

Law 15/2022, 12 July, Integral for equal treatment and non-discrimination

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On 13 July 2022, Law 15/2022, 12 July, on equal work and non-discrimination, was published in the Official State Gazette (BOE) and came into force the day after its publication. As its name indicates, its aim is to guarantee and promote the right to equal treatment and non-discrimination and to respect the equal dignity of persons in development of articles 9.2, 10 and 14 of the Spanish Constitution.

Law 15/2022 includes rights and concepts that already have broad protection in the Spanish legal system and case law, so we are not going to focus on aspects of the law that are widely known, but rather on those that are of a novel nature or that affect labour relations. In this regard, among the various aspects that it regulates, the following should be highlighted:

- It expressly includes **illness** or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders as a cause of discrimination. Although until now, on the basis of the case law of the CJEU, the difference in treatment of a person has been considered discriminatory when there is an illness which, initially or subsequently, can be considered to have a long evolution and, therefore, can be assimilated to a disability, after the approval of this new Law, a much broader concept of illness is included and, therefore, it can be understood to be applicable to all types of situations derived from a person's state of health. In the absence of the interpretation of the Courts and Tribunals, it seems that the door is open to the nullity of dismissal for causes derived from or related to any illness or state of health in general.
- It expressly **prohibits** limitations, segregation or exclusions in **access to employment**, including **selection criteria**, in job training, **in career advancement**, in **pay, working hours** and other working conditions, as well as in suspension, **dismissal** or other grounds for termination of employment contracts, which is not really new.
- It **prohibits** the employer from asking about the health conditions of the job applicant.
- It requires the application of sufficient methods or instruments for the detection of discriminatory situations, the **adoption of preventive measures** and the articulation of appropriate measures for the cessation of such situations. Failure to comply with these obligations may give rise to **administrative, criminal and civil liability**.
- It incorporates the definition of **discriminatory harassment**, understood as any conduct carried out on the basis of any of the grounds for discrimination set out in the Law, with the aim or the consequence of violating the dignity of a person or group of which he or she is a member and of creating an intimidating, hostile, degrading, humiliating or offensive environment. It includes other definitions such as the concept of reprisals, discrimination by association and by mistake, as well as multiple and intersectional discrimination.

- In order to guarantee the **effective judicial protection** of the right to equal treatment and non-discrimination, it requires judges and courts to adopt all necessary measures for the immediate cessation of discrimination, the prevention of imminent violations, the compensation of damages and the reinstatement of the injured party. It also legitimises trade **unions and associations** to be a part of judicial proceedings, provided they have the express consent of the persons concerned or, in administrative proceedings, also when the persons concerned are an undetermined plurality. It confirms the **reversal of the burden of proof** whenever the plaintiff or interested party provides well-founded indications of discrimination.
- It establishes as **responsible** for repairing the damage and facing the corresponding sanctions the natural or legal **person** causing the discrimination and, in labour relations, **the employer**. Once the discrimination has been proven, the existence of **moral damage** will be presumed.
- Through **collective bargaining**, companies and workers' representatives can establish positive action measures to prevent, eliminate and correct all forms of discrimination in the field of employment and working conditions. It is the responsibility of the legal representation of workers and the employer to ensure compliance with the right to equal treatment and non-discrimination and, in particular, the adoption of positive action measures.
- Companies may undertake **social responsibility actions** aimed at promoting conditions of equal treatment by informing and agreeing with workers' representatives on the implementation of such actions, and may use their responsibility actions for publicity purposes.
- In **terms of penalties**, minor infringements will carry a fine of between 300 and 10,000 euros, serious infringements of between 10,001 and 40,000 euros and very serious infringements of between 40,001 and 500,000 euros plus the imposition of accessory penalties, such as the withdrawal, cancellation or total or partial suspension of official aid.
- The Law does not apply to judicial and administrative proceedings initiated prior to its entry into force.

Finally, it includes a provision that indicates what may be the next regulatory development in terms of equal pay: by means of regulations, **companies with more than 250 employees may be required to publish the salary information** necessary to analyse the factors of salary differences, taking into account the conditions or circumstances that may be the cause of discrimination. As usual, we at **Simmons & Simmons** will be keeping a close eye on developments in this area.

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