

Employment Flash – April 2023

Employment news– Draft Family Law and its legal impact on employment relationships

On 14 April 2023, the Official Gazette of the Spanish Parliament published the Draft Law on Families (the "**Bill**"), entrusting its approval with full legislative competence and by urgent procedure to the Commission on Social Rights and Comprehensive Disability Policies and opening the period for amendments to the text.

Once the parliamentary process is completed and the law is finally approved by the Cortes Generales, it will be published in the BOE and will enter into force within 20 days of its publication, which is expected to take place in the coming months.

Although modifications to the text of the current Bill are to be expected, these should not be very significant, and we therefore consider it of interest to make some brief comments on the current content of the Bill, given the relevance of the issues regulated, and all this while awaiting the final approval of the new law.

The Bill aims to extend social protection to families and to advance in the rights to reconciliation, with full legal recognition of the different types of families. Furthermore, this regulation will transpose Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019.

We will summarise here its main aspects and developments in the labour field.

1. Concept of family

Art. 2 incorporates an expanded definition of "families", to which the law applies. Thus, "*a family is considered to be that derived from marriage or stable cohabitation as a couple, or from filiation and families composed by a single parent with his or her descendants*".

In addition, unmarried couples are equated to marital unions, measures to prevent discrimination against LGTBI families are contemplated and foreseen, and it is added that the benefits and measures foreseen in the law will be applied to "*cohabiting couples not formalised as unmarried couples with common offspring, as well as to people who live in non-family cohabitation nuclei when this is expressly foreseen in the corresponding regulations*".

It establishes the principle that the protective action of the Social Security system on the persons included in its scope of application and on their dependent family members or assimilated family members must guarantee its extension in a similar way to all of them, regardless of the family model that relates them.

2. Amendments to the Workers' Statute ("Estatuto de los Trabajadores" ("ET")) (DF 3^a of the Bill):

- a) Art. 4.2 c) ET makes explicit as a case of prohibited discrimination the "*unfavourable treatment of women or men due to the exercise of the rights of work/life balance or co-responsibility of family and working life*".

- b) Art. 34.8 ET is amended, extending and reinforcing the right to adapt the working time:
 - i. It shall also correspond to workers "*who have care needs with respect to children over the age of twelve, the spouse or unmarried partner, relatives by blood up to the second degree of consanguinity of the worker, as well as other dependents when, in the latter case, they live in the same home, and who for reasons of age, accident or illness are unable to look after themselves, and must justify the circumstances on which their request is based*".

 - ii. The period for negotiation with the company is reduced to 15 days, and the requested adaptation is presumed to have been granted if the company does not notify its reasoned opposition within this period.

 - iii. Whether the company proposes alternative measures or refuses the request, it must give "*objective reasons for its decision*".

 - iv. The worker shall have the right to return to his or her previous situation at the end of the planned adaptation period or when the reasons for it have lapsed, and in other cases, if there is a change of circumstances that justifies it, the company may only refuse the requested return when there are objective and justified reasons for doing so.

 - v. According to TD1^a of the Bill, the working time adaptations that are being applied when the new regulation comes into force will remain in force and will be covered by said new regulation.

- c) Articles 37 and 46 ET are amended, extending rights in terms of paid leave and leave of absence:
 - i. The 15 days' leave for marriage is extended to cases of registration of unmarried couples.

 - ii. With regard to the two days' leave for the death of a family member (or four days' leave if travel is required), the spouse or unmarried partner is expressly included.

- iii. The leave for accident or serious illness, hospitalisation or surgery with home rest is extended from two to five days, and the cases in which it may be granted are extended when it affects **"the spouse, unmarried partner or relatives up to the second degree by blood or marriage, including the unmarried partner's blood relative, as well as any other person other than the above, who lives with the worker in the same home and who requires effective care"** (changes in bold).
 - iv. The possibilities of limiting the exercise of the right to reduce the working day for breastfeeding (art.37.4 ET) or leave of absence to care for family members (art.46.3 ET) when it is requested by two people in the same company for the same person, will be restricted so that in such cases **"simultaneous exercise may be limited for well-founded and objective reasons of company operation, duly justified in writing, in which case the company must offer an alternative plan that ensures that both workers can take advantage of it and that makes it possible to exercise the rights of reconciliation"** (modifications in bold).
 - v. The subjects for whom it is possible to reduce the working time or request leave to care for a family member are extended (arts. 37.6 and 46.3 ET), including the spouse, unmarried partner or blood relative of the unmarried partner.
 - vi. A new paid leave is established (new paragraph 9 of Art. 37 ET), configured as a with proofworker's right to be absent from work *"due to force majeure when necessary for urgent family reasons related to relatives or people living with them, in the event of illness or accident that make their immediate presence indispensable"*, of the reason for the absence and with the right to payment for these hours of absence *"equivalent to four days a year"*, although it is added that this will be in accordance with the provisions of the collective bargaining agreement, or failing that in the agreement between the company and the workers' representatives.
- d) Art. 48.4 ET is amended, adding that in the suspension of the contract due to childbirth, the parent other than the biological mother may anticipate the exercise of the suspension of the contract up to ten days before the foreseeable date of childbirth.
- e) A new "Parental leave" is regulated in a new art.48 bis ET, as a new case of suspension of the employment contract (art.45.1.o), in the following terms:
- i) Its maximum duration shall be 8 weeks, continuous or discontinuous, which may be taken on a full-time or part-time basis, to care for a child for more than one year, and until the child reaches the age of 8 years.
 - ii) It is an individual and non-transferable right, for the exercise of which the worker shall notify the company of his or her decision on the period of leave, with 10 days' notice, taking into account the person's situation and the organisational needs of the company.

- iii. If two or more persons generate this right by the same causal subject or in other cases provided for in the collective bargaining agreement in which its enjoyment may seriously disrupt the operation of the company, the company may postpone the granting of the leave for a reasonable period of time, with written justification and after offering a more flexible alternative for its enjoyment.
- f) New cases of nullity of disciplinary or objective dismissal are added (unless the dismissal proves to be fair, in accordance with articles 53.4 and 55.5 ET), including those affecting individuals who take the new paternal leave, or the regime for adapting the working time in article 34.8 ET, as well as those applying for leave due to death, accident or serious illness of a family member (article 37.3.b ET).

3. Some other relevant legal amendments:

- a) The Law for the Protection of Large Families is amended and redefined as Families with greater needs for parenting support, together with single-parent families with two children (without the right to child support from the other parent); with two children in which one of the ascendants or descendants has a disability or in which one parent is in hospital treatment for a year or has been in prison; and families with two children headed by a victim of gender violence or by a spouse who has obtained sole custody without the right to child support. Families with four children, or with three children in case of multiple births, and families with three children and low income (up to 150% of the IPREM) are now qualified as "*families with higher needs for parenting support of "special category"*".
- b) Article 12.1 of Social Security Law is amended to exclude from being considered an employee for the purposes of registration with the Social Security (unless proven otherwise) the employer's unmarried partner or the descendants, ascendants and other relatives by blood or marriage up to the second degree inclusive and by reason of said unmarried partner, who are employed at the employer's workplace, when they live together and they are dependent on him/her.

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