**³.

Among academic staff, there is a lower presence of women, with 41,8% of women and 58,2% of men. Nevertheless, there are **differences between public and private universities**: while women represent 41,3% of academic staff in public universities, the percentage slightly increases to 44,4% in private universities, 2,6 percentage points higher than the national average.

The lower presence of women among academic staff is found in **all fields of teaching and research**. The largest gap is found in Engineering and Architecture, where women only represent 23,4%, while the field of Arts and Humanities presents a narrower difference with a presence of women of 48,5%.

Furthermore, among academic staff of public universities⁴, women represent 23% of Full Professors, 40% of Associate Professors, 50% of Assistant Professors and 50% of academic assistants, which emphasizes the existence of **vertical segregation among Spanish public universities**.

Among **administrative staff** working in Spanish universities in academic year 2017/2018, on the contrary, there is a higher presence of women, equal to 60,8%. Similarly, there are also **differences between public and private universities**. While 59,7% of administrative staff working in public universities are women, this percentage increases up to 67,1% in private universities.

The data indicates **the existence of a leaky pipeline, where the presence of women decreases with the level of studies and the hierarchy in the academic ladder**. Although women represent more than half of Bachelor, Master and PhD students, they only represent 46,6% of researchers and 41,8% of academic staff.

Finally, the data collected by EIGE provide an insight on **gender-equality in decision-making bodies in academia**. In 2017, Spain ranked 15th of the EU28 countries regarding the presence of women as presidents and members of the highest decision-making bodies of **National academies of science**⁵. The presence of women was just 11,8%, while the EU28 average was 21,6%. In 2019, the presence of women increased to 12,5%, still below the EU28 average of 25,9%.

Better results are found in the presence of women as presidents and members of the highest decision-making bodies in **Research funding organisations**. In 2017, Spain ranked 7th with a presence of women of

³ The group of researchers includes research assistants, post-doctoral researchers and other researchers.

⁴ There are not data regarding private universities.

⁵ European Institute for Gender Equality (2019), *National academies of science: presidents and members of the highest decision-making body*, Gender Statistics Database, last update 22 May.

40%, above the EU28 average of 37%⁶. The performance largely improved in 2019, when the national rate of women increased to 58,3% and Spain led the EU28 ranking, while the EU28 average remained at 37,8%.

The legislative framework about gender equality in the labour market

In order to improve gender equality in the labour market, Spain relies on a legislative framework promoting equality between women and men, strengthened in recent years introducing several instruments to guarantee equality and non-discrimination in the workplace.

A. Principle of equality and prohibition of discrimination based on sex in the workplace

The current legislation recognizes workers the **right to equality and non-discrimination**. Article 14 of the Spanish Constitution⁷ specifically guarantees the right to equality and establishes the prohibition of discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

In the context of the labour relationship, article 4.2.c) of the Spanish Worker's Statute (ET, hereinafter)⁸ guarantees workers the right not to be directly or indirectly discriminated for employment, or once employed, on the grounds of sex, civil status, age within the limits set by the law, racial or ethnic origin, social status, religion or convictions, political ideas, sexual orientation, affiliation or not to a union, language or disability.

As it is well known, **direct discrimination** is a situation in which a person is treated less favourably than another in a comparable situation for any of the causes of discrimination prohibited by the Constitution or the law. **Indirect discrimination**, in its turn, is the situation in which an apparently neutral provision, criterion or practice produces disadvantages to a certain protected group, unless it can be objectively justified in view of a legitimate purpose (article 6.2 Equality Act⁹; LOI, hereinafter; see also decision of the European Court of Justice of October 17, 1989).

The prohibition of discrimination between women and men in the workplace also refers to:

- Access to occupation must be free of discrimination between women and men.
- Professional classification must be based on objective criteria without gender bias (article 22 ET).
- Access to training must be based on criteria without direct or indirect discrimination (article 23 ET).

⁶ For more details, see the metadata section in European Institute for Gender Equality (2020), *Research funding organisations: presidents and members of the highest decision-making body*, Gender Statistics Database, last update 6 May.

⁷ *Constitución Española*, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229> (accessed on 12 June 2021).

⁸ *Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430> (accessed on 12 June 2021).

⁹ *Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres*, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-6115> (accessed on 12 June 2021).

- Promotions in the workplace must adjust to objective criteria without direct or indirect discrimination, allowing for positive action measures aimed at eliminating existing discriminations (article 24 ET).
- Article 28 ET establishes the prohibition of wage discriminations on the grounds of sex. Furthermore, it establishes the principle of equal pay for equal jobs, which means that jobs with same value -in terms of functions, tasks, education, training, qualification, and characteristics of the job- must receive equal pay.

Any discriminatory measure established in the legislation, collective bargaining agreement, individual agreements, employment contract or employer decisions will be considered null/void and, hence, will have no effect (article 17 ET). In cases of wage discrimination, the worker will be entitled to the wage corresponding to the same job or job of same value (article 9.3 ET). Furthermore, the dismissal of a pregnant worker, of workers during their maternity, paternity or risk during pregnancy or breastfeeding leave, workers exercising their work-life balance rights and after nine months and of a worker victim of gender violence exercising her rights to protection and social assistance is declared automatically null (articles 53.4 and 55.5 ET).

B. Instruments to guarantee equality and non-discrimination in the workplace

The Spanish legislation, in addition to the declaration of the equality principle and the legal prohibition of discrimination based on sex in the workplace, includes **10 different instruments -employer's obligations- to achieve equal treatment and opportunities between women and men.**

1. Wage registry

Companies, independently on their size and number of employees, have the obligation to develop a wage registry that includes all economic amounts perceived by workers, differentiated by sex and professional category (article 28.2 ET and Royal Decree 902/2020). Specifically, this registry must include the average and median of base salaries, wage complements and any another economic amount (including compensation for expenses) received by workers disaggregated by sex and professional group or category.

In companies with more than 50 employees, this wage registry must include two additional elements:

- The average and median of economic amounts perceived by workers differentiated by sex and jobs of equal value, even if they are from different professional categories. This means that for companies with more than 50 employees, the registry must include two different tables: one with the economic compensations per professional category and another one per jobs of equal value.
- When the overall wage gap (average or median) exceeds 25%, the company must include in the registry a justification of such difference. This justification, however, will not exclude a possible sanction in case there is evidence of wage discrimination.

The registry must be elaborated in a yearly basis, and it must be consulted with workers' representatives.

Finally, it is important to note that the wage registry is a mere instrumental obligation aimed at offering pay transparency, that does not assume nor exclude the existence of wage discrimination in the company.

2. Worker's access to the wage registry

Workers are entitled to access the information included in the wage registry (Royal Decree 902/2020). Specifically, workers will have access to this wage registry through their representatives, which will have access to the entire wage registry. If there are no workers' representatives in the company, workers will have access to the difference between the average salary for women and men.

3. Gender Equality Plan

Companies with more than 50 workers have the obligation to adopt a Gender Equality Plan (article 46 LOI and Royal Decree 901/2020¹⁰), understood as a set of measures adopted to achieve equal treatment and opportunities between women and men in the company and eliminating discrimination by reason of sex.

The regulation regarding Gender Equality Plans was recently reformed in 2019, which extended the obligation to adopt Gender Equality Plans from companies with more than 250 workers to companies with more than 50 workers (by March 2022). For companies which do not exceed this level of workers, the adoption of a Gender Equality Plan is voluntary.

The adoption of a Gender Equality Plan must be negotiated with workers' representatives. However, in absence of agreement, the company may adopt the Gender Equality Plan unilaterally.

The adoption of a Gender Equality Plan must begin with a diagnosis of the situation -which must also be negotiated with workers' representatives- with quantitative and qualitative data regarding the following:

- Selection and hiring process
- Professional classification
- Training
- Career advancement
- Working conditions
- Work-life balance
- Female underrepresentation
- Remuneration
- Sexual harassment

¹⁰ *Real Decreto 901/2020, de 13 de octubre, por el que se regulan los planes de igualdad y su registro y se modifica el Real Decreto 713/2010, de 28 de mayo, sobre registro y depósito de convenios y acuerdos colectivos de trabajo*, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-12214> (accessed on 12 June 2021).

Given the results of the diagnosis, the Gender Equality Plan must include measures in all these areas, a calendar of actions, assessable criteria for monitoring and evaluating the different measures adopted and the identification of financial and personal resources for its implementation.

The validity of the Gender Equality Plan will be determined by the parties, which cannot exceed 4 years. In any case, the implementation of the Gender Equality Plan must include, at least, an intermediate and a final assessment of the measures adopted and their efficacy. In this sense, the Gender Equality Plan must include a monitoring commission, integrated by the company and workers' representatives.

4. Remuneration audit

Companies who adopt a Gender Equality Plan must also include a remuneration audit. Specifically, a remuneration audit that includes:

- An evaluation of jobs to determine their value and the corresponding compensation.
- Identification of causes leading to wage differences.
- The adoption of an action plan to correct possible wage inequalities or discriminations.

5. Gender equality measures in collective bargaining agreements

All collective bargaining agreements -sector and company-level, independently on the company's size- must include measures aimed at promoting equal treatment and opportunities between women and men in the workplace.

6. Anti-sexual harassment policy

Companies, independently on their size, have the obligation to adopt measures to prevent and act against situations of sexual harassment (article 48 LOI).

7. Positive action measures

Collective bargaining agreements have the possibility to introduce quotas or preferences in hiring and/or promotion for women (article 17.4 ET). Regarding quotas, it is important to state that article 75 LOI establishes the obligation of companies obliged to present a non-abbreviated profit and loss account to include in their Board of Directors women to reach a balanced presence of women and men, although few companies currently achieve this goal.

8. Work-life balance measures

The Spanish Worker's Statute recognizes workers multiple work-life balance measures. Work-life balance measures can be considered instruments to promote equality between women and men in the workplace, as they allow women and men to meet their professional and family responsibilities. In this sense, the Spanish Worker's Statute recognizes workers (i) the right to reduce their working time to care for children under 12 years or a dependent family member, (ii) the right to adapt the duration and distribution of their working time in accordance with the regulation established in the collective agreement or the individual agreement they reach with the employer, (iii) leave of absence of maximum 3 years to care for a child under 3 years or 2 years for a dependent family member and

(iv) maternity and paternity leave of 16 weeks duration for each parent non-transferable (the 4 first weeks after the birth of the child are compulsory).

9. Non-financial information in consolidated accounts for holdings

Companies in holdings or groups of companies that prepare consolidated accounts have the obligation to include in the consolidated management report non-financial information, which include the average remuneration and its evolution disaggregated by sex, age and professional classification or equal value (article 49 of the Commercial Code¹¹).

10. Gender equality in research and innovation

Finally, regarding gender equality in research and innovation, universities have the obligation to include equality units in their structures, which aim at guaranteeing equality between women and men, according to the University Act¹², although the law does not specify the composition nor characteristics of these equality units. Furthermore, the Science, Technology, and Innovation Act¹³ introduces a gender perspective in research and technology and evaluation and selection committees and the obligation of public research organisms to adopt Gender Equality Plans.

¹¹ Consolidated text of the *Real Decreto de 22 de agosto de 1885 por el que se publica el Código de Comercio*, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1885-6627> (accessed on 12 June 2021).

¹² *Ley Orgánica 4/2007, de 12 de abril, por la que se modifica la Ley Orgánica 6/2001, de 21 de diciembre, de Universidades*, available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-7786> (accessed on 12 June 2021).

¹³ *Ley 14/2011, de 1 de junio, de la Ciencia, la Tecnología y la Innovación*, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2011-9617> (accessed on 12 June 2021).