

RocaJunyent

Reports

Labour Law Department
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On 13 July 2022, Law 15/2022 of 12 July, integral to equal treatment and non-discrimination (Law 15/2022), was published in the Official Spanish Gazette (*Boletín Oficial del Estado*, BOE) No 167, effective from the day following its publication.

The purpose of Law 15/2022 is to guarantee and promote the right to equal treatment and non-discrimination, as well as respect for the equal dignity of persons in line with Articles 9.2, 10 and 14 of the Spanish Constitution. All this through a package of measures to prevent, eliminate and correct all forms of discrimination, directly or indirectly, in the public and private sectors.

1.1. Subjective scope

It recognises everyone's right to equal treatment and non-discrimination.

It is worth noting the express reference to the "*disease or health condition, serological and/or genetic predisposition to suffer pathologies and disorders*". It must be analysed as to how such cases are regarded in the event of unfair dismissals or those declared as null and void.

Likewise, the wide range of protected situations will further underscore the importance to companies of justifying as much detail as possible in employment termination letters.

Differences in treatment may be established when the criteria for such differentiation is reasonable and objective and what is pursued is with the aim of achieving a legitimate purpose.

The obligations established in this law shall apply to the public sector. It will also be applicable for individuals or legal entities of a private nature who reside, who are located or who act in the Spanish territory.

1.2. Objective scope

- ☐ Employment, access, promotion, working conditions and training
- ☐ Membership and participation in political organisations, unions or business enterprises
- ☐ Education, healthcare, transportation, culture
- ☐ Citizen security, justice administration, social protection
- ☐ Etc.

1.3. Right to equal treatment and non-discrimination

Any disposition, behaviour, act, criterion or practice that violates the right to equality is prohibited.

The right to equal treatment and non-discrimination is a guiding principle of the legal system.

Gender perspective will be considered in anti-discrimination policies.

It is important to point out that a difference in treatment which has the legitimate purpose of precisely said law will not be understood to be discriminatory.

1.4. Definitions

The Law defines the following concepts:

- ☐ Direct and indirect discrimination.
- ☐ Discrimination by association and discrimination by mistake.
- ☐ Multiple discrimination and intersectionality.
- ☐ Discriminatory harassment.
- ☐ Induction, order or instruction to discriminate.
- ☐ Retaliation.
- ☐ Positive action measures.
- ☐ School segregation.

1.5. Right to equal treatment and non-discrimination in paid employment

No limitations, segregations or exclusions may be established in terms of access to paid employment, public or private, including selection criteria, in training for employment, in career promotions, in remuneration, in the working day and other working conditions, as well as in terms of suspension, dismissal or other causes of termination.

Criteria and systems for access to employment, public or private, or in working conditions that produce situations of indirect discrimination will be understood to be discriminatory.

The Employment and Social Security Inspectorate, under the terms provided for in the applicable regulations, in particular must ensure respect for the right to equal treatment and non-discrimination.

The employer may not inquire about the health conditions of an applicant for a position of employment.

1.6. Collective bargaining

Collective bargaining may not establish limitations, segregations or exclusions in terms of access to employment, including selection criteria, training for employment, career promotions, remuneration, working hours and other working conditions, as well in terms of suspension, dismissal or other causes of termination.

Collective bargaining may establish positive action measures to prevent, eliminate and correct all forms of discrimination in the field of employment and working conditions.

The legal representation of the workers and the company itself will ensure compliance with the right to equal treatment and non-discrimination.

1.7. Rules relating to burden of proof

When the petitioning or interested party alleges discrimination and provides substantiated evidence about its existence, it will be the responsibility of the defendant or to whom the discriminatory situation is attributed to provide objective and reasonable justification, sufficiently proven, of the measures adopted and of their proportionality.

1.8. Duty of cooperation

Public administration bodies and individuals must provide the necessary cooperation to the Independent Authority for Equal Treatment and Non-Discrimination.

1.9. Infringements

Infringements of equal treatment and non-discrimination will be rated as minor, serious or very serious.

Behaviours resulting from the non-observance of the provisions of this law and its implementing regulations will be understood to be minor infringements, provided that they do not generate or contain a discriminatory effect, nor are they motivated by a discriminatory reason.

Serious infringements will be understood to be:

- ☐ Acts or omissions that constitute discrimination, direct or indirect.
- ☐ Any retaliatory conduct.
- ☐ Failure to comply with a specific administrative requirement, which does not constitute a formal requirement, formulated by the administrative body.
- ☐ The committing of a third or more minor infringement, where the alleged offender has already been penalised for two minor infringements by final administrative ruling within the previous year.

Very serious infringements will be understood to be:

- ☐ Acts or omissions that constitute multiple discrimination.
- ☐ Discriminatory harassment.
- ☐ Stringent pressure exerted on the authority, agent thereof, official staff or public employee, in the exercise of administrative powers.
- ☐ The committing of a third or more serious infringement, where the alleged offender has already been penalised for two serious infringements by final administrative ruling within the previous two years.

1.10. Penalties

Infringements established in this law will be penalised with fines ranging from €300 to €500,000.

- ☐ Minor infringements between €300 and €10,000.
- ☐ Serious infringements between €10,001 and €40,000.
- ☐ Very serious infringements between €40,001 and €500,000.

1.11. Graduated criteria of penalties

In any case, the penalties will be applied to their minimum, medium or maximum degree according to the following criteria:

- ☐ Intentionality of the offending person.
- ☐ Nature of the damage caused.
- ☐ Permanent or transitory nature of the implications of the infringement.
- ☐ Number of people affected.
- ☐ The social impact of the infringements.
- ☐ Recidivism, where more than one infringement of the same nature is committed within one year, when so declared by final ruling.
- ☐ The economic benefit that would have been generated for the person who committed the infringement.
- ☐ The status of authority, agent thereof, official staff or public employee of the offending person.
- ☐ The concurrence or interaction of various causes of discrimination provided for in the law.
- ☐ In any case, infringements will be considered to the maximum extent when the infringements are carried out by the holders of any public office or function or public employees, within the scope of the entire territorial organisation of the State, in the exercise of their positions or functions.

When the committing of an infringement necessarily results from having committed another or other infringements, the penalty corresponding to the most serious infringement will be imposed.

1.12. Additional penalties and substitution penalties

When the infringements are very serious, the body that executes the sanctioning proceedings may impose as an ancillary penalty in addition to the applicable fine, such as: the full or partial freezing, cancellation or suspension of official aid that the penalised person had recognised or had requested in the sector of activity in which the infringement occurs; the closure of the establishment in which the discrimination has occurred; or the cessation of the economic or professional activity carried out by the offending person for a maximum term of five years.

By imposing penalties, with the consent of the penalised person, and as long as they are not very serious violations, the financial penalty may be replaced by any of the following: the provision of their unpaid personal cooperation in activities of public utility, with social interest and educational value, or in work to repair the damages caused or to support or assist the victims of acts of discrimination; the attending of training courses or one-to-one sessions – or by any other alternative measure – intended to raise the offender's awareness about equal treatment and non-discrimination, and to repair the moral damage of victims and affected groups.

1.13. Constitution of the Independent Authority for Equal Treatment and Non-Discrimination

The constitution of said body will be made up of the institutions existing until that time according to a government decision.

Within one year of its incorporation, the Independent Authority for Equal Treatment and Non-Discrimination shall submit to the competent Department on equal treatment a proposal for the establishment of a Documentation and Memory Centre on Discrimination, Hate and Intolerance.

1.14. Transitional regime of proceedings

Administrative and judicial proceedings already initiated prior to the entry into force of this law shall not apply to them, with them being governed by the previous regulations.