

# Labor and Employment Newsletter

Spain

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## 1. The application of the law on gender parity representation and balanced presence of women and men in companies

**This law has a broader scope than the European Directive, and its regulation also raises several interpretative doubts in the Labor sphere.**

### Federico Durán López

The application in companies of the provisions contained in the Organic Law 2/2024 on gender parity representation and a balanced presence of women and men raises various reflections and questions. The role of the interpreter will again be required, with a greater intensity than desirable, to clarify the meaning and scope of the legislative mandates. The Law modifies electoral regulations and those applicable to Constitutional bodies and bodies of Constitutional relevance (surprisingly not including the Economic and Social Council), as well as the Government and the public sector in general. It also affects other institutions (professional associations, public radio and television, trade unions and business associations, university student councils, foundations, third-sector organizations, and social economy organizations). However, it will undoubtedly have a particular impact on companies, and in relation to the rules applicable to them, some of the most relevant interpretative doubts arise.

Chapter V of the Law transposes Directive (EU) 2022/2381 of the European Parliament and of the Council, of November 23, 2022, on improving the gender balance among directors of listed companies and related measures. The first thing that stands out is that, once again, the Spanish legislator does not limit itself to transposing the directives' mandates but significantly extends them. It seems that European regulations are never enough and that Spanish companies must bear additional social demands compared to their European competitors. It is unclear what drives our legislators to systematically increase the already considerable demands of European legislation for our companies. A key example is the different scope of application: while the Directive applies exclusively to listed companies (as expressly acknowledged in the Preamble of the Law), explicitly excluding micro-enterprises and SMEs (even if listed), the Spanish law applies not only to listed companies but also to public interest entities that are not micro-enterprises or SMEs (in the terms of the EU Directive, i.e., those employing more than 250 workers, with a turnover of more than 50 million euros or a total balance sheet exceeding 43 million euros).

On the other hand, the Directive offers two alternatives to ensure "gender balance in Boards of Directors": either that members of the underrepresented sex hold at least 40% of the non-executive director positions, or that they occupy at least 33% of the total director positions, including both executive and non-executive roles. The Spanish legislator disregards this alternative and the distinction between executive and non-executive directors, directly requiring that at least 40% of the Board of Directors be composed of members of the underrepresented sex.

Furthermore, the Law imposes on listed companies (and the public interest entities mentioned) the duty to "ensure" that senior management has a composition with at least 40% of members of the underrepresented sex. However, in this case, the "comply or explain" principle applies, meaning that if the percentage is not met, companies must provide an explanation of the reasons and the measures adopted to achieve the percentage "in the next financial year and successive ones." The reference to "senior management" is also absent from the Directive, raising significant interpretative doubts. It could be understood that this refers to senior management contracts, affecting only the aforementioned personnel. However, the legislator does not explicitly mention this, which exacerbates interpretative doubts.

This seems to be what the wording of the preamble of the Law seems to lead to: "the central role that may be played by senior management positions that do not have the status of members of the board of directors should not be forgotten"; "for this reason, a principle of balanced presence in such senior management positions is also established". Certainly, the legislator could have referred to senior management contracts, to avoid interpretative doubts, but in any case it seems clear that he is referring to senior managers (senior management personnel) who do not form part of the Board of Directors (the preamble refers, incorrectly, to "posts" that do not have the character of Board Members, but Board Members are the managers, not the posts). That is, if Senior Managers are Directors, they are affected by the parity rule in the composition of the Board. And this parity rule also applies (on a comply-or-explain basis) to all senior management not on the board.

The first transitional provision, section 5, further complicates matters, as it does not specify whether the gender parity rule applies solely to the Board of Directors or also to other governing bodies.

Note that it does not say, as in section 8 of the new article 529 bis of the new Capital Companies Act, "Senior Management". If it were to say "the Boards of Directors and Senior Management", there would be no interpretative doubts. But by deleting the particle "the", grammatically speaking, it can be understood as referring to the Boards of Directors and Senior Management. The rest of the provision contributes to this, when it refers to the percentages "in these bodies". Obviously, a body is a Board of Directors, but Senior Management, or Top Management, does not in itself constitute a body of any kind. All this gives grounds for arguing that the parity rule applies to Boards of Directors and other Boards or Management Bodies (a management committee, for example, whose members, moreover, need not be Senior Management staff), but would not affect Senior Management staff who are not members of the Board of Directors or other Management Bodies. Although this transitional provision refers exclusively to Public Interest Entities, it gives rise to interpretative doubt, fostered, moreover, by the fact that the legislator has not made explicit reference to Senior Management contracts (although in the preamble it does refer to senior management "posts"). It is also reinforced by the fact that the Directive does not contain any reference to Senior Management personnel.

## 2. News

### [Publication of the organic law on equal representation and a balanced presence of women and men](#)

This proposal transposes into Spanish law the European directive on improving the gender balance among directors of listed companies and related measures, although it is more demanding in its scope than the provisions in the EU act. In labor law matters, the measures envisaged for victims of gender violence are extended to include the victims of sexual violence.

### [New obligations resulting from the European directive on pay transparency that companies will have to face](#)

In a new edition of the Sustainable Garrigues Dialogues, we discuss the main changes that the new European directive on pay transparency, approved in 2023, will entail, and how Spanish companies can prepare for its transposition.

### [Spain: The terms and conditions and call for applications for the "Equality in Business" award for 2024 are published](#)

The award is intended to recognise and stimulate the work of companies and entities committed to equality.

## **The European Committee of Social Rights concludes that compensation for unfair dismissal in Spain is inadequate and insufficiently dissuasive**

The ECSR has published its decision on the UGT complaint, concluding that compensation for unfair dismissal in Spain violates article 24 of the European Social Charter.

### **3. On the radar**

#### **The Gender Parity Law mistakenly eliminates the objective nullity of dismissals for those who have requested a working time adjustment or leave due to hospitalization**

On August 22, 2024, Organic Law 2/2024, of August 1, on gender parity representation and a balanced presence of women and men (Gender Parity Law), came into force. However, due to a drafting error, this Law has led to the elimination of the objective nullity of dismissals for workers who have requested or are enjoying a working time adjustment to balance family and work life, as well as the paid leave for certain cases of hospitalization or surgical intervention of relatives. The ministries involved have communicated that this error will be corrected, restoring the previous version of the Workers' Statute before the Gender Parity Law came into force.

#### **Government, unions, and employers sign an agreement to improve the compatibility of retirement pensions with work, including a new framework for partial retirement**

The agreement includes measures such as improvements in incentives for delayed and active retirement, the revision of flexible retirement regulations, improvements in the management of temporary disability, and the recognition of reducing coefficients for occupations with special hardship or danger. It also includes a new regulatory framework for partial retirement.

#### **Bill published to eliminate the automatic termination of the employment relationship in cases of permanent disability recognition**

The Government has approved a bill to eliminate the automatic termination of employment in cases where a worker is recognized as having a permanent disability, initiating its parliamentary processing.

#### **Parental leave compensation remains unregulated**

Spain has not yet regulated the compensation for at least four of the eight weeks of parental leave until the child turns 8 (as provided in Article 48 bis of the Workers' Statute). The Government has announced that this issue will be addressed in the Budget Law negotiations.

#### **Negotiations resume on reducing the working week to 37.5 hours**

The Ministry of Labor and Social Economy has resumed negotiations with unions and employers regarding the reduction of the working week to 37.5 hours.

The Government will present new proposals to bring positions closer together in these negotiations.

## 4. Judgements

### Requesting a generic justification for union hours does not violate the fundamental right to union freedom

In its [June 11, 2024 ruling](#), the Supreme Court held that it does not constitute a violation of union freedom for a company to request a general justification for the use of union hours (assembly, meeting, training, congress, etc.) from a workers' representative. In this case, the company stopped paying the salary for the unjustified time but did not impose sanctions or prevent the use of union hours.

### Compensation and absorption of personal leave days is valid in an agreement to reach the conventionally established vacation days

The Supreme Court, in its [ruling on March 12, 2024](#), resolved a case where workers were entitled to 22 vacation days and six personal leave days. The employees claimed a right to 23 vacation days as stipulated in the applicable agreement. The Court ruled that it is valid to absorb the six personal leave days agreed upon (outside the collective agreement) to reach the 23 legally mandated vacation days.

### The rejection of dismissal notification by the worker does not invalidate a properly executed notification

In its [July 5, 2024 ruling](#), the Madrid High Court of Justice evaluated a case where a worker was notified of his dismissal via a digital platform. Although the worker denied receiving the dismissal notification, the Court ruled that the company acted diligently by transmitting the notification multiple times, and the worker's decision not to acknowledge the notification was his sole responsibility.

### The Navarra High Court of Justice upholds a dismissal despite the absence of a prior hearing

In its [ruling on March 6, 2024](#), the Navarra High Court of Justice upheld the disciplinary dismissal of a worker who was not given a prior hearing. Although the lack of a prior hearing did not make the dismissal unfair, the Court recognized that it may lead to additional compensation for damages beyond the compensation for unfair dismissal.

### Objective dismissal due to supervening incompetence of a worker declared unfit by the prevention service is upheld

The Castilla-La Mancha High Court of Justice, in its [ruling on May 24, 2024](#), upheld the objective dismissal of a worker who was declared unfit by the prevention service. The Court justified its decision by noting that the report detailed job restrictions, that adapting the position was not possible, and that there were no alternative positions available within the company.

### Disciplinary dismissal of a worker who worked for another company while on medical leave is upheld

In its [April 25, 2024 ruling](#), the Andalusian High Court of Justice resolved a case where a worker was dismissed for working as a sales assistant for a family business while on medical leave. The Court ruled that if the worker was able to perform sales tasks, she was also fit to return to her regular duties as a hotel concierge assistant. The Court found that there was a breach of good faith since the worker was in a condition to return to her job (considering that both jobs required similar tasks).

## 5. Labor and Sustainable

### [Garrigues Sustainable Newsletter - July 2024](#)

This newsletter compiles the most relevant legal updates on ESG (Environmental, Social, and Governance) matters in Spain, published by Garrigues and G-advisory.

## 6. In Latin America

### [Chile: Companies with more than 100 workers must hire at least 2% of people with disabilities](#)

Law No. 21.690, which amends the Labor Code in terms of labor inclusion, has been published. Among other changes, it raises the minimum percentage of workers with disabilities that companies with more than 100 employees must hire from 1% to 2%. It also establishes that fines for non-compliance will be applied for each worker with a disability that should have been hired.

### [Colombia: New laws to combat sexual harassment, promote gender equity at work, and protect minors from sexual crimes](#)

The Colombian Congress has enacted three new laws of great relevance in the labor field, imposing on employers the obligation to implement measures against workplace sexual harassment, verify that hired personnel are not disqualified due to sexual crimes against minors, and encourage the hiring of women in the civil infrastructure and construction sectors.

### [Chile: The 'Karin Law' on workplace harassment, sexual harassment, and violence comes into force](#)

The law introduces new legal definitions of harassment, establishes preventive and protective measures to safeguard workers, and includes a new procedure for investigation and sanctions, among other measures.

### [Peru: The new telework law states that wages cannot be deducted for time not worked due to power or internet outages](#)

The law, which amends the current telework regulation, adds new provisions such as prohibiting employees from carrying out personal activities during their work hours and establishing the conditions for removing confidential documents from the offices.

## 7. Labor and Employment Blog

### [These are the new obligations for the protection and prevention of risks derived from exposure to carcinogens in the workplace](#)

In the context of the fight against cancer in the EU, Royal Decree 612/2024 on the protection of employees from the risks related to exposure to carcinogenic agents at work has brought relevant changes such as the incorporation of protection against reprotoxic agents or the updating of the table of occupational exposure limit values and has reinforced the obligations of companies to train and inform their staff, as well as to keep documentation.



## [The payment in installments of a severance compensation is compatible with the receipt of non-contributory unemployment benefits](#)

The Supreme Court considers that the payment of a severance compensation in installments in progressive monthly amounts over several years through the subscription of an insurance policy is compatible with the non-contributory unemployment benefit for which, among other requirements, the recipient needs to have no income.

## [Summer mix 2024: A refresher on five hits of employment law](#)

Providing services in high temperatures, working remotely in the summer or during school summer vacation, appropriate clothing for working in summer or digital disconnection are some of the big issues that arise in companies at this time of year.

## [Is the professional athlete entitled to severance payment when voluntarily leaving the sports entity?](#)

With the end of the European Championship, on the eve of the Paris 2024 Olympic Games, and in the middle of the summer soccer transfer market, professional sports become the center of attention. In this scenario, we analyze whether professional athletes have the right to be compensated when their own will prevents the renewal of the employment contract and, with it, the continuity of the special employment relationship, which is, by nature, of a fixed term.

## [Right to privacy and digital disconnection: can the company call an employee on sick leave?](#)

Absenteeism from work is a problem of concern to companies. One of its main causes is temporary incapacity, so it is common for organizations to consider implementing protocols to verify the employee's state of health, in which the possibility of contacting the employee is contemplated. But can companies call employees on sick leave?

## **8. Press**

### [Is it time for Spain to reform its regulation of unfair dismissal?](#)

Partners Eloy Castañer, Bernardo Pérez-Navas, and Cecilia Pérez highlight in this article, published by International Employment Lawyer, that the current system allows for the calculation of compensation for unfair dismissal based on objective criteria, making the system predictable, fair, and equitable.

### [Two and a half years after the Labor Reform, doubts persist among companies about which contracts to use](#)

Our partner Ángel Olmedo clarifies some of the doubts that may arise for companies regarding the types of employment contracts they can use, in this report from *El Mundo*.

### [The reduction of working hours halts negotiations and projects: "It's logical for companies to wait"](#)

Eloy Castañer and Bernardo Pérez-Navas, labor partners at Garrigues, comment in this report published by *El Mundo* on the effects of the announced reduction in working hours on companies.



### [When the heat melts the 'dress code' at work](#)

In this article published in *Actualidad Económica (El Mundo)*, our partner Cecilia Pérez analyzes how the limits on work attire are regulated in Spanish legislation.

### [Reduction of working hours: Challenge or opportunity for the hospitality industry?](#)

Carlos Pinilla, a labor partner at our Canary Islands offices, analyzes in this article from *Iberian Lawyer* how the reduction of working hours could impact a specific sector: hospitality.

### [Only a thousand victims of gender-based violence have requested leave from their jobs in the past decade](#)

Our partner Cecilia Pérez analyzes the procedure victims of gender-based violence must follow to access their right to temporary work leave compatible with unemployment benefits.

### [The Spanish Government will toughen severance compensation to avoid a wave of lawsuits triggered by the European ruling](#)

Federico Durán, of counsel in Garrigues' Labor Department, shares his opinion in this article from *El Español*, recalling that "the mandate of Article 24 of the European Social Charter is very brief, requiring only that, in the event of termination of employment without sufficient cause, the worker is entitled to 'adequate compensation' or other 'appropriate reparation'". He points out that it is the CEDS that has been broadening its interpretation of this mandate, going far beyond what the Charter actually stipulates.

**For more information:**

**[Labor and Employment Department](#)**

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