

WORK-FAMILY BALANCE IN SPAIN
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The massive incorporation of women to the job market in Spain throughout recent decades has transformed the productive environment and has forced the implementation of policies intended to foster the conciliation of family and work life. In this regard, *Law 39/99, of November 5 for the promotion of conciliation of family and work life* substantially fosters the family rights of workers and, more recently, *Organic Law LO 3/2007, of March 22, for the effective equality of women and men* makes progress in the same area, by providing depth to the recognition and effective exercise of these rights. In recent years, much progress has been made and there has been undoubted positive legislation, however, there are still loose ends to be taken into account if the improvements achieved are to be consolidated for the future and the measures are to be applied efficaciously.

- The cultural and social background of the problems of conciliation.

Most of the legal provisions which address the conciliation of family and work life are included in the employment regulations. Despite everything, all the statistics indicate that the effectiveness of these regulations depends, to a great extent, on the current social, cultural and educational habits and, consequently requires the adoption of coordinated initiatives in other areas. Thus, the majority of the periods of leave or reductions in the time of work in order to take care of children are exclusively requested by women, which has negative repercussions on their professional and economic situation in the long term; or, it has been verified that the recognition of employment rights is rather ineffective if these are not accompanied by social and assistance services which help families to care for and attend to their children. There are already some state policies in this regard, such as the *Integral family support plan*, which includes awareness campaigns, educational programmes in schools, the creation of services and centres to attend to infants, senior citizens and incapacitated persons, financial assistance for families, the financing of studies which detect special sector or regional difficulties for conciliation, etc. and it is expected that these measures which foster conciliation not only in the strict employment area will be boosted.

- Conciliation versus equality.

The conciliation policies have usually been applied in close relationship with policies concerning equality and non-discrimination for reasons of gender. Undeniably, maternity and family obligations have hindered and continue to hinder the access of women to the job market and their continuance in a job once their children are born. Thus, the initial preoccupation of the legislator was to establish regulations which would include attending to family duties with co-responsibility, and not exclusively as an obligation of the woman. Thus, little by little, the right to request leave in order to take care of children or a reduction in the time of work as a right for all workers, with no reference too gender, is being recognised. Even rights traditionally related to women such as maternity or baby feeding leave may be taken by the father. Therefore, a change has been made from *subjective legal protection* of women with family responsibilities to *objective protection* of these responsibilities, regardless of whether these are assumed by a man or a woman.

Despite all this, experience shows that these measures are insufficient because, in practice, most of the conciliation rights are requested and assumed exclusively by women. As a consequence of this, overprotection of women is generated in the employment area and this has negative consequences for their professional situation. This is known as the *boomerang effect* as was correctly pointed out by Constitutional Court, “it is no secret that, for an entrepreneur with few scruples concerning the principle of equality, it will always be more profitable to hire men than women employees due to the increased employment costs caused by women”.

In recent years, in order to alleviate these negative effects, measures have been adopted which no longer seek to ensure formal equality between men and women but rather that they be really and effectively equated. Especially outstanding are the initiatives of Organic Law 3/2007 on Equality, which, at this point, promotes positive discrimination so that the permanence of women with family responsibilities in employment is fostered through the concession of certain advantages or benefits. In addition, it includes provisions which force co-responsibility in sharing family duties, thus, a thirteen day paternity leave to be taken only by the father was established for the first time in the Spanish legal system, regardless of the maternity leave. Despite the short period of time which has elapsed, this new paternity leave has been welcomed by society and this confirms the impression that the measures which tend to foster co-responsibility regarding family obligations are currently the most advisable measures to achieve equality of men and women in the world of work, eradicating discrimination and, in turn, normalising the conciliation rights of employees while overcoming the reticence to this new situation.

- The cost of conciliation for the entrepreneur.

In the employment area, the expenses involved in the implementation or improvement of the rights of conciliation recognised in the legislation normally and almost exclusively fall on the entrepreneur. These are what may be called *direct costs*, the cost of the remunerated leave of the employee, the contribution to the Social Security for employees during maternity or paternity leave and the *indirect costs*, such as all the organisational changes which must be assumed by the entrepreneur in order to cover the temporary absence of the employee benefiting from these rights. In addition, it should be taken into account that repercussion of these expenses is not necessarily the same, depending on the type of company, the sector or activity it is engaged in, the number of employees, the composition of the staff, for example, companies which have mainly workers who are young or female, etc. However, the regulations do not include corrective criteria concerning the particular circumstances and needs of each company.

This means that the conciliation measures are not currently as widespread in companies as would be wished as these are considered to be an award or an incentive for employees rather than a right properly speaking, consequently, these are mainly used in companies with highly qualified workers or those with workers who can be replaced with difficulty.

In relation to this problem, the solution may involve two possible routes in our opinion: more state intervention may be necessary in order to pay the financial costs of conciliation as the interests involved are especially relevant and transcend the business and employment area, and may question the model of the family and society in which we live.

Furthermore, formulas must be sought to convert the investment in these conciliation rights into an attractive measure, and, more specially, into a profitable measure for the entrepreneur, a competitive advantage in the market. Some initiatives in this regard have already been put into practice, from the concession of subsidies to companies for implementing conciliation

plans to the creation of company certificates which accredit their involvement in conciliation and enable them to access public contracts or state aid in advantageous conditions.

- Conciliation measures which respond to the new family requirements.

For a long time, the family rights recognised for employees in legislation were focussed exclusively on the times of the births of the children. Little by little and especially due to the incorporation of women to work, the employment measures acquired a broader time dimension as the family responsibilities have a quasi-permanent nature, not only due to the children, but more and more due to the need to attend to elderly parents and relatives. In any case, it is still necessary to go more deeply into the rights which make it possible to adapt work and family responsibilities, and to respond to the new family models which are appearing and which require particular treatment: single or reconstituted families, for example. In this regard, the work of collective negotiation may be especially fruitful through the exploration of other channels not yet addressed by legislation, such as flexible timetables, preferences for holiday periods, telework, paid leave for medical visits or extraordinary family contingences, etc..

In short, the family rights of the workers have undergone substantial progress in Spain in recent years due especially to the legal initiatives. However, there are questions pending which will have to be addressed if effective normalisation of these rights is to be achieved in the world of business and discrimination concerning the employees who have to assume family responsibilities is prevented.

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MAIN LEGAL RIGHTS FOR EMPLOYEES WITH FAMILY RESPONSABILITIES

MEASURE	TIME	PARTICULAR CIRCUMSTANCES FOR APPLICATION
Paid leave for marriage (art. 37 Employees Law)	15 days	Marriage certification required
Paid leave for children birth (art. 37 Employees Law)	2-4 days	In addition, 1 hour/day in case of premature baby which needs hospital cares.
Paid leave for extraordinary family contingences (art. 37 Employees Law)	2-4 days	Decease, serious illness, accident, hospitalization
Baby feeding leave (art. 37 Employees Law)	1 hour/day until baby is 9 months	Fathers can take the leave
Maternity leave (art. 45 Employees Law)	16 weeks + 2 weeks for multiple birth	Fathers can take part of the leave (until 10 weeks) Insurance coverage Children adoption is covered (under 6 years)
Paternity leave (art. 45 Employees Law)	13 days	Only fathers can take the leave Insurance coverage Part-time leave is possible
Victims of gender violence leave (art. 45 Employees Law)	6-18 months	Women victims of gender violence Insurance coverage
Working hours reduction (art. 37 Employees Law)	1/8-1/2 working day reduction salary reduction	Children care (under 8 years) Sick/elderly relatives care
Extended leave (art. 46 Employees Law)	Children care (under 3 years) Sick/elderly relatives care (2 years)	No insurance coverage Job reservation