Employment Flash – November 2026

Pay transparency and new employment rules

Royal Decree-Law 39/2026 of 17 November, published on 18 November in the Official State Gazette (BOE), comes into force on 19 November and completes the process of transposing Directive (EU) 2019/1152 on transparent and predictable working conditions, and Directive (EU) 2023/970, which strengthens the application of the principle of equal pay for men and women for the same work or work of equal value through pay transparency measures and enforcement mechanisms.

Key changes for businesses

Recruitment. Job advertisements must include the starting salary for the post and the applicable collective agreement. It is prohibited to ask about an applicant's previous salary. Job advertisements and job titles must be gender-neutral and accessible.

Pay transparency. Staff shall be entitled to know the pay criteria and pay scales; in companies with 50 or more employees, they shall also be entitled to know the criteria for pay progression, where these exist. Employees shall have the right to disclose information about their own pay, and any clauses preventing such disclosure shall be null and void.

Probationary period. The statutory limits (six months for qualified technical staff and two months for others, or three months in companies with fewer than 25 employees) are now maximum limits: a collective agreement may only exceed them if justified. For fixed-term contracts, the maximum is one month, with a proportional reduction if the contract lasts less than six months.

Multiple employment. The employer may not prevent or restrict work for other employers, nor may it treat employees unfavourably on that ground. Restrictions on the grounds of incompatibility are permitted only where based on objective grounds (health and safety, business confidentiality, the integrity of the public service or the prevention of conflicts of interest), without prejudice to an agreement on full-time employment in return for financial compensation.

Complementary hours. If the three-day notice period or the notice period specified in the collective agreement is not observed, the employee shall be entitled to refuse the assigned task without this resulting in any adverse consequences. In the event of total or partial cancellation by the employer of such complementary hours, the employee shall retain the right to remuneration corresponding to the hours not worked.

Transition to another form of employment. A new article, Article 21 bis, has been added to the Workers' Statute (ET), governing cases in which employees may request a transfer to vacant posts from their employer. The employer must respond to such requests in writing, stating the reasons, within a maximum period of one month, or three months in the case of companies with a workforce of no more than ten employees. The collective agreement or, failing that, the company agreement may set out the procedure for submitting applications, whilst complying with these time limits.

Information and the pay gap. Any employee may request, in writing, details of their own salary and the average annual and hourly pay, broken down by gender, of those performing work that is the same or of equal value to their own. The employer must respond within two months of receiving the first request at the latest and must inform all staff of this right at least once a year. This right may be exercised by anyone who has ceased to provide services, within one year of their departure.

Remuneration Register. The register shall include data for both annual and hourly rates. The register, together with the documentation and data used to compile it, must be retained for four years. In companies with 100 or more employees, differences in averages of 5 per cent or more must be justified in the register; for companies with between 50 and 99 employees, the threshold remains at 25 per cent. Any unjustified differences detected in the audit or reporting instruments must be corrected within a reasonable period, which may under no circumstances exceed six months.

Monitoring. The Commission for Monitoring Pay Transparency is established as an inter-ministerial and tripartite collegiate body, attached to the Ministry of Labour and Social Economy. Companies with 50 or more employees must provide the Commission for Monitoring Pay Transparency, following consultation with the employees' legal representatives, with information regarding the gender pay gap in its various forms, the proportion of employees receiving salary supplements, and the proportion of employees in each quartile of the pay band. Information on the pay gap by category or for jobs of equal value must also be provided to the entire workforce and their legal representatives.

Greater penalties for non-compliance. Penalties for serious infringements relating to pay information and records have been strengthened, as have those for very serious infringements involving reprisals. Legal actions for pay discrimination will be time-barred three years after the discrimination ceases. In public procurement, certain serious breaches may result in the termination of the contract.

Entry into force

General rule. The Royal Decree-Law comes into force on 19 November 2026, the day following its publication. Most of the obligations (transparency in recruitment, pay information, record-keeping, probationary periods, holding multiple jobs, overtime, transition to another form of employment and new infringements) are enforceable from that date. However, like any Royal Decree-Law, it is a provisional piece of legislation which Parliament must ratify or repeal within thirty days of its promulgation. In the meantime, the legislation is fully in force and its obligations are enforceable.

Information on the pay gap. The first report to the Commission is phased in: by 8 June 2027 for companies with 150 or more employees, and by 8 June 2031 for those with between 50 and 149 employees.

Pay audits. Those included in existing equality plans remain valid and must be adapted, at the latest, when the plans expire or are due for review.

Current contracts of less than four weeks' duration. The employer must provide information on the essential terms of the contract within ten working days of the employee's request, if the employee does not already have this information.

What companies must do

Review job offers and interviews immediately. Include the starting salary and the applicable collective agreement, and pass on the instructions to those responsible for the recruitment processes.

Update contracts and HR procedures. Review probationary periods, salary confidentiality clauses and restrictions on holding multiple jobs; monitor notice periods and the cancellation of overtime, and record applications for vacancies and the responses to them.

Prepare salary information. Appoint responsible personnel, set up a channel for requests, review the records and justifications for pay differences, and coordinate measures with employee representatives, whilst protecting personal data. Audits incorporated into existing equality plans will remain valid until they are reviewed or expire, at which point they must be adapted.

Note the pay gap reporting Schedule. Initial reporting to the Commission by 8 June 2027 for workforces of 150 or more; by 8 June 2031 for 50–149. Thereafter, annual reporting for organisations with 250 or more employees and every three years for those with 50–249 employees. These deadlines do not defer other obligations.

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