

Bird & Bird

The Spanish Government approves new measures to reinforce equality plans and tackle the gender salary gap



The Council of Ministries has approved new obligations regarding equality plans and equal pay between women and men, which have been put forward in the publication of the Royal Decree 901/2020 of 13 October, regulating equality plans and their registration, and the Royal Decree 902/2020 of 13 October, on equal pay between women and men

I. EQUALITY PLANS

1) COMPANIES OBLIGED TO IMPLEMENT AN EQUALITY PLAN.

a) **Companies with more than 50 employees, as per the following calendar:**

- **From the 7th of March, 2020:** companies with more than 150 employees.
- **From the 7th of March, 2021:** companies between 100 and 150 employees.
- **From the 7th of March, 2022:** companies with more than 50 employees,

or

b) **When the applicable collective bargaining agreement (hereinafter, "CBA") establishes such obligation,**

or

c) **When established by the labor authority** in a sanctioning proceeding.

The remaining companies may implement equality plans **voluntarily**, after consultation or negotiation with the Workers Representatives (hereinafter, "WR").

2) CRITERIA FOR QUANTIFYING THE NUMBER OF EMPLOYEES.

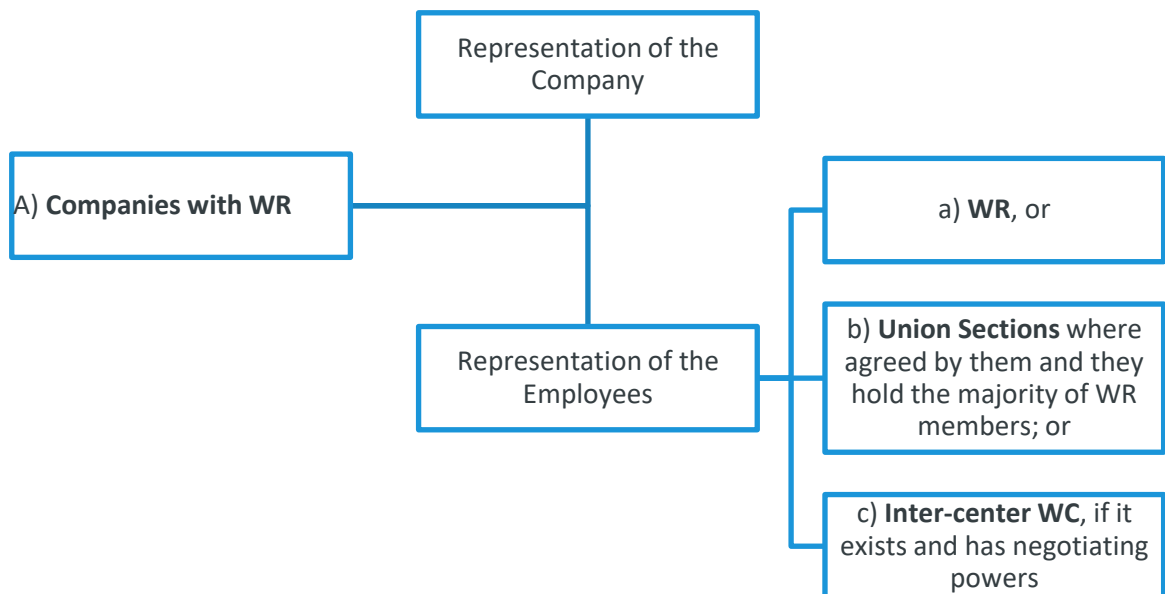
- The **entire workforce of the company** will be taken into account, regardless of the number of workplaces the company has.
- **Fixed-term contracts that have been in force throughout the 6 months previous to the implementation of the plan** will be included. For every 100 days worked or fraction thereof, those employees will be count as an employee.
- The **calculation of the quantification shall be made, at least, on the last day of June and December of each year**, in order to verify the obligation of implementing the equality plan.
- In cases of workforce reductions, the obligation to implement the equality plan will be maintained once the negotiating committee is constituted, and will be upheld until the end of the validity period of the plan, or if applicable, for 4 years.

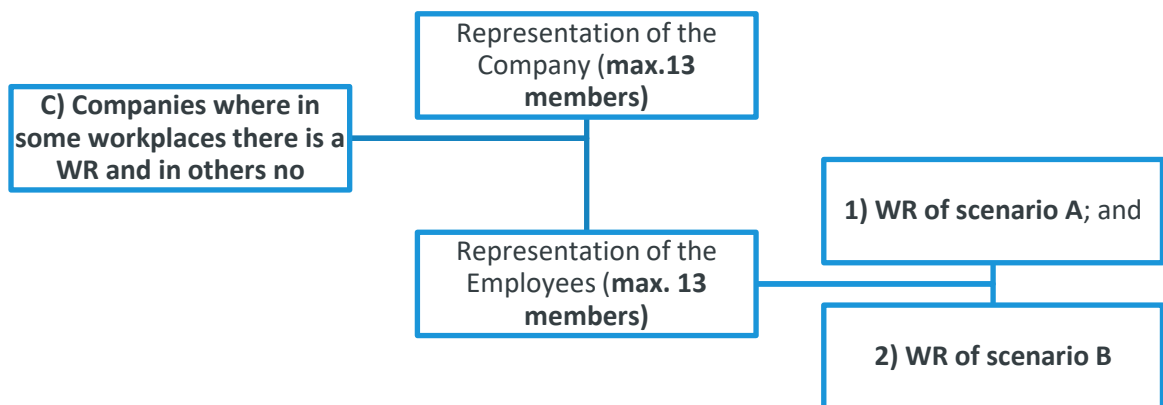
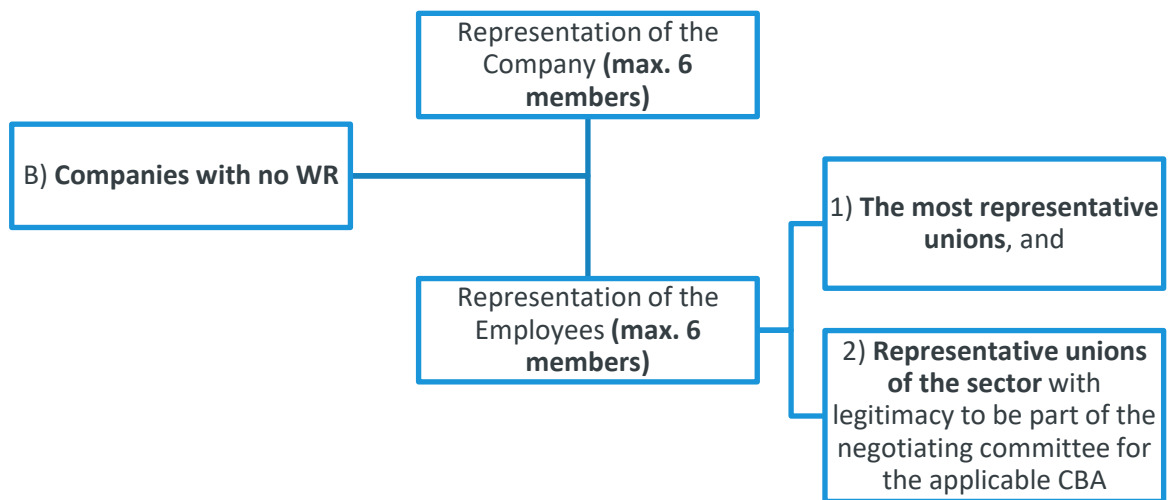
3) NEGOTIATION PROCEDURE

a) Deadlines

- **Period to initiate the procedure for the negotiation of the plan: 3 months** to be calculated starting from the time the minimum threshold of employees is reached or the CBA is published (unless the CBA provides for another period).
- Period for the negotiation, approval and presentation of the application for the registration of the equality plan: **1 year** starting from the day following the end of the period for initiating the negotiation procedure.

b) Composition of the Negotiation Commission





c) **Diagnosis of the situation:** This is the first phase of the preparation of the plan, in which **information must be obtained to design and establish the measures to be adopted, the degree of priority in their application, and the criteria to evaluate their fulfilment.** This information shall be included in a report that will integrate the equality plan.

d) **Minimum content to be included:**

- a. Determination of the negotiating parties of the equality plan.
- b. Personal, territorial and temporal scope.
- c. Report of the diagnosis of the equality situation of the company.
- d. Results of the remuneration audit, its validity and periodicity.
- e. Definition of the qualitative and the quantitative objectives.

- f. Description of specific measures, execution time and prioritization.
 - g. Identification of the means and resources necessary for the implementation, monitoring, and evaluation of the measures.
 - h. Calendar of actions.
 - i. System of monitoring, evaluation, and periodic review.
 - j. Composition and functions of the monitoring committee.
- e) **Validity period: the one agreed by the negotiating parties (max. 4 years).**
- f) **Creation of a joint monitoring and reviewing committee.**
- g) **Registration of the equality plan: obligation to register all the equality plans in the Register of Collective Bargaining Agreements and Collective Labor Agreements, without prejudice to the regional registers.**

4) EQUALITY PLANS IN FORCE AT THE ENTRY INTO FORCE OF RD 901/2020

Obligation to adapt the equality plans to the provisions of RD 901/2020 **within the period established for their review** and, in any event, within a maximum period of 12 months as from the entry into force of the RD 901/2020 (i.e. **14th of January, 2022.**)

5) ENTRY INTO FORCE

3 months after the publication of the RD 901/2020 in the official gazette (i.e. **from 14th of January, 2021**).



II. EQUAL PAY:

1) **OBLIGATION OF EQUAL PAY FOR WORK FOR WORK OF EQUAL VALUE**

A job is of equal value to another when (i) the nature of the functions or tasks (the essential content of the employment in accordance with the law or the CBA, and the type of the activity); **(ii) the educational requirements** (professional qualifications); **(iii) the professional and training conditions** (qualifications, experience or non-regulated trainings); **and (iv) the working conditions and performance factors** (hardship, repetitive movements, dexterity, thoroughness, isolation, versatility, social skills, etc.) **are equivalent.**

2) **INSTRUMENTS OF TRANSPARENCY IN REMUNERATION**

Companies must adopt the following instruments to comply with the principle of transparency in remuneration.

a) **Salary record:**

- a. **All companies, regardless of their size, must keep a record of the salaries of the workforce, including management and senior positions.**
- b. **Minimum content:** the arithmetic average and the median of (i) the base salaries, (ii) each of the complementary salary, and (iii) each of the extraordinary supplements of the workforce, which must be detailed by gender and distributed by professional group, professional category, level, position or any other applicable classification system.
- c. When applicable, **the WR must be consulted** with at least 10 days before the preparation of the salary record.
- d. **Right to Access to the salary record:**
 - Companies with WR: access to the full contents of the salary record through the WR.
 - Companies without WR: limited access to the percentage differences that exist in the average remuneration of men and women, which will also be detailed by remuneration and the applicable classification system.
- e. **Reference period:** the **calendar year** as a general rule, except for substantial alterations of any of the elements of the salary record.

b) **Remuneration audit:**

- a. **Companies implementing an equality plan (refer to section I.1) shall include a remuneration audit**, prior to the negotiation of such equality plans.
- b. **Obligations of the company**
 - i. To carry out a diagnosis of the company's remuneration situation: (i) the evaluation of the jobs, assigning a score or numerical value to it, and (ii) the other factors that trigger the difference in remuneration.
 - ii. Establish an action plan for the correction of the pay gap, which must contain: (i) the determination of objectives, (ii) specific actions to be implemented, (iii) schedule, (iv) the persons responsible for its implementation, and (v) a system for monitoring and implementing improvements based on the results obtained.
 - iii. Include the following additional content in the salary record:
 - a. The record shall reflect the arithmetic averages and the medians of each of the groups of jobs of equal value in the company, according to the valuation of the jobs, even if they belong to different sections of the professional classification, detailed by gender and disaggregated by remuneration
 - b. When the arithmetical average or the median of the total remuneration in the company of the persons of one gender is at least 25% higher than that of the other, an objective justification for this differentiation must be included in the salary record.
- c. **Validity**: it shall have the same validity of the equality plan unless a shorter one is established.

3) PENALTIES

Non-compliance with the obligations regarding the non-discrimination in remuneration based on gender may result in **penalties ranging from 6,251 to 187,515 euros** (depending on the seriousness), as well as **additional sanctions such as the automatic loss of public benefits and bonuses for a period ranging from 6 months to 2 years**.

4) ENTRY INTO FORCE

6 months after the publication of the RD 902/2020 in the official gazette (*i.e. from 14th April 2021*).

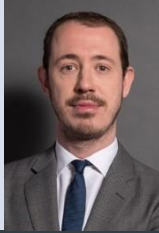
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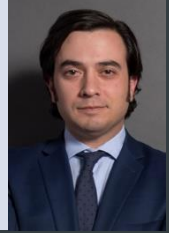


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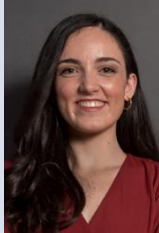


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