



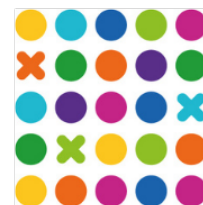
Deliverable No. D 3.3: National and Comparative
Discrimination Map Reports

Spanish Care Workers' Discrimination Map Report

Partner: University of Girona

Authors: Ferran Camas Roda, Maria Antonia Barceló Rado,
Dolors Juvinyà Canal, Marc Sáez Zafra, Anna Maria
Molina Garcia, Andrea Cano Redondo

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Disclaimer

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Please note that the data and information presented in the national reports and the comparative report are accurate only up to June 2024. Any subsequent changes have not been included and are therefore not reflected in this document.

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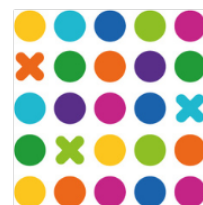
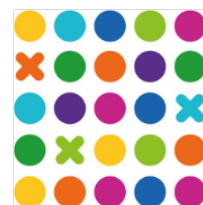


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1. Description of WP3 based on the project report

1.1. Objectives

WP3 intends to map patterns of discrimination in the care sector, focusing on two factors: **gender** and **migrant status**.

The objective of WP3 is to offer a comparative analysis of how anti-discrimination legislation and case law in the six countries member of the Consortium impact on care workers. WP3 will also examine collective bargaining in order to verify the existence of anti-discrimination practices and will study in a comparative perspective the contribution of equality bodies at the national level in the care sector.

Through case law and dialogue with equality bodies, the investigation of national contexts will be conducted in the light of EU anti-discrimination legislation in order to verify gaps in the implementation of EU relevant legislation.

1.2. Description of work, lead partner and role of participants

UdG is lead partner for WP3 and will conduct work in Tasks 3.1–3.3, with specific responsibility for Task 3.2 and the comparative analysis. Academic partners (UNIFI, UNI Lund, EUV, RU, UdB, UdS) from the six countries involved in the project will conduct work in Tasks 3.1 and 3.3. EFFE and EFSI will be more actively engaged in Task 3.3.

WP3 is focused on mapping and addressing discrimination in the care sector, on two grounds, gender and migratory status and, in particular, to investigate substantive issues such as: types of employment contracts, wage remuneration (recognition of the principle of equal pay for equal work or work of equal value); staff classification criteria; work-life balance rights for workers in the care sector; health and safety at work in a gender perspective; dismissal regime; social security registration, access to social security measures, in particular with regards to unemployment benefits and retirement regime; rights of migrant workers in the care sector in comparison to other sectors (e.g., in terms of renewal of work permits or family reunification); the intersectionality between gender and nationality as a driver for inequalities in the care sector.

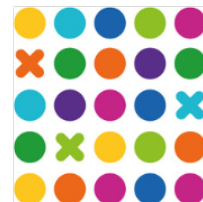
The analysis of these issues will provide relevant structural variables needed to conduct the activities of Task 4.1 in WP4.

The main methodology to be used in WP3 is socio-legal research methodology in a comparative and EU/international perspective.

- Task 3.1 Data collection and research and analysis in various national contexts within the EU (M03-M08)

Socio-legal analysis of existing statistics and data concerning discrimination in the care sector.

Legal analysis of antidiscrimination legislation and case law at the national level referring to care sector; legal analysis of collective bargaining agreements in the care sector in order to detect measures to contrast discrimination; investigation of the role played by equality bodies in the care sector through review of legislation,



practices and consultation to gather information on the sector (D3.1). Partners will circulate internally a first draft of a report - "Discrimination Map" (DM) - on discrimination and on the role of equality bodies in the care sector from six EU Member States (France, Germany, Italy, Poland, Spain, Sweden), including the interplay between national and EU/international law and policy to allow the WP leader to proceed with Task 3.2.

- Task 3.2 Data collection and research and analysis in a comparative and EU/international context (M08-M13)

Legal analysis of relevant antidiscrimination provisions and case law at EU/international level to assess the contribution of such body of legislation and jurisprudence in tackling discrimination in the care sector.

Comparative analysis of information collected at national level by the six EU Member States (France, Germany, Italy, Poland, Spain, and Sweden - Task 3.1) also to highlight potential gaps in implementing EU legislation at the national level (D3.1).

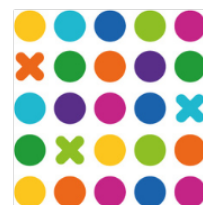
- Task 3.3 Dialogue with stakeholders aimed at research dissemination, exchange of best practices, and policy development (M14-M16)

Each national partner will organise a seminar at the national level with national stakeholders to discuss findings of the research activities conducted both in WP2 and in WP3. The leaders of WP2 and WP3, thanks to the organisational support of TOUR4EU, will organise a seminar at EU level involving all partners and representatives of stakeholders (trade unions, families' and employers reps, civil society organisations, governments, EU/international organisations: approximately 50 participants) collaboration with WP8 for the promotion on social media (D3.2).

- Task 3.4 Definition of final draft of national and comparative reports (M16-M18)

Further consultation with stakeholders, academic law partners will revise national and comparative reports in order to complete the final draft (D3.3).

The purpose of the questionnaire in this document is to provide information for conducting the tasks 3.1 and 3.2.



2. Explanatory note on of the concepts that will be used in the questionnaire

2.1. Notion of discrimination (and harassment)

Please consider that in this concept we include the notions of direct discrimination, indirect discrimination, and harassment (including sexual harassment).

These concepts are based on European Union Directives. In general terms, direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of gender, race or ethnic origin, religion, or belief. On the other hand, Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin, gender, religion or belief at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (as you have seen, motives related to gender or to characters that migrants may have - race or ethnicity or religion- are chosen).

The concept of harassment is related with an unwanted conduct related to the sex, or ethnic origin, or religion [...], of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment; or in case of sexual harassment, where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person.

2.2. Notion of Equality Bodies (or entities for the promotion of equal treatment)

This notion refers to entities that are entrusted with a range of powers (amicable settlement (e.g., mediation or conciliation), litigation, investigations, binding decision-making), depending on the State concerned. These powers, when combined, can sometimes imply a different role: impartiality for some of the powers, and partiality for others (when the equality body sides with the victim).

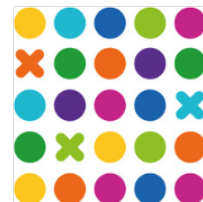
For instance, in the area of discrimination on the grounds of ethnic origin or race, the legal basis of equality bodies is to be found in *Art. 13 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*

This article states that:

BODIES FOR THE PROMOTION OF EQUAL TREATMENT

Article 13

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.



2. Member States shall ensure that the competences of these bodies include:

- without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, - conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.

2.3. Notion of Undeclared work (UDW)

It is a general and all-inclusive concept to define any paid activities performed by any worker (national or non-national, documented or undocumented) that are lawful as regards their nature but not declared to public authorities, taking account of differences in the regulatory systems of the Member States.

Within the general notion of “undeclared work” other, more detailed, notions can be identified:

Under-declared employment: when formal employers pursue the illegal practice of reducing their tax and social security payments, and therefore labour costs, by under-declaring the remuneration of employees. This occurs when employers pay their formal employees two salaries: an official declared salary and an additional undeclared (‘envelope’) wage which is hidden from the authorities for tax and social security purposes. Alternatively, an employer can under-declare the number of hours an employee works, such as to evade paying the minimum wage.

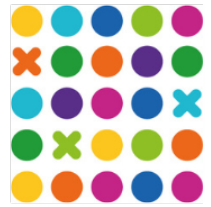
Envelope wages: often used in the context of under-declared employment, an envelope wage is a cash-in-hand wage paid by a formal employer to a formal employee in addition to their official declared salary, to reduce their tax and social security payments and therefore labour costs. It arises from an agreement between the employer and employee, and additional conditions may be attached to its payment, which are not in the formal written contract or terms of employment.

Undeclared self-employment: paid activity conducted by the self-employed where income is not declared for the purpose of evading either tax and/or social insurance contributions owed. The self-employed may not declare either some or all their income.

Bogus self-employment: often referred to as false self-employment or dependent self-employment, this is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are de facto dependent employment. National legislation and/or court decisions determine this status. This employment status is used to circumvent tax and/or social insurance liabilities, or employers’ responsibilities.

2.4. Notion of Informal economy

Covers all economic activities that are – in law or in practice – not covered or insufficiently covered by formal arrangements (e.g., unlawful temporary agencies; cooperatives not formally established as legal entities; etc.).

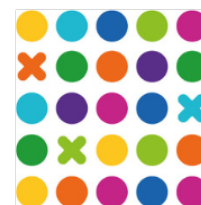


2.5. Undocumented migrants (or “irregular migrants”):

A non-national (or a third-country national) who enters or stays in a country without the appropriate documentation. Migrants can find themselves as undocumented in one of the following two ways.

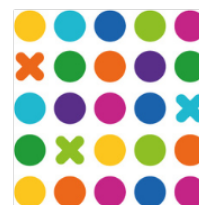
First, they have documentation that acts as proof of identity, but they do not have documentation that proves their right to enter and stay in the country, or such documentation is fraudulent or no longer valid. In this meaning, this expression is used as a synonym of “irregular migrant” (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ((adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, Art. 5(b)).

Secondly, they do not hold any form of documentation that proves their identity, nor do they have any other proof of their right to enter and stay in the country. Undocumented migrants who lack any identity document usually experience more difficulties in accessing services, in obtaining permits to reside or work, or in returning to their countries of origin. Undocumented migrants may even, in the long term, be at risk of statelessness if it becomes impossible for them to obtain any evidence of their nationality.

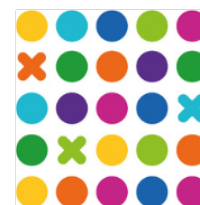


3. Questionnaire to be completed by the members of the project consortium.

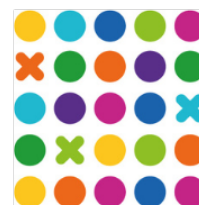
Sphere of analysis	Questionnaire
GENDER	<p>1. Provide a brief overview of your national legislation on gender discrimination in the field of employment.</p> <p>2. Make a brief social commentary on the presence of women workers in the care sector.</p>
	<p>3. Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?</p> <p>- In the case of databases, do these present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?</p> <p>- Are these databases public and freely accessible to everyone, or only to researchers?</p> <p>- If databases exist, please provide links and/or how to request them.</p> <p>4. Describe or comment on what the statistics or databases you have found show in relation to the participation of male and female workers in the care sector workforce, either taking this sector as a whole, or in relation to each of the occupations that make up this sector.</p>
	<p>5. If legislation exists on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of the workers, or whether it makes any reference to the presence of women in this sector or these occupations (e.g. acknowledging the majority presence of women in the sector, or granting them any special attention in terms of rights, etc.). If special reference is made to women, please specify.</p>



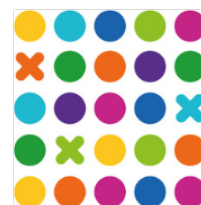
	<p>6. Does the legislation or, if applicable, collective agreements provide for occupational classification system in care sector? If so, do you consider any gender bias in this occupational classification (if so, please explain).</p> <p>7. Have there been any legal disputes or conflicts publicised by the media in your country over “job classification” in the care sector and gender discrimination? If so, please summarise or comment on the case(s).</p>
	<p>8. Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain)</p> <p>9. Have there been any legal disputes or conflicts publicised by the media in your country over “employment contracts” in the care sector and gender discrimination? If so, please summarise or comment on the case(s).</p>
	<p>10. Do the legislation or, if applicable, collective bargaining agreements make any provision for wages in each of the care sector occupations, differentiating them in terms of their structure or amount from workers in the general or other production sectors?</p> <p>11. Have there been any legal disputes or conflicts publicised by the media in your country over “wages” in the care sector and gender discrimination?</p>
	<p>12. Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?</p> <ul style="list-style-type: none"> - Do the legislation or, if applicable, collective agreements make any reference to reconciling work and family life “for women workers” in the care sector in general or in each care sector job? If so, please summarise or comment. - Have there been any court rulings on this matter? If so, please summarise or comment. - Do the legislation or, if applicable, collective agreements, provide for different provisions in terms of work-life balance for staff in each of these care sector occupations compared to ordinary workers or workers in other production sectors? If so, please summarise or comment on the case(s). - Have there been any court rulings on differences in conciliation between the care sector and other sectors? If so, please summarise or comment on the case(s).



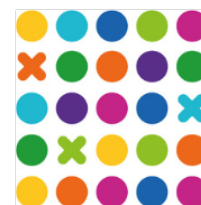
	<p>13. Have statistics or databases been published in your country on occupational accidents or illnesses arising from the work of personnel in the care sector as a whole or in each of the care sector jobs according to the workers' gender?</p> <p>- If so, do the databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?</p> <p>- Are these databases public and freely accessible to everyone, or only to researchers?</p> <p>- If published databases exist, please provide links and/or how to request them.</p> <p>14. Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.</p>
	<p>15. Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.</p> <p>16. Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.</p>
	<p>17. Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.</p> <p>18. Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.</p>
	<p>19. Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).</p> <p>20. Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sector? If so, please summarise or comment on the case(s).</p>



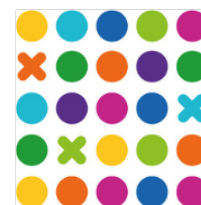
	<p>21. If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.</p>
	<p>22. Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.</p> <p>To answer this issue, please take into account the UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, n. 100; Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, n. 111; the Workers with Family Responsibilities Convention, No. 156; the Maternity Protection Convention, n. 183; and the Domestic Workers Convention, n. 189.</p> <p>At the European level, remember mainly Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 2010/41/EU on the application of the principle of equal treatment between men and women who are self-employed.</p>
<p>MIGRANT STATUS</p>	<p style="text-align: center;">Attention – Authors’ note:</p> <p>A) General information on migrants in the care sector is requested in this section; broadly speaking, these are non-EU third country nationals (where appropriate, EU nationals will be included). In some questions, nationals of the countries covered by the report will also be included.</p> <p>B) Some questions refer to undocumented migrants (or irregular migrants): See notions defined above. In general terms undocumented migrants are those who do not have a residence and work permit in the host country, while documented migrants (or regular migrants) have been granted a residence permit.</p> <p>C) Some of the questions refer to legislation on foreigners or immigration: by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.</p>



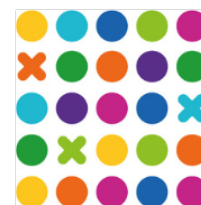
	<p>D) Some questions may be answered not only by referring to the specific legislation on aliens, but also to other legislation, such as, for example, the legislation established by each country in the field of human rights or labour rights.</p>
	<p>1. Provide a brief overview of your national legislation on anti-discrimination on the grounds of race or ethnic origin, religion, or belief, in the field of employment or occupation</p> <p>2. Also provide a brief overview of the legislation concerning the rights and duties of “foreigners”: EU third country nationals (by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.) In terms of national legislation on foreigners or migrants, please make a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.</p> <p>3. Make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in employment in your country.</p> <p>4. Finally, make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in the care sector in your country.</p>
<p>This question includes both EU nationals and third-country nationals in the EU as the object of analysis.</p>	<p>5. Have statistics or databases been published in your country on foreigners or immigrants who are part of the personnel providing services in each of these care sector occupations?</p> <ul style="list-style-type: none"> - If yes, which care sector occupations are they most employed in? - If there are statistics or databases, do these establish the “nationality” or origin of foreign personnel providing services in these sectors? What nationalities are predominant? - Do databases also distinguish by gender? If yes, please describe what the statistics show. - Do databases exist for each of the occupations, with a distinction between labour migrants, refugees, and other categories of foreigners or migrants? -Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)? - these databases public and freely accessible to everyone, or only to researchers?



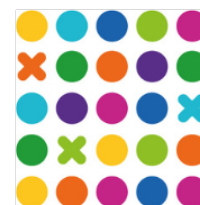
	<p>- If published databases exist, please provide links and/or how to request them.</p> <p>6. Describe any statistics or databases you have encountered:</p> <p>-Describe what these statistics show in relation to the nationality of the person working in the care sector and, if applicable, in relation to the gender by nationality of these staff.</p> <p>-If you have found statistics or databases, please describe whether these show a distinction between general migrants, refugees, or other categories of migrants?</p>
<p>This question concerns both nationals of the country, EU nationals and EU third country nationals.</p>	<p>7. Have statistics or databases been published on people working in the care sector, whether nationals of your country, EU, or non-EU nationals, differentiating them by race or ethnic origin, religion, or language?</p> <p>- Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?</p> <p>- Are these databases public and freely accessible to everyone, or only to researchers?</p> <p>- If published databases exist, please provide links and/or how to request them.</p> <p>8. Describe what statistics or databases you have found, i.e., summarise and comment on the data found on participation in the care sector by workers on the basis of race or ethnicity, religion, and language.</p> <p>9. Have there been any legal disputes or conflicts publicised by the media about the race or ethnicity, religion or language of staff providing services in the care sector? If so, please describe the situation and the solutions provided.</p>
<p>(This question refers to third country nationals of the EU)</p>	<p>10. Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?</p> <p>- Do databases exist for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?</p> <p>- Do you know whether these statistics or databases distinguish between work migrants, refugees, or other categories of foreigners or migrants?</p> <p>- Do these databases also distinguish by gender?</p>



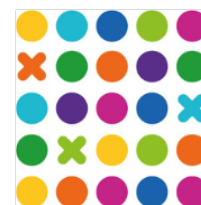
	<ul style="list-style-type: none"> - Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)? - Are these databases public and freely accessible to everyone, or only to researchers? - If published databases exist, please provide links and/or how to request them. <p>11. Describe or comment on any statistics or databases you have found regarding the participation of migrant workers in the care sector in either the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them.</p>
<p>(This question refers to third country nationals of the EU)</p>	<p>12. Have any statistics or databases been published in your country on the possible presence of “undocumented” or “irregular” immigrants (without authorisation to reside or work in your country) who may be providing services in care occupations?</p> <ul style="list-style-type: none"> - Do these databases also distinguish by gender? - Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)? - Are these databases public and freely accessible to everyone, or only to researchers? - If published databases exist, please provide links and/or how to request them. - Comment on any statistics or databases you have found regarding the participation of irregular or regular migrants in the care sector. Where statistics have been found which differentiate by gender, please comment on the data.
<p>(This question refers to third country nationals of the EU)</p>	<p>13. Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If yes, please describe them. Also indicate if this sector is understaffed (Are there staff shortages in the sector?).</p>
<p>(This question refers to third country nationals of the EU)</p>	<p>14. Describe whether migrants with residence and work authorisation have the same labour rights as other “national” workers in the care sector.</p> <p>Take into account the provisions of European law, according to which third-country national workers enjoy equal treatment with workers who are nationals</p>



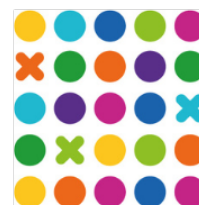
	of the Member State in working conditions or Social Security (art. 12 of Directive 2011/98/EU, of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State). Also, if your country has ratified them, ILO Conventions No. 97 (Revised) on migrant workers, 1949; and Convention No. 143 on migrant workers, 197
(This question refers to third country nationals of the EU)	<p>15. Do the “labour” legislation (i.e., on working conditions) or, if applicable, collective agreements in your country, make any reference to the migrant or foreigner status of the person working in each of these care sector occupations?</p> <p>16. Have there been any court rulings on this matter? If so, please summarise or comment on them.</p>
(This question refers to third country nationals of the EU)	<p>17. Does the legislation on foreigners or immigration in your country (e.g., on residence or work permits, family reunification, permit renewal, etc.) specifically mention people working in one of these care sector occupations? Have there been any court rulings on this matter? If so, please summarise or comment on them.</p>
(This question refers to third country nationals of the EU)	<p>18. Do migrants with the corresponding residency permit and authorisation to work in the care sector (in each of these occupations) have access to the same rights as other workers in other production sectors?</p> <p>19. Have there been any court rulings on this matter? If so, please summarise or comment on them.</p>
(This question refers to third country nationals of the EU)	<p>20. Have there been any collective bargaining provisions to favour the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnic origin, etc.?</p>
(This question refers third country nationals of the EU)	<p>21. Do you know if there have been any conflicts publicised by media between migrant workers of the care sector and the people they care for in terms of non-discrimination on the basis of ethnicity, religion, or nationality? If so, please explain.</p>



<p>(This question refers third country nationals of the EU)</p>	<p>22. Have any statistics or databases been published in your country on migrant workers' salaries in the care sector?</p> <ul style="list-style-type: none"> - Have any statistics or databases been published in your country on the occupational classification of migrant workers in the care sector? - Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)? - Are these databases public and freely accessible to everyone, or only to researchers? - If published databases exist, please provide links and/or how to request them <p>23. If you have found statistics or databases, please describe what they show in relation to the job classification and wages of migrant workers in the care sector.</p>
<p>(This question refers third country nationals of the EU)</p>	<p>24. Are migrants in an undocumented situation (without authorisation to reside or work) entitled to employment rights when working in the care sector in your country? Please outline your views on this issue.</p> <p>25. Have there been any court rulings on this matter? If so, please summarise or comment on them.</p>
<p>(This question refers third country nationals of the EU)</p>	<p>26. With the onset of the Covid-19 pandemic, measures were adopted by the State to allow “undocumented” foreign personnel to obtain residence or work permit, both structural and extraordinary?</p> <p>27. From the onset of the Covid-19 pandemic to the present day, have measures been taken by the State to allow “undocumented” foreign personnel providing services “in the care sector” to obtain residence or work permits?</p>
<p>(This question refers third country nationals of the EU)</p>	<p>28. If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of migrant workers in the care sector? If yes, please describe this report.</p>
<p>This question concerns both nationals of the country, EU nationals and</p>	<p>29. If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action</p>



<p>EU third country nationals.</p>	<p>or produced any report in relation to the rights of people, whatever their nationality, working in the care sector? If yes, please describe this report.</p>
<p>This question concerns both nationals of the country, EU nationals and EU third country nationals.</p>	<p>30. Comment whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Comment whether the worker's employer (including migrant workers) can be held responsible for such situations.</p> <p>To answer this issue, please consider the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; or Convention (Council of Europe) on preventing and combating violence against women and domestic violence, adopted on 7 April 2011 (Istanbul Convention)</p>
<p>(This question refers third country nationals of the EU)</p>	<p>31. Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with regard to undocumented or irregular migrant workers (without residence authorisation). Comment on whether in these cases migrants in an irregular situation can denounce or have access to the courts in cases of exploitation and labour exploitation. Also, whether there are cases in the legislation in which they can obtain a residence authorisation.</p> <p>To answer this issue, please take into account the Directive 2009/52/ of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.</p>



4. Gender

1. Please provide a brief description of your national legislation on gender discrimination in employment.

In the Spanish State, the legislation to guarantee a fairer egalitarian society is found in the Magna Carta of the rights of Spaniards, specifically in the constitution. The most important precept on which the conception of non-discrimination rests is found in article 14 of the same constitution, which reads as follows: "Spaniards are equal before the law, without any discrimination on grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."

Thus, not only do we find that the principle of non-discrimination is within the norm with the highest rank of law of the State, but it also makes it clear that the State and consequently the government of the State must guarantee legislation in accordance with this principle to guarantee its implementation in society.

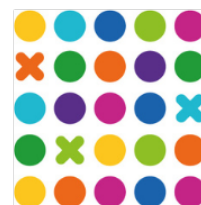
Based on the obligation on the part of the state to carry out this principle, state legislation has been developed in this regard. In relation to labour matters, the most important legislation is the Workers' Statute Act, article 4 of which states that workers have the right not to be discriminated against directly or indirectly in employment or, once employed, on grounds of sex, including the unfavourable treatment given to women or men for the exercise of the rights to conciliate or co-responsibility for family and work life.

On the other hand, also Royal Decree-Law 6/2019, of March 1, 2019, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation. This royal decree modifies different legal precepts, including an Organic Law, specifically Law 3/2007, of 22 March, for effective equality between men and women. This reform has boosted aspects such as the implementation of an equality plan within companies; anti-discrimination measures, including pay discrimination; birth leave for the birth of a child, as a measure towards co-responsibility in the upbringing or the attribution of new rights in the Workers' Statute Law in matters of conciliation.

Finally, the report of Spain states that Spanish law has developed the principle of equal treatment in various legal fields, mainly labor and criminal law. The main labor legislation is Royal Legislative Decree 2/2015 of 23 October 2015, approving the consolidated text of the Workers' Statute, which establishes that discriminatory legislative provisions, clauses of collective agreements, individual agreements and unilateral managerial decisions are considered as null and void, and discriminatory acts by employers are specified as very serious offences. Under the criminal law, racism or xenophobia is an aggravating circumstance in the commission of a crime, and several provisions specify racist offences and consider serious discrimination in employment as an offence¹. There are also anti-discriminatory measures in the administrative, civil and educational spheres. The transposition of Directives 2000/43 and 2000/78 was made in Chapter III of Title II of Law 62/2003,² on fiscal, administrative and social measures. Articles 27-28 contain a general transposition of the definitions of direct and indirect discrimination, harassment and instructions to discriminate. Law 62/2003 was amended in 2014 in relation to the

¹ Camas Roda, Ferran.: Country Report of Non Discrimination- Spain. (European network of legal experts in gender equality and non-discrimination): <https://www.equalitylaw.eu/downloads/5976-spain-country-report-non-discrimination-2023>

² Law 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures (*Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y de orden social*) Official State Bulletin (*Boletín Oficial del Estado, BOE*), 31 December 2003.



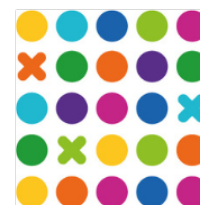
independent body, the Council for the Elimination of Racial or Ethnic Discrimination.³ Following Law 62/2003, EU directives have been implemented in various other laws and have influenced policy changes in Spain on anti-discrimination legislation for different grounds and in different fields. In any case, the main law in this area is the Law No. 15/2022 Law 15/2022, of July 12, 2022, comprehensive for equal treatment and non-discrimination. As established in article 2 of Law 15/2022, what this new law does is regulate the rights and obligations of natural or legal persons, public or private, establish principles for the action of the public authorities and provide for measures aimed at preventing, eliminating, and correcting all forms of discrimination, direct or indirect, in the public and private sectors. The subjective scope of application of the law is established in art. 2 of Law 15/2022. On the one hand, it recognizes the right of everyone to equal treatment and non-discrimination regardless of their nationality, whether they are minors or adults, or whether or not they enjoy legal residence. This is an expansive clause on the holders of the right, as it would include immigrants in an irregular situation (without a legal residence permit), who will subsequently be subject to treatment. In any case, after this recognition, the first paragraph of article 2 establishes that "no one may be discriminated against on the basis of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, disease or health condition, HIV status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance." As can be seen from the reading of this provision, the grounds of discrimination prohibited by Article 14 of the Constitution are now added in Article 2.1 of Law 15/2022 to the grounds of "disease or health condition", "HIV status and/or genetic predisposition to suffer pathologies and disorders", "sexual identity", "gender expression", "language" and "socio-economic status".

In any case, the Spanish Report provides the adoption by the Spanish Government of the *State Strategy for a new model of care in the community - A process of deinstitutionalisation (2024-2030)*⁴. This is a political strategy promoted by the Spanish Government in the field of care for the coming years. It should be mentioned that one of the principles of this Strategy is respect for dignity and good treatment, which implies avoiding any form of abuse, discrimination or restriction. The aim is to create care and support environments that are safe, respectful, nurturing and restorative for people with support and care needs. To achieve this, the Strategy assumes the need for a gender perspective in care, i.e. an approach that identifies the differences, inequalities and discriminations that exist between women and men in terms of access, use and control of social resources and services and deploys concrete actions and measures to break down these existing barriers.

It also assumes the perspective of intersectionality, which is understood as the situation in which the same person can suffer discrimination as a consequence of multiple social categories that converge simultaneously, such as gender, socio-economic class, disability, place of origin or migrant status, among other factors. Adopting an intersectional approach helps to articulate measures taking into account factors that impact on people's lives and the exercise of their rights in different ways, i.e. belonging to a vulnerable population group that faces other vulnerabilities at the same time, such as gender, disability, LGBTIQ+ status, socio-economic class, educational level, being born in another country, among other factors that can increase vulnerability and discrimination.

³ Law 15/2014 of 16 September 2014 on the rationalisation of the public sector and other measures of administrative reform (*Ley 15/2014, de 16 de septiembre, de racionalización del Sector público y otras medidas de reforma administrativa*), BOE, 17 September 2014, <https://www.boe.es/boe/dias/2014/09/17/pdfs/BOE-A-2014-9467.pdf>.

⁴ Gobierno de España: Estrategia para un nuevo modelo de cuidados en la comunidad: un proceso de desinstitucionalización (2024-2030) <https://estrategiadesinstitucionalizacion.gob.es/>



2. Make a brief social comment on the presence of women workers in the care sector.

Historically, from the modern age onwards, work was differentiated into two main areas, productive work (dedicated to the production of material goods, characterized by being located outside the home) and reproductive work (within the home, dedicated to the maintenance of the home and the care of people). In this great dichotomy of division of labour, the role of women was anchored to reproductive work, while that of men was relegated to productive work outside the home. In today's contemporary society, however, many factors have changed that have transformed and determine care work today.

On the one hand, it must be said that regarding the different types of care (paid or unpaid) that can be included within the care sector, it is worth mentioning two aspects:

1. On the one hand, in relation to carers of people in a situation of dependency, the *XXIII Opinion of the Dependency Observatory, of the State Association of Directors and Managers in Social Services*⁵, published in April 2023, states that "The profile of family carer in terms of age, sex and kinship is defined as follows. 74% are women and 26% are men. 28.4% were 16-49 years old, 46.8% were 50-66, 17.8% were 67-79, 6.1% were 80-89, and 0.9% were 90 years of age or older. 34% are children, 24.6% mothers, 19.7% spouse, 4.7% sibling, 3.3% father, 1.8% son-in-law/daughter-in-law, 1.7% grandchildren, 1.4% partners and 8.8% other people."

Subsequently, the opinion develops this key by emphasizing the result of these percentages that the data confirm annually, with hardly any variation, that the role of caregiver falls mostly on women⁶.

Of great interest is the statement on page 42 of the opinion that many women become carers not by free choice, but by economic and social imposition; also, that the potential (highly feminized) workforce that is being diverted to care without coverage or consideration is enormous; and finally, that men do not equitably assume the role of caregivers, which results in a discriminatory assignment of care functions, feeding back into inequality.

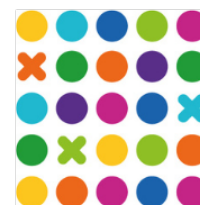
2. On the other hand, in relation to family domestic work, according to data from the Ministry of Labour, in 2019 (data will be discussed later, as of 2022) the number of 402,500 people affiliated to the Special System for Domestic Employees was reached, of which 18,000 are men and 384,500 are women⁷. These figures allow us to visualize how this social protection system is intensely feminized, whether we are talking about Spanish nationals or foreigners. In this regard, if we review the statistics corresponding to foreign workers affiliated to Social Security who are registered as workers⁸, it turns out that out of a total of 170,444 affiliated to the Special Family Home System, 10,251 are men and 160,179 are women.

⁵ *XXIII Opinion of the Dependency Observatory, of the State Association of Directors and Managers in Social Services* <https://directoressociales.com/xxiii-dictamen-del-observatorio-de-la-dependencia/>

⁶ Ferran Camas Roda: El diario de Ferran Camas. Blog sobre Cuidemos a las personas que cuidan, "Para leer sobre la dependencia: el XXIII Dictamen del Observatorio Estatal de la Dependencia": <https://www.ferrancamass.com/cuidemos-a-las-personas-que-cuidan/dependencia-informe/ia576>

⁷ SEE: MINISTRY OF INCLUSION, SOCIAL SECURITY AND MIGRATION: AFILIACIÓN DE TRABAJADORES AL SISTEMA DE SEGURIDAD SOCIAL-SOCIAL SECURITY AFFILIATIONS
[HTTP://WWW.MITES.GOB.ES/FICHEROS/MINISTERIO/ESTADISTICAS/ANUARIOS/2019/AFI/AFI.PDF](http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/AFI/AFI.PDF)
<http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/AFI/AFI.pdf>

⁸ See MINISTRY OF INCLUSION, SOCIAL SECURITY AND MIGRATION: TRABAJADORES EXTRANJEROS AFILIADOS A LA SEGURIDAD SOCIAL EN ALTA LABORAL - SOCIAL SECURITY AFFILIATIONS
[HTTP://WWW.MITES.GOB.ES/FICHEROS/MINISTERIO/ESTADISTICAS/ANUARIOS/2019/AEX/AEX.PDF](http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/AEX/AEX.PDF)
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As can be seen, the work of domestic workers confirms the increasing presence of migrant workers in the context of a process of progressive replacement of native women, as will be demonstrated later with the data on this subject recorded to date. This, by the way, has had positive effects on the latter, since the fact that many Spanish women were able to delegate, in terms of work, the tasks of domestic service to other personnel, especially foreigners, has allowed them to access the labour market and thus increase their activity rate in the labour market⁹.

The fact that we find ourselves in a profoundly globalized society, with a large movement of people, greater than at any other time in history, which favours mobility between the north and the south. This new paradigm has meant that most people who have migrated from south to north have taken on many jobs that were not well regarded either economically or socially in Western society. As M. Ángeles Durán says, care work generates powerful migratory flows¹⁰.

Thus, we find that today, most people who work in the care of people (especially the elderly) are migrant women, many of them without training, without higher education or economic possibilities.

3. Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?

- In the case of databases, do they present aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?
- If databases exist, provide links and/or how to request them.

A search for statistics yielded the following results:

We include the main statistical data on the care sector, although it must be said that the data refer to different situations or are scattered, for example, data on people who care for others in the family sphere; people employed to care for others in the dependency sector (i.e. who are paid through State aid or by the family that receives recognition of a situation of dependency); or above all in the domestic sector. In fact, the best statistics can be found in this sector, where a clear delimitation by gender and even by the migrant's status is reflected. In all cases, access is free of charge.

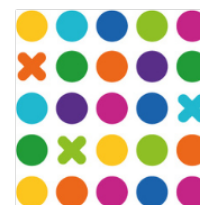
1. IMSERSO provides data related to non-professional carers of dependent people (non-professional carers), differentiating them on the basis of gender¹¹. In this regard, as of May 31, 2023, 71,745 non-professional caregivers were detected in Spain, of which 88.50% were women, and 62.40% were 51 years of age or older¹²

⁹ See the monograph included in the Defensor del Pueblo. Informe annual 2019 (Ombudsman's 2019 Annual REPORT): The contribution of immigration to the Spanish economy: https://www.defensordelpueblo.es/wp-content/uploads/2020/05/II_Estudios_documentos_de_trabajo_2019.pdf

¹⁰ María Ángeles Durán: La riqueza invisible del cuidado (*The Invisible Wealth of Care*), Universitat de València, 2020

¹¹ IMSERSO: <https://imserso.es/el-imserso/documentacion/estadisticas/sistema-autonomia-atencion-dependencia-saad/estadisticas-mensual/historico-datos-cuidadores-no-profesionales>

¹² IMSERSO: <https://imserso.es/documents/20123/3515245/ceuidadores20230531.pdf/bcada0b2-38f8-d227-89ff-14fdd53fdb9>



2. Regarding the INE, there is the statistic: Total number of people (aged 18 and over). Care activities and household chores¹³. It should be mentioned that according to this data the percentage of women, aged 18 and over, who in 2016 spend at least several days a week caring for or raising children, cooking or doing housework, caring for family members, neighbours or friends with disabilities is higher in all cases than the percentage of men aged 18 and over who perform these same tasks. The percentage of those who dedicate at least several days a week to the care or education of grandchildren is very similar, 32% of women and 33% of men.

Also, it should be noted that the number of hours per week that women dedicate to child care or education, cooking or housework, and caring for sick or disabled family members, friends, or neighbours is also higher. On the other hand, the number of hours per week dedicated to the care or education of grandchildren is equal (16 hours per week) for men and women aged 18 and over.

There is the data statics on the study of INE: *43.7% of children under the age of three attend child care centres 54.6% pay these services in full, while 22.2% attend free of charge 32.9% of households that use health services do not pay for them. Three out of 10 households with dependent persons who would need to receive home care are not covered for it*¹⁴

According to this study, in more than three million Spanish households (16.4% of the total) there lived at least one dependent person in 2016. In 14.4% of those households, that person received care at home. By income level, among the households with dependent persons, 23.2% of households with higher income level had home care services, as compared with 9.1% in households with lower income level.

Also, 36.6% of households with dependent persons that receive home care services paid them with "difficulty" or with "great difficulty". In turn, 21.0% had this service free of charge. And we can read in the statistics that three out of 10 households with dependent persons who needed to receive home care (30.8%) were not covered for it. The main reason was that they could not afford it.

3. Statistics are published on one of the occupations in the care sector, namely, the special employment relationship for the provision of services for the family home. These statistics are derived from the Ministry of Labour¹⁵.

According with the comments of the Government of these data statistics¹⁶, the Social Security registered 21,073,339 affiliates in April 2024. In the month of April, the sector with the greatest growth in the General Social Security Scheme (which includes all salaried workers) was the Hotel and Catering sector, with 91,913 more members, 6.5%. It is followed by Administrative Activities and Auxiliary Services (15,074). In year-on-year terms, the growth in Education stands out, with 153,891 more enrolled (13.8%). There were also increases in Transport and Storage (4.35%), Information and Communications (4.1%), and Professional, Scientific and Technical Activities (4%).

¹³

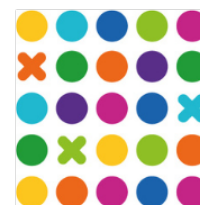
INE:

https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259950772779&p=%5C&pagename=ProductosYServicios%2FPYSLayout¶m1=PYSDetalle¶m3=1259924822888

¹⁴ INE : *43.7% of children under the age of three attend child care centres 54.6% pay these services in full, while 22.2% attend free of charge 32.9% of households that use health services do not pay for them. Three out of 10 households with dependent persons who would need to receive home care are not covered for it* : https://www.ine.es/en/prensa/ecv_2016_m_en.pdf

¹⁵ MINISTRY OF LABOUR: MINISTRY OF INCLUSION, SOCIAL SECURITY AND MIGRATION: SOCIAL SECURITY AFFILIATIONS <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10>

¹⁶ La Moncloa: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/Paginas/2024/060524-afiliacion-seguridad-social.aspx#:~:text=La%20afiliaci%C3%B3n%20ha%20sumado%20m%C3%A1s,%20con%2021.101.505%20exactamente.>



Special mention should be made of the group of women: In April, 9,999,282 women were registered as employed, 103,132 more than in March. In fact, most of the employment created in the last month corresponds to women (more than half, 56.5%). In the daily enrolment records, female enrolment has exceeded 10 million from 15 to 29 April. Women now account for 47.4% of all workers, which is the highest level in the series.

4. Describe or comment on what the statistics or databases you have found show in relation to the participation of workers in the care sector workforce, either taking this sector, or in relation to each of the occupations that make up this sector.

If we look at the statistics, we can see that the predominant profile of people engaged in care work is that of an adult woman: specifically, the profile of the person engaged in care work is a woman between the ages of 45 and 64 years old and who usually lives in the same household as the person to whom she provides care.

Thus, we find that according to statistics provided by the Spanish Institute of Statistics (INE), the statistical body recognized throughout the state, 78.9% of caregivers live with the person they care for.

In addition, we observe how the family structure is a basic pillar in the work and the provision of care, a structure that usually falls on women. This family model is what we can call the Mediterranean welfare model, since there is a great weight in the family structure, similar to the models in Italy and Greece.

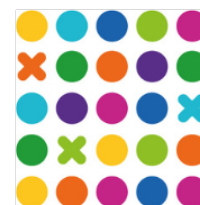
Thus, in Spain we find that 85% of carers are women with an average age of 52 years and primary education. And, if we focus on the family structure, in 43% of cases they are daughters, in 22% wives and in last place in 7.5% they are daughters-in-law.

In reference to what we could define as a working day, most dependent people need to be cared for about 8 hours a day or more. Thus, we see how the care of the caregiver is violated or not considered, as he or she is subjected to a lot of stress and is more likely to develop a mental illness. (Mental Health Statistics).

About family home service workers, the first thing to do is to confirm that the family home service sector is highly feminized. It must be confirmed, with data from the Ministry of Labour and Social Economy (MITES), which includes the number of affiliates to the Special System for Domestic Employees, included in the General Workers' Regime. This Special System includes those workers who are subject to the special employment relationship of the family home service regulated by *Royal Decree 1620/2011*, excluding in any case personnel who provide domestic services not hired directly by the owners of the family home, but through companies (see Seventeenth Additional Provision of the *Law 27/2011, of 1 August, on the updating, adaptation, and modernisation of the Social Security system*). With this premise, according to data from the Ministry of Social Security and Migration of the Government of Spain, in August 2022, the latest data published at the time of this study and squaring the figures that there were 373,101 people affiliated to the Special System for Domestic Employees, of which, to balance the numbers, 16,963 were men, and 356,138 were women¹⁷.

5. If there is legislation or, where appropriate, collective agreements, on the care sector in general, or on the

¹⁷ MINISTRY OF INCLUSION, SOCIAL SECURITY AND MIGRATION: SOCIAL SECURITY: AFILIACIONES EN ALTA LABORAL: [HTTPS://WWW.SEG-SOCIAL.ES/WPS/PORTAL/WSS/INTERNET/ESTADISTICASPRESUPUESTOSESTUDIOS/ESTADISTICAS/EST8/EST10](https://www.seg-social.es/WPS/PORTAL/WSS/INTERNET/ESTADISTICASPRESUPUESTOSESTUDIOS/ESTADISTICAS/EST8/EST10)



occupations that make up the care sector, please describe whether it is gender-neutral in terms of workers, or whether it makes any reference to the presence of women in this sector or in these occupations (e.g. recognising the majority presence of women in the sector, or giving them special attention in terms of rights, etc.). If special reference is made to women, please specify.

Regarding the work of providing services in the family home, it should be noted that Royal Decree-Law 16/2022, of September 6, 2022, for the improvement of the working and Social Security conditions of domestic workers, in its Explanatory Memorandum, expresses "the manifest, incontrovertible and absolute feminization of the Special System of employment in the family home, accredited by the TGSS itself with data from May 2021 (95.53% are women, and 4.72% of RGSS workers are in this Special System, compared to 0.21% of men)", as a basis for recalling that the Court of Justice of the European Union has recognised that exclusion from unemployment protection entails – in principle – indirect discrimination on grounds of sex contrary to Article 4.1, of Directive 79/7E/EEC, of 19 December 1978. The explanatory memorandum of the law also recalls that since many domestic workers are women, the end of exclusions from social and labour protection is an effective and essential step towards the realization of gender equality in the world of work and in the effective exercise of equal rights and protection of women before the law. Finally, and following the Explanatory Memorandum of the regulation, it states that its objective is to determine among the precepts applicable to domestic workers, those whose difference with respect to the common labour or social order are not justified by reason of the peculiarities of this provision of services, constituting for this group, constituted almost exclusively by women, a difference in treatment or a particular disadvantage that lacks objective and reasonable justification and which, therefore, must be reviewed, corrected and, where appropriate, repealed.

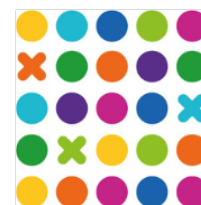
In relation to collective bargaining, to develop this question, we will concentrate on two collective agreements, one applicable throughout the Spanish territory and the other in a part of the territory, Catalonia, which is where this university is located. Specifically, we are going to try to determine the agreements that affect all types of people who can and are in contact with people who need care.

Thus, at the state level we find the *Agreement on care services for dependent people and the development of the promotion of personal autonomy*, applicable throughout the Spanish state. In this agreement, a series of locations are detailed where care work can be carried out, either through homes for the elderly or in personal homes. In this regard, and in accordance with what is specified in the question, there is no mention or special consideration in the collective agreement to refer to the fact that this work has a large part of the mass of women workers. We can deduce that the convention is not taken into account from a global perspective and simply complies with the regulations.

On the other hand, we find that in Catalonia there is a collective agreement to determine the rights of care workers, which is the *Collective Agreement for home care companies*. This agreement specifically regulates the work carried out by people hired through a company (which acts as an intermediary) and provides services in the homes of people who need attention and care. In it, as in the previous one, there is no mention or inclusion of a gender perspective even though the work itself is highly feminized, with all the possible violations of the rights of women workers in the sector that this entails.

6. Do legislation or, where appropriate, collective agreements provide for a system of occupational classification in the care sector? If so, do you consider any gender bias in this occupational classification. (if so, please explain)?

Collective agreements provide for a classification system with respect to the work carried out in any case.



We can start from the *VIII State Framework Agreement on care services for dependent persons and development of the promotion of personal autonomy*¹⁸. Its scope of application are the companies and establishments that exercise their activity in the sector of care for dependent persons and/or development of the promotion of personal autonomy: residences for the elderly, day centres, night centres, sheltered housing, home help service and telecare.

In addition, in the collective bargaining agreement throughout the Spanish territory, not only is there a classification of the function that is carried out, but also where it is carried out: in a home for the elderly, home help, telecare. In short, it does exist, and it presents a classification of care work, but it is based on the professional activity and not on the gender of the person who carries it out.

The collective agreement uses gender-inclusive language.

7. Have there been any legal disputes or conflicts publicized by the media in your country about "job classification" in the care sector and gender discrimination? If so, please summarize or comment on the case(s).

There has been no conflict that has come to light publicly or through any media regarding job classification in care work.

In any case, it is worth mentioning the report "Eva Nasarre, from television icon to dependency activist: "I have no hope that care will improve" (El País).

The report echoes that a famous television presenter from the 80s of the last century, with programs focused on the practice of aerobics and stretching, who currently suffers from a chronic disease (severe rheumatoid arthritis) and has become an activist for the rights of people with dependency and disabilities. In the report, Ms. Nasarre says that "I'm going to repeat it. There is precariousness in the care of people in a situation of dependency. Low salaries for assistants working in care homes and home help, and companies that get richer¹⁹.

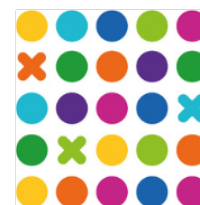
8. Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain)

No specific provisions have been identified on employment contracts in the care sector that are different from contracts in other productive sectors.

It should be remembered that in the field of the family home service, the employment relationship between the worker and the head of the family home is "special", that is, it is governed by specific regulations different from those of the ordinary or common employment regime. In any case, the legal trend has been to unify both types of contract: in particular through the abolition of the non-causal annual temporary contract that was in force in this type of employment relationship until 2022, and the subjection to the rules of the Workers' Statute on

¹⁸ *VIII State Framework Agreement on care services for dependent persons and development of the promotion of personal autonomy* : https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-13742

¹⁹ EL PAÍS: <https://elpais.com/gente/2023-12-29/eva-nasarre-de-icno-de-la-television-a-activista-por-la-dependencia-no-tengo-ninguna-esperanza-en-que-los-cuidados-mejoren.html>



temporary contracts.

In any case, the Spanish Government's initiatives to benefit hiring in two types of cases should be noted in the Spanish report: firstly, when hiring people in the "family context"; and secondly, when hiring carers in the context of large families. The type of benefit ordered by the Spanish Government is to grant bonuses to the employer who hires, i.e. to reduce the payment of the tax or contribution that the employer must make to the Social Security for the hiring of a person in the family environment, or who is a carer. When it comes to hiring a carer within the framework of large families, the law states that carers are considered to be "natural persons in the service of the family home in which the object of their special employment relationship is constituted by services or activities provided in the home of large families that are officially recognised as such under said law, and which consist exclusively of the care or attention of the members of said large family or of those who live in the home of the same, The latter may be verified by means of the corresponding inspection" (see the Sixth Final Provision of *Royal Decree-Law 2/2024, of 21 May, adopting urgent measures to simplify and improve the level of unemployment protection assistance, and to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on reconciling family and working life for parents and carers and repealing Council Directive 2010/18/EU*).

9. Have there been any legal disputes or conflicts publicized by the media in your country about "employment contracts" in the care sector and gender discrimination? If so, please summarize or comment on the case(s).

No such conflicts have been detected.

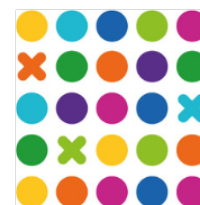
10. Do the legislation or, as the case may be, the collective agreements provide for wages in each of the occupations in the care sector, differentiating them according to their structure or amount from those of workers in the general productive sector or in other productive sectors?

In Spain, it should be borne in mind that the Law on the Workers' Statute establishes that the Government shall fix, after consulting the most representative trade union organisations and employers' associations, the minimum interprofessional wage on an annual basis. When setting the minimum interprofessional wage, it must take into account the consumer price index; the average national productivity achieved; the increase in the share of labour in national income; and the general economic situation. In this sense, the Government set the minimum interprofessional wage for the year 2024 at 15,876 € per year distributed in 14 payments of 1,134 € (i.e. 1,134 € per month).

This minimum interprofessional wage must be respected as a minimum either by collective bargaining or by collective agreements. Collective agreements can improve the minimum wage, but not make it worse for the worker; employment contracts can improve on what collective agreements say on wages, but cannot set a wage lower than the minimum wage.

In the specific area of the family home service (domestic work), it should be remembered that a specific regulation is established in terms of minimum wage that is different from that of other workers. This difference applies exclusively to domestic workers who work on an hourly basis, on an external basis.

In this case, according to Royal Decree 1620/2011, the minimum reference wage will be the one established in the



royal decree setting the minimum interprofessional wage for temporary and seasonal workers and domestic employees annually, which includes all remuneration concepts; This minimum wage shall be paid entirely in cash, in proportion to the hours actually worked.

In this regard, based on Royal Decree 99/2023, of February 14, 2023, which sets the minimum interprofessional wage for 2023, in particular its article 4, it is foreseen that the minimum wage for domestic employees will be 8.45 euros per hour actually worked.

Finally, in terms of studies (not statistics) that have been carried out on salaries, it is worth mentioning the Randstad study on salary trends (2024) in Spain²⁰, which shows salary bands in the health sector (not care, but health), where salary bands for staff such as "nurses" are shown, which in Madrid or Barcelona can range from 26 thousand euros to 52 thousand euros depending on how long they have been working in the company. A nursing assistant can range from 16,000 euros to 24,000 euros.

11. Have there been any legal disputes or conflicts publicized by the media in your country about "wages" in the care sector and gender discrimination?

In the specific field of care, a news item has been detected from a private company in which the workers complain about several issues: in particular that they work more hours than they are required by the employment contract, on the other hand, that they have to assume the mileage of going to visit or take care of people (and they do not accept this since the fact that they have to assume the mileage is due to the company's desire to save money)²¹.

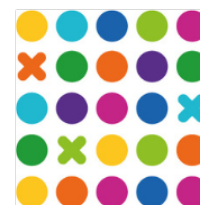
12. Do the legislation or, as the case may be, the collective agreements for the care sector or for each job in the care sector contain specific provisions for reconciling work and family life?

Legislation on the reconciliation of work and family life is generally set out in the Workers' Statute Law, applicable to all sectors. In general terms, a number of work-life balance rights are included, such as breastfeeding leave, reduced working hours due to legal guardianship, or reduced or distributed working hours and leave of absence to care for children or family members. These have been joined in 2024 by what is known as parental leave, which constitutes a right of absence of the worker - parent - for family reasons that can be taken up to the child's eighth birthday. This new parental leave was introduced by Royal Decree-Law 2/2024 of 21 May adopting urgent measures to simplify and improve the level of unemployment protection and to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the reconciliation of family and working life for parents and carers and repealing Council Directive 2010/18/EU.

This Royal Decree-Law 2/2024 promotes the participation of women and the maintenance of their professional careers; also that a genuine guarantee of the co-responsible exercise of care tasks is established to avoid the perpetuation of roles; and, finally, that for all of the above, the economic cost associated with care leave is addressed. In this sense, the new parental leave is conceived as a leave to care for children different from the leave linked to childbirth, a leave that is exclusively and non-transferable to each parent and with the maintenance of a compensatory benefit for the salary lost during the leave in order to change the behavioural patterns of the

²⁰ See Randstad: *Informe de Tendencias Salariales*, 2024.

²¹ Diari de Girona: https://www.diaridegirona.cat/economia/2023/05/08/treballadores-empresa-publica-sumar-fan-87062732.html?utm_source=twitter&utm_medium=social&utm_campaign=btn-share



male parent. It is also important to underline that the new parental leave, in order to correct this situation of professional disadvantage caused by caring responsibilities, also requires that it can be taken in a flexible manner at the will of the worker and in accordance with her needs and for a period that goes beyond the birth of the child.

The care sector does not have specific legislation in this regard, without prejudice to the fact that collective agreements in this sector may establish their own rules respecting, in general, what the law establishes.

On the other hand, the following administrative or regulatory acts may be mentioned in this area:

1. Acts of the public authorities have been detected so that day centres or residential centres for people with disabilities can agree with these public authorities on the provision of new services (generally, through the coverage by the public authorities of new residential places), in which it is rewarded, in order to provide these services, that the centre or entity applies measures that allow work and family life to be reconciled of the workers who provide the service (e.g., RESOLUTION opening a call for the provision of occupational therapy day centre services, occupational therapy day centre services with auxiliary and insertion occupational day centre services, of the home care service for people with intellectual or physical disabilities, of the Specialised Day Care Centre service for people with intellectual and/or physical disabilities, of the Public Care Social Services Network, under a social agreement regime).

2. Law 18/2003 of 4 July 2003 on Family Support (CATALUNYA) also provides for the adoption of specific measures to support *families with people in a situation of dependency*. It is foreseen by the regulations that measures to reconcile family life and work life will be adopted. The law states that the Government of Catalonia has to "promote awareness campaigns" aimed at companies that have their registered office in Catalonia or that carry out activities, so that they apply measures to reconcile family life and working life with respect to their employees. Among these measures are the creation of childcare services in companies; the provision of aid for access to childcare services; making the working day more flexible and implementing reduced working hours for workers with children under six years of age or with dependent dependents; or extending maternity or paternity leave.

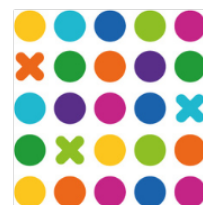
- Do legislation or, as the case may be, collective agreements make any reference to work-life balance "for female workers" in the care sector in general or in individual positions in the care sector? If so, please summarize or comment.

There is no specific reference in the legislation to written leave of absence for care workers.

In any case, it is worth stressing that Royal Decree-Law 7/2023, of 19 December, has transposed Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers. In this sense, a new parental leave is created that is conceived as a leave to care for children different from the leaves linked to birth, leave that is intended to be the exclusive and non-transferable property of each parent and with the maintenance of a compensatory benefit for the salary not received during its enjoyment to change the patterns of behaviour of the male parent.

A review has been made of collective agreements such as the Collective Agreement for Home and Family Care of Catalonia, which grants rights to work-life balance; in any case, these rights are not specifically linked to the case of carers.

- Have there been any court rulings on this matter [reconciling work and family life and care sector]? If so, please summarize or comment.



There are very few cases that have reached litigation and on which we have judicial resolutions in matters of workers in the care sector. However, there are some judgments, where the right to unemployment assistance benefit for people over 52 years of age is recognized to people who have dedicated their lives to care, such as judgment 856/2022, of February 9th, 2022, of the High Court of Justice of the Canary Islands and judgment 2339/2022, of March 30th, 2022, of the High Court of Justice of Galicia.

These are cases in which both workers have never had the opportunity to reconcile, due to the attention they had to give to their relatives, due to their role as women in the family sphere, which automatically and traditionally positioned them as directly responsible for these dependents.

What the court wants to do is compensate for the lack of conciliation that they had during their active working life and that made them sacrifice their professional development to dedicate themselves to the care of their relatives, which made it difficult for them to contribute to access a retirement pension.

In both judgments, statistical data are collected from sources such as the National Institute of Statistics (INE), the Women's Institute (IM), the Institute for the Elderly and Social Services, the Center for Sociological Research (CIS), or the Spanish Society of Geriatrics and Gerontology (SEGG), where it is shown that up to 80% of care work is carried out by women, which translates into a lack of reconciliation between family and work life in the care sector and discriminates against them in terms of benefits.

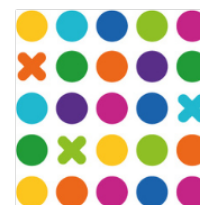
- Do the legislation or, as the case may be, collective agreements provide for different provisions in terms of work-life balance for staff in each of these occupations in the care sector compared to ordinary workers or workers in other productive sectors? If so, please summarize or comment on the case(s).

No specific regulations are provided for in the legislation. Specific provisions may be established in collective agreements depending on the negotiation they have carried out, for example, 2.- Voluntary leave of absence by conciliation Staff with a seniority to the company of Catalonia, as the Collective Agreement for Home and Family Care of Catalonia, provides for a leave of absence for "reasons of reconciliation of work and family life". In this sense, it is said that such leave, of at least one year, "may be used for reasons of reconciliation of work and family life, an unpaid leave of absence for a maximum of six months that will not be computed for seniority purposes and that will have a minimum duration of one month. The exceedance will not be able to coincide with the months of July, August and September and it is necessary to solicit with a minimum advance of 20 days to the date of initiation, except in cases of urgent need. Once you apply for leave of absence, you will not be able to enjoy a new one until after six months of effective work. At the end of the voluntary leave of absence by conciliation, staff have the right to automatic return to work".

- Have there been any court rulings on differences in work-life balance between the care sector and other sectors? If so, please summarize or comment on the case(s).

There are no judgments that distinguish between the reconciliation of work and family life depending on whether we are dealing with the care sector or other sectors. However, it is true that there are judicial decisions on the gender perspective in matters of work-life balance, in relation to the childcare supplement and this supplement affects, in a generalized way, the worker, particularly women, regardless of their occupational sector.

However, judgment 894/2023, of October 10th, 2023, of the High Court of Justice of Cantabria, among others, considers it appropriate to grant the childcare supplement to a man who has carried out care tasks, despite the fact that the measure has been established to reduce the gender gap, since the purpose of the measure is to



compensate workers who have had to move away from the labor market because of the care of their minor children.

13. Have statistics or databases been published in your country on occupational accidents or occupational diseases arising from the work of care workers as a whole or for individual jobs in the care sector according to the gender of the workers?

- If so, do the databases present aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual, collected, but not published, data available only to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?
- If published databases exist, please provide links and/or how to request them.

It is necessary to study some very interesting statistical data of: Ministry of Labour in its Bulletin of Statistics on Occupational Accidents²². On this page, the Statistics of accidents at work are collected. Within the page, the following index is detected: ATR-I.1.8. Incidence rates of accidents at work with sick leave, by occupation of the injured worker.

Within that index are the following occupations: Health service and care workers; These include (a) Care workers in health services; (b) Other care workers; (c) Personal service workers. In this sense, with respect to accidents among workers in health services and care of people, the incidence rates in recent years have been 2,737.2 (2019)-2,517.6 (2020); 2,893.9 (2021) and 3,211.9 (2022).

These data show a high incidence rate of occupational accidents (i.e., work-related accidents) among workers in health and care services.

It should be noted that the total incidence rate, i.e., for all occupations in the labour market, was as follows;

- 2019: 3.019,6
- 2020: 2.455,
- 2021: 2.810,5
- 2022: 2.950,7

As can be seen below, for each occupation, the incidence index of care workers in health services reached 5,373.4 in 2022.

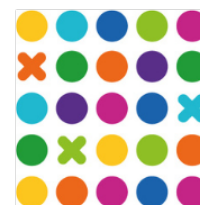
Health care workers 3,799.5 (2019) 4,044.4 (2020) 621.9 (2021) 5,373.4 (2022)

Other care workers 2,489.8 (20219) 1,992.8 (2020) 2,233.7 (2021) 2,194.5 (2022)

Personal service workers 1,834.0 (2019) 1,304.7 (2020) 1,546.4 (2021) 1,703.9 (2022)

This should serve to confirm how the care sector is particularly sensitive to occupational accidents with sick leave. It is presumed that the underlying reason for this accident rate may be psychosocial risks at work such as violence

²² Ministry of Labour in its Bulletin of Statistics on Occupational Accidents: https://www.mites.gob.es/es/estadisticas/monograficas_anuales/EAT/2022/index.htm



or harassment at work, or stress.

14. Describe or comment on any statistics or databases you have found on the participation of workers in the care workforce, either in general, or in relation to each of the various occupations that make up the care sector.

No specific data on participation in the care sector has been detected, although it is worth mentioning the report The situation of women in the labour market 2023, published by the Government of Spain²³.

According to this report, in terms of women's labour force participation, it is said that in 2022 the activity rate of women aged 16 to 64 has risen to 71.1%, 0.3 pp more than in 2021 and 8.3 pp above that of 2007. The participation gap has more than halved in these 16 years, standing at 8.5 pp, compared to a gap of 19.8 pp in 2007. Inactivity due to studies has continued to increase to 14% and decreased due to family responsibilities and "discouragement".

Sectors of activity: women work mainly in the service sector, where 8,354,900 women work (88.6% of employed women), mainly in commerce, health, education, and hospitality; Its presence in industry is relatively low, and minimal in construction. The greatest increase in female employment in 2022 was concentrated in the hospitality industry, with 92,700 more women employed.

On average in 2022, a total of 9,481,300 women aged 16 and over were out of the labour force. This figure represents 57.4% of the total number of inactive people. Compared to 2021, the number of inactive women increased by 0.5%, while compared to 2007, there was a decrease in the number of inactive women of 2.5%. Of the total female population aged 16 or over, 46.2% of the inactive women accounted for, 4.3 pp less than 16 years ago. Among the alleged reasons for inactivity, in 2022 16.0% of women are inactive due to caring for children or relatives, 17.4% due to retirement and 14.8% due to studies, while only 1.1% remain inactive because they believe they will not find a job (discouraged).

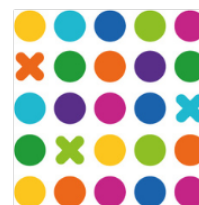
15. Do the legislation or, as the case may be, the collective agreements, for each of these occupations in the care sector, provide for specific provisions for women in terms of safety and health at work? If so, please provide details.

In relation to the healthcare sector in general, there are several regulations that refer to it.

As a result of the COVID-19 pandemic, the importance of care work for social well-being for the population became apparent. This brought with it a major focus on the people who were engaged in these jobs, and with it, their working conditions. For this reason, on 6 September 2022, Royal Decree-Law 16/2022 was approved for the improvement of the working and social security conditions of domestic workers since this regulation aims to bring the working conditions and social security contributions of people who are workers in the family home into line with other employees. to avoid conditions that may be discriminatory.

Regarding jurisprudence, we find the CJEU of February 24, 2022. This judgment has had a special significance with respect to the scope of application of the European Council Directive 79/7/CCE of 19 December 1978, since the

²³ Government of Spain: The situation of women in the labour market 2023. https://www.mites.gob.es/ficheros/ministerio/sec_trabajo/analisis_mercado_trabajo/situacion-mujeres/Mujeres-y-Mercado-de-Trabajo-2022.pdf



Spanish courts have raised before the Court of Justice of the European Union, the undeniable fact that as far as the rules applicable to the care work sector are concerned, they have a greater impact on women. Thus, it is recognized that there is a feminization of the Special System of employment in the home, since, as of May 2021, 95.53% of RGSS workers in care work were women, compared to 0.21% of male care workers.

For the same reason, the court recognises that there is a breach of the principle of equality, in short, indirect discrimination on grounds of sex contrary to Article 4.1 of the aforementioned Directive by excluding care workers from unemployment protection.

16. Have there been any court rulings on this matter? If there have been court rulings, please summarize or comment on them.

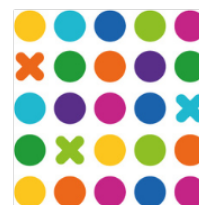
Yes, the most important is the one mentioned in question 15, the CJEU of 24 February 2022. This judgment states that a Spanish domestic worker, who since 2011 had been registered in the special SS system for domestic employees, submitted an application for unemployment contingency contributions in order to be able to access said economic benefit. By administrative resolution, the application was denied on the grounds that the worker was registered in the Special System for Domestic Employees, and that this system excluded the possibility of receiving unemployment benefit, since it was expressly excluded by article 251 d) of the LGSS.

An administrative appeal was lodged with the Administrative Court No. 2 of Vigo. In that appeal, it was stated that the abovementioned provision entailed indirect discrimination on grounds of sex in matters of social security with domestic workers, who are mostly women. Thus, the appeal explained that the situation of domestic workers who had lost their jobs was not assimilated to that of other workers registered with the SS, and the exclusion from unemployment protection implied that it was impossible for those employees to access any other benefit or subsidy subject to the extinction of the right to unemployment benefits. As a result, these workers were placed in a situation of social helplessness. Thus, the court deciding on the case observed that the majority of domestic workers were women and that their exclusion from receiving unemployment benefit could contradict Directives 79/7 (LCEur 1979, 7) and 2006/54 (LCEur 2006, 1696) of EU law and referred 2 questions to the CJEU for a preliminary ruling. The CJEU held that according to Article 4(1) of Council Directive 79/7/EEC (LCEur 1979, 7) of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, the Spanish national provision excluding unemployment benefit for domestic workers must be interpreted as meaning that the Spanish national provision excluding unemployment benefit for domestic workers, It was at a particular disadvantage in relation to them and was not justified by objective factors, ergo it was in itself discrimination on grounds of gender. As a result of this ruling, the current Royal Decree Law 16/2022 was approved for the improvement of working and social security conditions for domestic workers.

17. Is there any specific provision for the termination of the contract that differentiates between men and women in each of these occupations? If so, please provide details.

Within the scope of the special employment relationship for the provision of services of the family home, there is a specific termination regime.

On the one hand, the reform of Royal Decree 1620/2011 in 2022, which regulates this special employment relationship, has led to the elimination of the termination of the contract of family home employees based on the withdrawal of the owner of the household.



Instead, specific causes are established that must be accredited and communicated in writing in order to terminate the employment relationship: Notwithstanding the foregoing, this special employment relationship may be terminated for any of the following reasons, provided that they are justified:

- a) A decrease in the income of the family unit or an increase in its expenses due to a supervening circumstance.
- b) Substantial modification of the needs of the family unit that justifies the dispensing of the domestic worker.
- c) The behaviour of the worker that justifies in a reasonable and proportionate manner the loss of confidence of the employer.

18. Have there been any court rulings on this matter? If there have been court rulings, please summarize or comment on them.

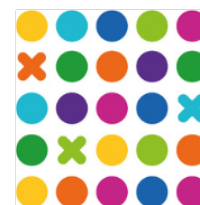
Only the Supreme Court Judgment of January 29, 2020 (Appeal No.: 2401/2017) **has been detected**. This is the case of a domestic worker dismissed due to the employer's withdrawal, whose dismissal is recognised as unfair in the first instance, and after appealing it is classified as null and void with an increase in compensation with respect to the judgment of the lower court since it is proven that the termination decision was based on her state of pregnancy. In this sense, the SC only resolves, because the parties request it, whether the worker is entitled to the processing wages until the day of notification of the supplication judgment, to which it responds in the affirmative. It does not, therefore, assess whether this type of termination due to withdrawal can be classified as null and void, and whether that classification corresponds to compensation or on the contrary should have led to the reinstatement of the worker, In any case, seen from the opposite angle, the result of all this is the procedural validation as null and void dismissal of the withdrawal by the employer of his domestic worker, to which only compensatory effects are attached with recognition of processing wages²⁴.

19. Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the state, such as unemployment benefits, social security or social assistance, etc.)

There is no specific provision for social protection that differentiates between men and women for social protection purposes.

20. Have there been any disputes in your country concerning the granting of social benefits to staff working in the care sector that have resulted in direct or indirect discrimination on the basis of sector? If so, please summarize or comment on the case(s).

²⁴ Regarding the debate on how to proceed in the event of null and void dismissals in the cases of special employment relationships of the family home service, see M^a INMACULADA BENAVENTE TORRES: A particularly problematic legal aspect: the termination of the employment relationship, in *Revista Jurídica de los Derechos Sociales, Lex Social*, 2019. The author maintains that disciplinary dismissals may be declared null and void, but with effects restricted to compensation, processing wages and compensation for violation of fundamental rights (p. 271).



See answer to question 16.

21. If there are Equality Bodies in your country, do you know if they have carried out any action, report, follow-up or judicial activity in relation to the rights of workers in care occupations? If so, please summarize or comment.

In 2022, the Economic and Social Council published the report *Women, Work and Care: Proposals and the future Perspectives*²⁵: In my opinion, two basic ideas should be highlighted from the report:

1. Firstly, the existence of existing information gaps, as the indicators included in official data sources do not always reflect gender disaggregation and do not usually record issues, incorporating qualitative analyses that would be relevant for its interpretation in the gender perspective. For this reason, despite improvements in statistical information systems, it is still difficult to make an accurate diagnosis of the situation of women in the United States. different areas. The report says that making women's specific problems visible is a precondition for designing solutions to them.

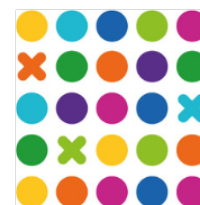
In this sense, the report concludes that: *For this reason, it is necessary for statistical agencies to strengthen the production and updating of data disaggregated by sex that, in addition to complying with the regulations in this regard, allow for a better understanding of the reality of women in different areas (use of time, income, affiliation to Social Security, etc.). health and access to health care, entrepreneurship, digitalization, science and technology, social protection, among others) in order to identify obstacles to effective equality. Likewise, beyond the data, it would be important to promote the inclusion of the gender perspective in studies and research of all kinds, which also implies a qualitative analysis considering their different position and the incidence of gender roles in different areas, to know the specific reality of women in all its dimensions and detect the inequalities that persist.*

2. On the other hand, in relation to the Equitable Sharing of Time, Work and Care, the report concludes that In order to achieve an inclusive labour market that does not discriminate against women or waste a crucial part of their human capital in a context, in addition, of transformation of labour demand, it will be necessary to pay special attention to issues such as: that special attention be paid to the *diversity of women and the specific problems of certain groups in vulnerable situations due to their age, educational level, origin, situation of single-parenthood, gender-based violence or others. By way of example, it would be necessary to move forward with formulas that allow women who are self-employed and in care jobs to reconcile their work-life balance.*

It is also necessary to take due account of *the need for families with dependents to access professional services and affordable care infrastructures to facilitate the participation of all people in the labour market, which necessarily entails a sufficient provision of public resources.*

Or the need, in short, to promote *co-responsibility beyond the individual sphere, that is, involving public administrations, companies and society as a whole to create environments that are more favourable to a fairer distribution of time, work and care from a gender perspective.*

²⁵ Economic and Social Council: *WOMEN, WORK AND CARE: PROPOSALS AND FUTURE PERSPECTIVES*: <https://www.ces.es/documents/10180/5282746/Inf0122.pdf/8283bf1c-0f10-1f2d-7e55-444949c4def1>



22. Indicate whether your country's care sector complies with EU and international obligations on non-discrimination on grounds of sex in the area of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

In answering this question, please refer to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, No. 100; Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, No. 111; Convention No. 156 concerning Workers with Family Responsibilities; Maternity Protection Convention, No. 183; and Domestic Workers Convention, No. 189.

At European level, remember in particular Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 2010/41/EU on the implementation of the principle of equal treatment between men and women among self-employed persons.

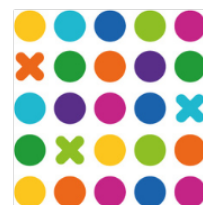
Spain complies with European and international legal obligations regarding non-discrimination on grounds of sex; in any case, the actions foreseen in the legislation on anti-discrimination on grounds of sex are applicable to all working staff, as no specific regulations are established for the care sector.

It is worth mentioning Article 28 of the *Workers' Statute Law*, which regulates equal pay on grounds of sex. In 2019, a reform of this precept was made to oblige the employer to adopt a register with the average values of salaries, salary complements and non-wage payments of its staff, disaggregated by sex and distributed by professional groups, professional categories or jobs of equal or equal value. Employees have the right to access, through the legal representation of workers in the company, to the wage register of their company.

In addition, after 2019, in companies with 50 or more workers, when the average remuneration of workers of one sex is twenty-five percent or more higher than that of the other sex, taking the total wage bill or the average of the payments made, the employer must include in the wage register a justification that this difference is due to reasons unrelated to the sex of the workers.

On the other hand, it should be mentioned the Organic Law 3/2007, of 22 March, for the effective equality of women and men: its art. 5 recognises the principle of equal treatment and opportunities in access to employment, in professional training and promotion, and in working conditions. According to this precept, the principle of equal treatment and opportunities between women and men, applicable in the field of private and public employment, shall be guaranteed, under the terms provided for in the applicable regulations, in access to employment, including self-employment, vocational training, professional promotion, working conditions, including pay and dismissal, and membership and participation in trade unions and employers' organisations, or in any organisation whose members exercise a specific profession, including the benefits granted by them.

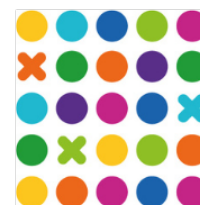
A difference of treatment based on a characteristic related to sex shall not constitute discrimination in access to employment, including the necessary training, where, by reason of the nature of the particular occupational activities or the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate, and the requirement is proportionate.



On the other hand, Article 44 recognises that the rights to reconcile personal, family and working life shall be recognised for working men and women in a way that encourages the balanced assumption of family responsibilities, avoiding any discrimination based on the exercise of these responsibilities.

The precept adds that in order to contribute to a more balanced distribution of family responsibilities, fathers are recognised as having the right to paternity leave and a paternity allowance, under the terms provided for in labour and social security regulations.

The law also establishes that companies must adopt measures aimed at avoiding any type of discrimination between women and men in the workplace, measures that must be negotiated and, where appropriate, agreed with the legal representatives of the workers. In the case of companies with fifty or more workers, the equality measures referred to in the previous section must be aimed at the preparation and implementation of an equality plan.



5. Migrant status

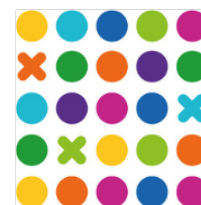
1. Please provide a brief description of your national legislation against discrimination on the grounds of race or ethnic origin, religion or belief, in the field of employment or occupation.

The main Law is Law No. 15/2022 Law 15/2022, of July 12, 2022, comprehensive for equal treatment and non-discrimination. As established in article 2 of Law 15/2022, what this new law does is regulate the rights and obligations of natural or legal persons, public or private, establish principles for the action of the public authorities and provide for measures aimed at preventing, eliminating, and correcting all forms of discrimination, direct or indirect, in the public and private sectors. The subjective scope of application of the law is established in art. 2 of Law 15/2022. On the one hand, it recognizes the right of everyone to equal treatment and non-discrimination regardless of their nationality, whether they are minors or adults, or whether or not they enjoy legal residence. This is an expansive clause on the holders of the right, as it would include immigrants in an irregular situation (without a legal residence permit), who will subsequently be subject to treatment. In any case, after this recognition, the first paragraph of article 2 establishes that "no one may be discriminated against on the basis of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, disease or health condition, HIV status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance." As can be seen from the reading of this provision, the grounds of discrimination prohibited by Article 14 of the Constitution are now added in Article 2.1 of Law 15/2022 to the grounds of "disease or health condition", "HIV status and/or genetic predisposition to suffer pathologies and disorders", "sexual identity", "gender expression", "language" and "socio-economic status".

With regard to the objective scope of application of the above prohibition of discrimination, it should be noted that Article 3 states that the Act shall apply to the following areas: employment, employment and self-employment, which includes access, working conditions, including remuneration and dismissal, career advancement and training for employment; access, promotion, working conditions and training in public employment; membership and participation in political, trade union, business, professional and social or economic interest organizations; education; health; transport; culture; citizen security; Administration of Justice; social protection, benefits and social services; access, supply and supply of goods and services available to the public, including housing, that are offered outside the scope of private and family life; access to and stay in establishments or spaces open to the public, as well as the use of and stay on public roads; advertising, media and information society services; Internet, social media, and mobile apps; sports activities, in accordance with Law 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sport; and finally Artificial Intelligence and massive data management.

In the field of employment (article 9), a general declaration is made of the impossibility of establishing limitations, segregations or exclusions on the grounds provided for in this Act for access to public or private employment, specifying that this impossibility includes the selection criteria in training for employment. in professional promotion, remuneration, working hours and other working conditions, as well as in suspension, dismissal, or other causes of termination of the employment contract.

Following this general statement, the employer is charged with two specific duties: first, that it "may not inquire about the health conditions" of the job applicant; Second, that prior to the adoption of a government regulation, employers whose companies have more than 250 workers may be required "to publish the wage information



necessary to analyse the factors of wage differentials, taking into account the conditions or circumstances of Article 2.1".

Finally, we must refer to the Spanish Employment Law, approved in 2023 (*Ley 3/2023, de 28 de febrero, de empleo*). This law regulates that it is based on the principles of equality and non-discrimination in access to and consolidation of employment and professional development on the grounds of age, sex, disability, health, sexual orientation, gender identity, gender expression, sexual characteristics, nationality, racial or ethnic origin, religion or beliefs, political opinion, trade union membership, as well as on the grounds of language, within the Spanish State or any other personal, family or social condition or circumstance, thus favouring social cohesion.

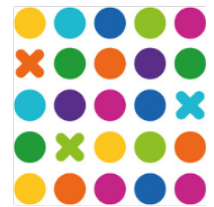
Therefore, this precept does not discriminate on the basis of a person's migrant status.

In any case, in another provision of the law (art. 50), the law establishes that the Government will adopt specific programmes aimed at promoting the employment of people with special difficulties in accessing and maintaining employment and for the development of their employability.

Among these vulnerable people, or those with special difficulties in accessing employment, are, among others, young people, especially those with low qualifications, the long-term unemployed, people with disabilities, and migrants. As can be seen, the employment law specifically states that migrants should be a group in which positive action measures should be activated in order for them to access the labour market.

2. Also provide a brief description of the legislation concerning the rights and duties of "foreigners": third-country nationals of the EU (by this we mean legislation setting out the framework of rights and duties of foreigners in the country; requirements for entering and working in the country; requirements for bringing family members into the country, etc.) With regard to national legislation on foreigners or migrants, please provide a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.

In relation to the system of rights and duties of non-EU foreigners in Spain, Article 13 of the Spanish Constitution provides that they shall enjoy the fundamental rights and duties "in the terms established by the Treaties and the law". Therefore, the EC implies that the constitutional rights it contains are not granted to foreigners automatically, but that their enjoyment will depend on how they are recognized by the corresponding law that regulates their situation. The terms under which foreigners enjoy their rights and duties are regulated in Organic Law 4/2000, *on the rights and freedoms of foreigners in Spain and their social integration* (LE/2000), which has been developed by *Royal Decree 557/2011, of 20 April* (RLE/2011). The starting point of this legislation is the recognition of rights and duties to immigrants based on their legal status in Spain, that is, based on whether they have been authorised by the State to reside or work in Spain. With this authorisation, foreigners are treated on an equal footing with Spaniards in most constitutional rights (freedom of movement, education, association, effective judicial protection, etc.), including public participation, although on the specific issue of the right to vote for foreigners who do not have the nationality of an EU Member State, it is limited by the Constitution to local elections and to the condition of accrediting the requirement of reciprocity in their country of origin, i.e. that Spaniards can also vote in municipal elections there).



Since the Judgement of Constitutional Court 107/1984, of 23 November 1984²⁶ it is understood that there is no principle of equal treatment between Spaniards and foreigners (non-EU) in terms of access to the labour market, since article 35 The EC only recognises the right to work of Spaniards. Therefore, a foreigner who is in another country cannot claim the right to access Spain to work. The right to work, understood as the right to carry out a remunerated activity in Spain as a self-employed person or as an employee, will only be obtained by a foreigner who has been authorised by the competent public authority to reside and work in Spain. Only by obtaining this authorisation will non-EU foreigners be entitled to the right to work and the right to access the Social Security protection system.

With regard to foreigners in an irregular situation, i.e., people who are in Spain without a residence permit granted by the Spanish State, the first thing to move forward is that they lack the right to work, that is, they cannot access any type of employment. However, although they cannot work, if they are actually doing so, article 36.5 of the LE/2000 provides that "the lack of a residence and work permit, without prejudice to the employer's responsibilities to which it gives rise, including those of Social Security, shall not invalidate the employment contract with respect to the rights of the foreign worker, nor shall it be an obstacle to obtaining benefits derived from cases contemplated by the international conventions for the protection of workers or others that may correspond to them, provided that they are compatible with their situation". Therefore, a non-EU foreigner, even if he or she lacks a residence and work permit, will not have his or her rights as a worker invalidated. The precept recognises the labour rights of irregular workers deriving from their employment contract. In this way, the rights that may correspond to them from the legal, conventional or contractual level are recognized.

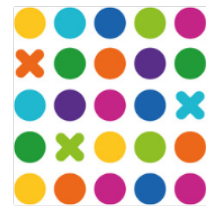
In addition to the above, non-EU foreigners in an irregular situation do enjoy certain rights. The basis for this endowment of rights is found in the Judgment of the Constitutional Court (TC) No. 236/2007 of 7 November 2007²⁷, on the rights of immigrants in an irregular situation and also its Judgment nº. 259/2007 of 19 December 2007²⁸. In these resolutions, it was made clear that immigrants, despite being in an irregular situation in Spain, and, therefore, not being protected by the law to be here, enjoy the principle of human dignity as persons. Therefore, Spanish legislation recognises those rights that are most in line with the dignity of the person, which are mainly the right to assemble, to education, to obtain free legal aid, or the right of all migrant workers to join trade unions and to strike. In fact, although irregular immigrants cannot work in Spain because they lack the corresponding authorization, if they do, they do they are entitled to enjoy the minimum working conditions provided for in Labour Law (salary, health, and safety measures, etc.). On the other hand, Royal Decree-Law 7/2018, of July 27, 2018, on universal access to the National Health System, *has* begun to guarantee the right to health and free health care to undocumented foreigners.

In order to gain access to Spain, the foreigner must apply to the Spanish State for a residence permit, giving reasons for this. In this regard, Royal Decree 557/2011 provides for the initial granting of temporary residence and work permits. To come to work as an employee in Spain and obtain this temporary residence permit, the legislation establishes a filter that foreigners who wish to come must pass, which is the "national employment situation". According to this requirement, for a non-EU foreigner to enter Spain to work, it must be proven that no native person wants the job that the foreigner intends to occupy. In other words, the requirement of the national employment situation gives preference to people who are already in Spain to work (whether they are

²⁶ Judgement of Constitutional Court 107/1984, of 23 November 1984: <https://hj.tribunalconstitucional.es/HJ/es-ES/Resolucion/Show/SENTENCIA/1984/107>

²⁷ Judgment of the Constitutional Court No. 236/2007 of 7 November 2007 <https://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6203>

²⁸ Judgment of the Constitutional Court: nº. 259/2007 of 19 December 2007: <https://www.boe.es/buscar/doc.php?id=BOE-T-2008-1083>



Spaniards, nationals of a Member State of the European Union or non-EU foreigners who are already duly resident in our country). It is, therefore, a first obstacle for foreigners to access Spain since it has been shown that, in times of economic or labour crisis, the passage to Spain is closed to non-EU foreigners, since the jobs offered are mainly occupied by citizens already resident in our country.

The initial temporary residence and work permit is for one year; this temporary residence of one year can, in general, be renewed for a period of four years and will allow the exercise of any activity in any part of the national territory, as an employee and as a self-employed person; having reached five years In order to obtain a residence permit, the foreigner may be able to apply for and obtain a "long-term" residence permit, thanks to which he or she will no longer have to apply for administrative authorizations.

Other reasons for which an initial grant of temporary residence permit may be obtained are for non-profit reasons (i.e. basically when the foreigner does not want to engage in any activity to earn a living); also those granted to family members of foreigners who already reside in Spain (known as family reunification authorisations); In addition, there is a legal provision to grant temporary residence permits for study purposes or for carrying out volunteer actions, as well as those granted to unaccompanied foreign minors who have been detected in Spain.

3. Make a brief social comment about the presence of migrant populations (both EU and non-EU nationals) in employment in your country.

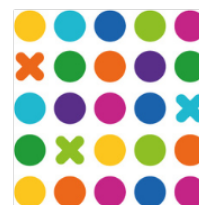
As Pr. Eduardo Rojo says in his blog²⁹, based on the Census of population 1 January 2023, the population figure of Spain stands at 48,085,361 inhabitants as of 1 January 2023, with a growth of almost 600,000 people in one year. 12.7% of the population had foreign nationality and 17.1% were born outside Spain. The largest increases during 2022 were among citizens of Colombia (142,391 more), Ukraine (83,401) and Venezuela (64,498). In any case, the most numerous foreigners as of 1 January 2023 were Moroccans (893,953), Romanians (629,755) and Colombians (453,911).

Regarding the labour market, in Spain, and with data from the average for the month of November, there were a total of 2,667,664 affiliates, of which 867,610 were from EU countries (462,042 men and 405,568 women), and 1,800,054 from non-EU countries (1,031,842 men and 768,212 women).

44.0% were women and 56.0% were men. According to countries of origin, 32.5% are from EU countries and 67.5% from other countries. By autonomous community, and always with data from the average for the month of November, Catalonia is the first in total number of affiliates (635,913, 23.84%), followed by Madrid (562,194, 21.07%), Andalusia (317,847, 11.91%) and the Valencian Community (310,268, 11.63%).

In the general Social Security system (and highlighting that the incorporation of the agricultural regime and the staff at the service of the family home account for 33.40% and 45.31% of the total affiliation in their sector, respectively) the number of affiliates in the hotel and catering sector stands out, which occupies 362,753 (26.26%), of which 267,164 are from non-EU countries, and which occupies the first position. It is followed, in quantitative data, by the motor vehicle and bicycle trade and repair sector, which occupies 284,299 (11.04%), of which 194,776 are from non-EU countries, and in third place are administrative activities and auxiliary services, which are grouped into 222,870 (15.53%), of which 155,843 are from non-EU countries; the construction sector is in fourth place and occupies 199,569 (20.09%), of which 148,332 are from non-EU countries; manufacturing ranks fifth, with 175,430 (8.98%), of which 114,111 are from non-EU countries. In the special regime for self-employed workers,

²⁹ Eduardo Rojo Torrecilla: Blog: <http://www.eduardorojotorrecilla.es/search?updated-max=2023-12-20T22:44:00%2B01:00&max-results=5&start=12&by-date=false>



the presence of the motor vehicle and bicycle trade and repair sector (100,816, 13.61%, always out of the total affiliation in the sector), the hotel and catering sector (72,847, 22.99%), and the construction sector (60,837, 14.95, 14.74% of the total, and with a high participation of EU citizens (31,598) stands out. By regime, it is worth noting the significant presence of Romanian and Moroccan workers in the general scheme, following the above statistical criteria (224,489 and 187,986, respectively), of the Chinese and Romanians in the self-employed (63,799 and 47,353), and Moroccans and Romanians in the agricultural sector, still following the previous statistical criteria (94,993 and 40,464). In the data on staff working in the family home that appear in the general regime, the Romanian presence is also the majority (23,711), followed by the Honduran (22,163) and the Colombian (14,768).

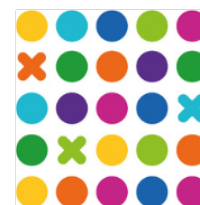
4. Finally, make a brief social comment about the presence of migrant populations (both EU and non-EU nationals) in the care sector in your country.

Within the care sector, especially in the field of domestic service (or provision of services for the family home), it is being found that it is a work environment conducive to access by the immigrant population, especially migrant women. The reasons for the incorporation of migrant workers into the service of the family home have been various and diverse. To begin with, the low valuation of this type of work, which also meets the conditions of jobs that, abandoned by national workers, are covered by foreigners, those that comply with the 5-P rule: heavy, dangerous, precarious, poorly paid, and socially penalized. It must be said that the type of activities in which migrants have been concentrated has evolved, since if in the first years of the new millennium those classified as 3-P, the most painful, dangerous, and precarious, now the lowest levels of working conditions occupied by foreign workers have increased even more. By adding to these qualifiers those of also being the lowest paid, and, on the basis that the old category of arduous occupations could include the new category of heavy occupations, those that are more socially undervalued are now also added.

These characteristics are adapted to the work performed in the field of domestic service. On the one hand, they are poorly qualified, socially undervalued, poorly paid and with poor working conditions, especially derived from the power granted to the head of the family home in these employment relationships that can lead to arbitrariness, also due to the lack of stability and discontinuity in the provision of these jobs or the simultaneity in the provision of services for several households that occurs on the part of many workers. and, of course, also because of the impact on the safety and health of workers that this type of work can cause.

5. Have statistics or databases been published in your country on foreigners or immigrants who are part of the staff providing services in each of these occupations in the care sector? [This question includes both EU nationals and third-country nationals in the EU as the subject of analysis]

- If so, in which occupations in the care sector are they most employed?
- If statistics or databases exist, do they establish the "nationality" or origin of foreign personnel serving in these sectors? Which nationalities are predominant?
- Do the databases also distinguish by gender? If so, please describe what the statistics show.
- Are there databases for each of the occupations, with a distinction between labour migrants, refugees and other categories of aliens or migrants?
- Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual, collected, but not published, data available only to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?
- If published databases exist, please provide links and/or how to request them.



No specific statistics on foreign staff in the care sector have been published. But the Ministry of Labour³⁰ of the Spanish Government provides complete data on foreign workers who are registered with the Social Security, and therefore, who are registered in the special system for persons employed in the domestic sphere (consequently, no specific data are given on the different occupations in the care sector in general, but only on employment in domestic service). Thus, it can be highlighted in their report that in 2021 there were a total of 2,216,536 foreigners registered in the Social Security as working, of which 1,425,070 were in the General Workers' Scheme (salaried workers; 233,861 in the agricultural scheme; 168,535 in the area of domestic workers; 4,643 in the maritime scheme; and finally, 384,423 were registered as self-employed. Consequently, in 2021 approximately 8% of foreigners were working as registered domestic workers).

6. Describe any statistics or databases you found: [This question includes both EU nationals and third-country nationals in the EU as the subject of analysis]

- Describe what these statistics show in relation to the nationality of the person working in the care sector and, where appropriate, in relation to the gender by nationality of these staff.
- If you have found statistics or databases, describe whether they show a distinction between general migrants, refugees, or other categories of migrants.

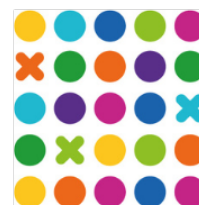
According to data from the Ministry of Social Security and Migration of the Government of Spain, in August 2022, the latest data published at the time of this study and squaring the figures that there were 373,101 people affiliated to the Special System for Domestic Employees, of which, to balance the numbers, 16,963 were men, and 356,138 were women³¹. These figures allow us to visualize how this social protection system is intensely feminized, whether we are talking about Spanish nationals or foreigners. In this sense, if we review the statistics corresponding to foreign workers affiliated to Social Security registered in the data published in 2021, which included this variable by gender very well³², it turns out that of a set of 168,535 foreign affiliates to the Special Family Home System, 9,960 were men and 158,562 were women, by the way, most of America (90,465). Consequently, the domestic service sector in Spain is characterized by having a high component of immigrant women, which has another derivative, which is that in truth the service of the family home has become more of a labour niche for foreign workers.

7. Have statistics or databases been published on people working in the care sector, whether they are nationals of your country, EU or non-EU, differentiating them by race or ethnic origin, religion or language? [This question concerns both EU nationals and EU nationals and third-country EU nationals]

³⁰ MINISTRY OF INCLUSION, SOCIAL SECURITY AND MIGRATION: AFFILIATIONS TO SOCIAL SECURITY. FOREIGN WORKERS AFFILIATED TO SOCIAL SECURITY. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjQgPvb87z6AhUO8xoKHR1ODuIQFnoECA4QAQ&url=https%3A%2F%2Fwww.mites.gob.es%2Fficheros%2Fministerio%2Festadisticas%2Fanuarios%2F2021%2FAEX%2FAEX-.pdf&usg=AOvVaw3ydFLD394Yxo1_XdcxoN-Y&cshid=1664554412347120

³¹ MINISTRY OF INCLUSION, SOCIAL SECURITY AND MIGRATION: SOCIAL SECURITY AFFILIATIONS [HTTPS://WWW.SEG-SOCIAL.ES/WPS/PORTAL/WSS/INTERNET/ESTADISTICASPRESUPUESTOSESTUDIOS/ESTADISTICAS/EST8/EST10](https://www.seg-social.es/wps/portal/wss/internet/estadisticasPresupuestosEstudios/estadisticas/EST8/EST10)
<https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10>

³²



- Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?
- If published databases exist, please provide links and/or how to request them.

No such statistics have been published.

8. Describe what statistics or databases you have found, i.e. summarize and comment on the data found on worker participation in the care sector on the basis of race or ethnicity, religion and language. [This question concerns both EU nationals and EU nationals and third-country EU nationals]

This statistic has not been detected.

9. Have there been any media-publicized legal disputes or conflicts about the race or ethnicity, religion or language of staff serving in the care sector? If so, please describe the situation and the solutions provided. [This question concerns both EU nationals and EU nationals and third-country EU nationals]

In April 2023, racism came to light in some employment agencies that offer services to domestic workers, specifically through advertising based on their nationality, specifically Filipino. They describe them as having "great capacity for work, honesty, loyalty to the family they work for, loving and patient attitude towards children".

Thus, this practice was denounced by Carolina Elías, who is the spokesperson of the Asociación Servicio Doméstico Activo (SEDOAC), since she considers that it commodifies people under market standards, turning them into another product of the market and using racist and classist stereotypes.

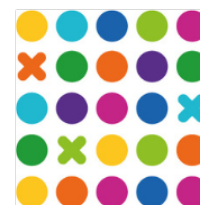
From the Confederal Secretary of Women, Equality and Working Conditions of Comisiones Obreras (CCOO) it was announced that this type of practice would be reported to the Labour Inspectorate since they consider that this type of practice was an obvious attack on the principle of equality, since it entailed discrimination in terms of race and specific nationality. well, to the fundamental right enshrined in Article 14 of the EC.

It should be borne in mind that racialized women are exposed to double discrimination: one, because they are women and the other because they are migrants.

The state's other largest union, UGT, also spoke out about this type of discriminatory practices.

10. Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector? [This question concerns third-country EU nationals]

- Are there databases for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?
- Do you know whether these statistics or databases distinguish between labour migrants, refugees or other categories of aliens or migrants?
- Do these databases also distinguish by gender?
- Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?



- If published databases exist, please provide links and/or how to request them.

There are no statistics on informal employment in the care sector.

The data that can be collected, as explained in the next question, derives from a combination of several statistics or surveys, without in any case referring to the care sector, but only to domestic work.

11. Describe or comment on any statistics or databases you have found on the participation of migrant workers in the care sector in the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them. [This question concerns third-country EU nationals]

In relation to people who work in the family home sector, the informality of both Spanish and foreign women is presumed to be high: it is not possible to verify specific data on informality since it is naturally not registered by its very nature, however, it is presumed to be high if the data of the group of people affiliated to the Special Social Security System that were published in August 2022 are compared: 373,101 people, with the figures published by the Labour Force Survey for the second quarter of 2022 with respect to the number of people employed in households employing domestic staff, which gives the figure of 545,700. Therefore, according to the differential parameters between the two latitudes, it is found that there could be some 172,599 domestic workers who, despite providing their services for employer households, would not be registered with Social Security.

The fact that it is a sector with a high level of informality has also been a favourable place for foreign workers in an irregular situation to see it as a priority gateway to the labour market, and also useful for applying years later for a temporary residence and work permit through the exceptional channels of entrenchment, either the labour or social nature provided for in the legislation on foreigners.

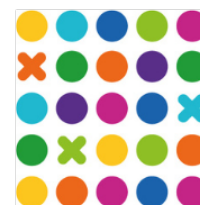
12. Have any statistics or databases been published in your country on the possible presence of "undocumented" or "irregular" immigrants (not authorized to reside or work in your country) who may be serving in care occupations? [This question concerns third-country EU nationals]

- Do these databases also distinguish by gender?
- Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?
- If published databases exist, please provide links and/or how to request them.
- Comment on any statistics or databases you have found on the involvement of irregular or regular migrants in the care sector. Where gender-differentiated statistics have been found, please comment on the data.

The Spanish government publishes statistics on irregular immigration arriving in Spain by any route, sea, or land, but there are no statistics on irregular immigration that already exists in Spain³³.

In any case, although there are no statistics, there are studies on irregular immigration in the care sector. In this sense, according to the Report on the Situation of Migrants and Refugees in Spain, in the field of "domestic work",

³³ Government of Spain: Reports on Irregular Immigration <https://www.interior.gob.es/opencms/es/prensa/balances-e-informes/>



it is estimated that more than 600,000 women work in this sector. Among them, 70,000 are in an irregular situation, according to data from the research "Essentials and without rights" by Oxfam Intermon³⁴. About 40,000 women work as interns and 9 out of 10 are foreigners. Many of the workers who find themselves in an irregular situation are forced to accept precarious work in order to survive with excessive hours, even working with few or no days off. This, in addition, implies not being registered with Social Security, with the effects that this entails, while they are exposed to violence and mistreatment by their employers, even more so in the case of caregivers and interns.

13. Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If so, please describe them. Please also indicate whether this sector is understaffed (Is there a shortage of staff in the sector?). [This question concerns third-country EU nationals]

No specific measures have been taken for foreigners to come to work from their countries of origin to Spain to work (granting them the corresponding work and residence permits) in the care sector.

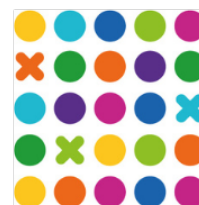
In any case, it should be remembered that in 2020, during the Covid-19 pandemic, several regulations were adopted that aimed to cover the growing demand for care, promoted the hiring of health professionals included in the scope of application of Royal Decree 459/2010, of April 16, 2010, who had a Specialist degree obtained in non-member States of the European Union (see Order SND/319/2020, of 1 April, amending Order SND/232/2020, of 15 March, adopting measures in the field of human resources and means for the management of the health crisis situation caused by COVID-19. BOE, 3 April).

In any case, it should be noted that Spain has made the system for the entry of foreigners into Spain more flexible in terms of access for highly qualified foreign workers. In this regard, *Law 11/2023, of 8 May, on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalisation of notarial and registry actions, and amending Law 12/2011, of 27 May, on civil liability for nuclear damage or damage caused by radioactive materials*, was passed in 2023. This law recognises the possibility of access to Spain as highly qualified personnel to persons with a higher-level vocational training qualification, and also extends the validity of all residence permits to three years, renewable for a further two years.

In addition, a new Law on Universities (*Ley 2/2023, de 2 de marzo*) introduced a reform regarding highly qualified foreigners so that once foreigners in Spain complete their studies at a higher education institution, those who have reached at least Level 6 according to the European Qualifications Framework, corresponding to the Degree accreditation, may stay in Spain for a maximum non-extendable period of 24 months in order to seek employment appropriate to the level of studies completed or to undertake a business project.

The first results of this legislation have meant that 3,215 work authorisations were granted to foreign healthcare professionals in 2023. According to provisional data published by the Ministry of Labour, 240 professionals joined this sector in December. The increase, slightly less than in the previous month, when 330 health professionals

³⁴ OXFAM: *Essentials and without rights*: <https://www.inclusion.gob.es/documents/1652165/2966006/Situaci%C3%B3n+de+las+personas+migrantes+y+refugiadas+en+Espa%C3%B1a+-+Informe+Anual+2022.pdf/e55230f9-2aa9-3f4e-d64e-002b746e4551?t=1688465906066>



were hired, is sufficient to surpass the 3,000 work permit barrier and reinforces the health system with talent from outside Spain³⁵.

14. Describe whether migrants with residence and work permits have the same labour rights as other "national" workers in the care sector. [This question concerns third-country EU nationals]

Consider the provisions of European law, according to which third-country nationals enjoy equal treatment with workers who are nationals of the Member State under conditions of work or social security (Art. 12 of Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of the Member State). a Member State and a common set of rights for third-country workers legally resident in a Member State). In addition, if your country has ratified them, ILO Conventions No. 97 (Revised) concerning Migrant Workers, 1949; and Migrant Workers Convention No. 143, 1975.

With respect to Spanish law, they have the same rights. According to the legislation, there is no difference in rights at work compared to workers in other sectors. It should be recalled that according to Law 4/2000 on the Rights and Duties of Foreigners in Spain, workers with a residence and work permit or permit have the right to engage in remunerated activity as a self-employed person or as an employee, as well as to access the Social Security system.

15. Do the "labour" legislation (i.e., on working conditions) or, as the case may be, the collective agreements in your country make any reference to the migrant or foreign status of the person working in each of these occupations in the care sector? [This question concerns third-country EU nationals]

Article 23 of Organic Law 4/2000 of 11 January 2000 sets out the principle of equality and non-discrimination towards the immigrant population, which includes social integration, i.e. promoting the well-being of the migrant population. In collective agreements, we find that they undertake to guarantee the principle of equality in general.

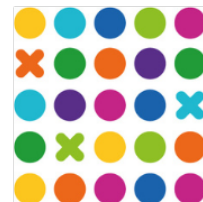
The generalist clauses in these agreements become irrelevant if we look at it from a legal point of view, they become pedagogical, a means to raise awareness in society about the need for this type of practice to promote equality.

The generalist provisions have their origin in the *2007 Interconfederal Agreement for Collective Bargaining (BOE 24 February 2007)*, Chapter VI of which provides that it will be necessary to "apply the same working conditions to immigrants as to other workers in forms and types of contracting, remuneration, prevention and safety, classification, and promotion, training and entitlement to social benefits".

This agreement also referred to taking into account sufficient flexibility in specific and exceptional situations to apply the leave regime for family events and increasing these when they implied the need for long journeys.

With regard to the exercise of a particular religion (which may be practiced by a Spanish national or by a foreign migrant), it should be noted that the celebration of Ramadan and the Muslim religion in general is included in

³⁵ Ministerio de Trabajo: https://www.mites.gob.es/es/estadisticas/Inmigracion_emigracion/PTE/welcome.htm# Puede verse un comentario de estos datos en el Diario Redacción Médica: <https://www.redaccionmedica.com/secciones/empleo/espana-concedio-3-215-permisos-de-trabajo-a-sanitarios-extranjeros-en-2023-5589>



article 12.1 of Law 26/1992 of 10 November, according to which "members of the Islamic Communities belonging to the 'Islamic Commission of Spain' who wish to do so, they may request the interruption of their work on Fridays of each week, the day of obligatory and solemn collective prayer of Muslims, from thirteen thirty to sixteen thirty hours, as well as the conclusion of the working day one hour before sunset, during the month of fasting (Ramadan)".

It should be mentioned that in all cases the provisions in collective agreements to guarantee equality between migrant workers and nationals are found in sectors where the majority of these migrant workers are men, such as the agriculture and livestock sector (especially in the autonomous community of Andalusia).

From this we can deduce the following: in male-dominated sectors there are special provisions to guarantee the equality of workers, although not sufficiently, but, in fully feminized sectors, such as the care sector, we find the general provisions that we have described at the beginning, which generally have no legal value.

16. Have there been any court rulings on this matter [care sector and working conditions: freedom of religion]? If so, please summarize or comment on them. [This question concerns third-country EU nationals]

It is not recorded.

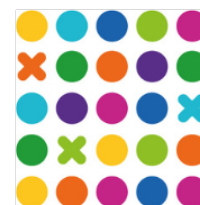
17. Does the legislation on aliens or immigration in your country (e.g. on residence or work permits, family reunification, renewal of permits, etc.) specifically mention people working in one of these occupations in the care sector? Have there been any court rulings on this matter? If so, please summarize or comment on them. [This question concerns third-country EU nationals]

The regulatory framework on immigration made up of Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, and the regulation implementing it, Royal Decree 557/2011 of 20 April, do not provide for specific treatment with regard to the rights and duties of domestic service personnel, either with respect to the procedures in which they may be immersed, beyond a reference to the payment of the fees that must be paid for the processing of residence and work permits (see Articles 45 and 46 of Organic Law 4/2000 in relation to the Eighteenth Additional Provision of the regulations).

For years, the Catalogue of Difficult-to-Cover Occupations regulated in article 65 of Royal Decree 557/2011, which facilitates foreigners who are not in our country to overcome the conditions of the national employment situation and thus be able to access Spain to work, does not include any mention of the need for domestic staff in the labour market. Thus, for example, in the Resolution of October 13, 2020, of the State Public Employment Service, which publishes the Catalogue of Occupations of Difficult Coverage for the fourth quarter of 2020, only those related to the Merchant Marine sector are included, as well as those related to coaches and professional athletes.

The first conclusion, therefore, is that Spanish legislation is closed to the reception of foreign personnel to work in domestic service or care in general.

In addition to the above, it is also necessary to bring up certain initiatives for the reform of immigration legislation involving foreign domestic workers. These initiatives have been launched by the Ombudsman in his annual



reports, the last of which, prior to the COVID-19 pandemic, included a report on *The contribution of immigration to the Spanish economy*, which includes several reform proposals.

Of particular interest are several of the recommendations that affect the temporary residence and work permit. Although these are proposals whose adoption would affect all workers who intend to obtain such leave, the Ombudsman develops them after the treatment he makes in his study of the problems of the care sector and domestic service. In other words, these are recommendations for regulatory reform that have as a frame of reference the activities of the family home service, and, therefore, their acceptance would have a strong impact on this regime.

To begin with, the need to modulate the economic amounts that are set in articles 66.2a) of Royal Decree 557/2011 and that any employer must prove to justify that they have sufficient economic means for the purposes of formalizing the employment contract thanks to which the authorization is obtained. Apart from the request for this modulation of the economic percentages established in that provision, the Ombudsman does not add anything, although I consider that rather than modulation, what should be done is to expressly establish a specific regulation on these amounts, in order to reduce their amount as much as possible when the employer is a family home service holder, especially in the case of units of two or more people. In this sector of activity, care companies are also provided services, although I believe that the greatest modulating flexibility should be focused when the person who hires is the head of the family home, arbitrating the necessary measures for their beneficiaries of the necessary measures so that they respect the regulations on foreigners and of a labour nature.

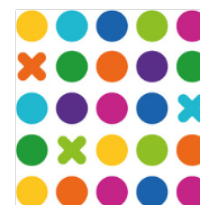
Also, in general with regard to the procedure for applying for initial authorisation and residence and work as an employee, although without losing sight of the importance that this may have for foreign domestic workers, the Ombudsman requests an extension of the period established in article 67.8 of Royal Decree 55/2011, in the event of the death of the employer, so that the worker can be registered by another employer, which is now limited to three months from the foreigner's entry into Spain.

In any case, where the Ombudsman does make a specific mention of the special regime for domestic workers is when recommending a specific issue on residence permits for family reunification. In this sense, it advocates amending Article 54 of Royal Decree 557/2011, reducing the economic requirements set in accordance with the IPREM in the cases of foreign sponsors who are registered in the special regime for domestic employees, with minor children in their care in the country of origin.

18. Do migrants with the corresponding residence permit and authorization to work in the care sector (in each of these occupations) have access to the same rights as other workers in other productive sectors?
[This question concerns third-country EU nationals]

As stated above, they have the same rights. According to the legislation, there is no difference in rights at work compared to workers in other sectors. It should be recalled that according to Law 4/2000 on the Rights and Duties of Foreigners in Spain, workers with a residence and work permit or permit have the right to engage in remunerated activity as a self-employed person or as an employee, as well as to access the Social Security system.

However, in terms of wages, both domestic workers and foreign workers who provide services in the family home have a different "minimum wage" regime than other workers in other sectors (see the answer to question number 10 - GENDER - of this report).



19. Have there been any court rulings on this matter [residence permit and authorization to work in the care sector]? If so, please summarize or comment on them. [This question concerns third-country EU nationals]

No sentence is detected.

20. Have there been any collective bargaining provisions that favour the integration of migrant workers into the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnicity, etc.? [This question concerns third-country EU nationals]

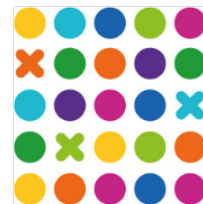
Within the framework of Catalonia, legal initiatives have been adopted that aim to encourage companies to adopt diversity plans that favour the integration of migrant workers into the labour market in general.

It is worth mentioning the Catalan Law 10/2010, of 7 May, on the reception of immigrants and returnees to Catalonia, which includes a precept that attributes to the Generalitat the promotion of the establishment of anti-discriminatory measures in relation to immigrants in companies, which in any case, according to article 16.2 of said law, They should be adopted with the participation of workers' representatives and should cover both access to the workplace and the establishment of working conditions, within the framework of the applicable labour legislation. Such measures include, in accordance with Article 16(3), the promotion of diversity management programmes, with the aim of adapting to the cultural and organisational changes that may be generated by the presence of immigrant workers, or the adoption of economic, commercial, labour, welfare or similar measures, aimed at promoting conditions of equality among all workers. regardless of their nationality, in the company's own or in their social environment, and it is also recalled that collective bargaining agreements and company agreements may contain clauses aimed at promoting the aforementioned measures.

Under this legislation and the Citizenship and Immigration Plan 2009-2012 of Catalonia, the Generalitat has published a "Guide of recommendations on diversity management in companies and other organizations"³⁶. The Guide, which has no binding legal value, makes a number of considerations of interest for the integration of foreign workers into the workplace: on the one hand, it is generally suggested that a vital part of diversity management is to include all staff in the planning and decision-making process; particularly in the area of collective bargaining. In this sense, it could be said that just as important as involving all staff, whatever their origin, in the planning of these company policies, is that the representative bodies also include workers who respond to the diversity of profiles in the company, the latter issue in which the unions are also addressed in an important way.

Along with this, and in order to promote the operationalization of the principles of diversity of human resources, the Guide recommends that with the incorporation of people from different backgrounds, cultures, abilities, gender, age, etc., organizations must be able to manage the needs of flexibility linked to the conditions of reconciliation of personal and family life with work. which, according to the Generalitat's document, would imply obtaining improvements in relation to working hours, holidays, leaves and days of free disposal, leave of absence, etc. Precisely, in this area, and as an example of the cultural change that the diversity of the workforce entails for the company, the Guide recalls the negotiation processes on the festive calendar in the presence of workers of

³⁶ Department of Social Action and Citizenship. Secretary for Immigration. Generalitat de Catalunya: *Guide to recommendations on Diversity Management for companies and other organizations*; available at: http://www20.gencat.cat/docs/dasc/03Ambits%20tematics/05Immigracio/002Destacats_dreta/banners/banner_recomanacions_diversitat_empresa/recomanacions.pdf (last consulted: 23 September 2010).



different religious confessions; in this sense, a general recommendation made by the Guide is that a good management of such diversity should take these people into account when specifying shifts or distributing vacation periods.

These tendencies to take into account in industrial relations the various factors of diversity of their workers (not only their nationality, origin or religion, for example, but also the age of the workers or, of course, gender issues), would seek due consideration by labour regulations, but above all by the practices in companies within the framework of their managerial power, but also, This, in my opinion, is fundamental, because of the collective agreements that can be reached between the workers' representatives and the employers.

On the other hand, in relation to the profession of a religion by workers and their adaptation to work, there are experiences in some collective agreements: some agreements in companies already go in this direction based on individual attention to the individual interests of workers, in some cases because of their migrant nature and the coverage of the needs that this entails. and in others for aspects derived strictly from their religion, but without attending to collective requests from the confessions to which they belong. This is the adoption by collective bargaining of a principle of personalised flexibility of working conditions, particularly working time, which grants the possibility of holding holidays of a traditional nature or linked to the worker's choices without this entailing any reduction in the working hours required of all workers³⁷, in some cases leaving the final decision to the employer according to his organisational directive; Mention can also be made of the adoption of several company agreements that favour the reconciliation of working hours and working time with the personal and family commitments of workers, including the facilitation of emergency trips to the country of origin (illness of family members), or for specific celebrations, provided that in any case, this is "organisationally feasible"³⁸.

21. Do you know if there have been any media-publicised conflicts between migrant care workers and carers (in terms of non-discrimination on ethnic, religious or national grounds)? If so, please explain. [This question concerns third-country EU nationals]

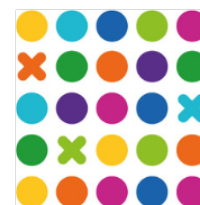
We can refer to the Spanish TV report of 30 March 2023: Female interns denounce their terrible working conditions: "I lost almost 25 kilos by eating leftovers"³⁹. The report talks about the case of an immigrant who migrated to Spain from South America, lives and works in the house of an elderly woman and her disabled daughter; for her it is a job opportunity (but without a work contract) that occupies all her time and space. She says that "I haven't slept at all tonight. The lady gets up at least four times a night to go to the toilet and we have to make sure she doesn't fall or bump herself, because she has bad feet", she exemplifies. Her working day is not limited to the night and, after a break of a couple of hours in the morning when she has taken time to look after us, she goes back to her work, from cleaning the house to looking after a dependent person. And so, six days a week for the minimum wage, 1,080 euros.

The report also points out that some 40,000 women work as live-in care workers in Spain with an average working week of 45 hours. It adds that according to studies that have been carried out, nine out of ten are foreigners and one in four cares for a dependent adult. These studies, which are made public in the report, denounce "endless

³⁷Diversity in the Company Management Agreement. Abattoir of Girona.

³⁸Acord de Gestió de la Diversitat de l'HotelMajestic SPA Barcelona; Acord de Gestió de la Diversitat de l'EmpresaMantylim, S.A.; Acord de Gestió de la DiversitatFerroberica, S.L.; Acord de Gestió de la Diversitat de l'Empresa ABD.

³⁹TVE: <https://www.rtve.es/noticias/20230330/internas-hogar-cuidados-condiciones-laborales-migrantes/2433410.shtml>



working hours", extending over 61 hours for one in ten and over 71 hours for more than 7%. For many of these "essential workers" in our society, economic necessity, difficulties in obtaining a work contract without papers or the high cost of housing are intertwined to trap them in a particularly vulnerable situation.

On the other hand, in April 2023, racism came to light in some employment agencies that offer services to domestic workers, specifically through advertising based on their nationality, specifically Filipino. They describe them as having "great capacity for work, honesty, loyalty to the family they work for, loving and patient attitude towards children". Thus, this practice was denounced by Carolina Elías, who is the spokesperson of the Asociación Servicio Doméstico Activo (SEDOAC)⁴⁰, since she considers that it commodifies people under market standards, turning them into another product of the market and using racist and classist stereotypes.

From the Confederal Secretary of Women, Equality and Working Conditions of Comisiones Obreras (CCOO) it was announced that this type of practice would be reported to the Labour Inspectorate since they consider that this type of practice was an obvious attack on the principle of equality, since it entailed discrimination in terms of race and specific nationality. well, to the fundamental right enshrined in Article 14 of the EC.

It should be borne in mind that racialized women are exposed to double discrimination: one, because they are women and the other because they are migrants.

The state's other largest union, UGT, also spoke out about this type of discriminatory practices.

In March of this same year 2023, Spanish radio and television reported on the appalling working conditions to which migrant domestic workers are subjected. This news showed that 9 out of 10 domestic workers are migrants and are in an irregular situation. In addition, most of the care work in Spain is endured thanks to the poor working conditions to which they are subjected (they receive the minimum wage or sometimes not at all) and the need they have for housing when they arrive in Spain. This news highlights a 2021 report by Oxfam Intermon, which highlights in its study that there are some 40,000 women working as interns in Spain, with an average working week of 45 hours per week that extends into more than 61 hours per week for one in ten and more than 71 hours per week for more than 7%.

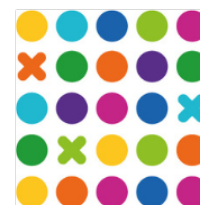
22. Have statistics or databases been published in your country on the wages of migrant workers in the care sector? [This question concerns third-country EU nationals]

- Have statistics or databases been published in your country on the occupational classification of migrant workers in the care sector?
- Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?
- Are these databases public and freely accessible to all, or only to researchers?
- If published databases exist, please provide links and/or how to apply for them.

No data have been published on the wages of migrant workers in the care sector.

23. If you have found statistics or databases, describe what they show in relation to job classification and

⁴⁰ SEDOAC: <https://sedoac.org/>



wages of migrant workers in the care sector. [This question concerns third-country EU nationals]

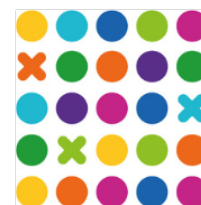
Although there are no statistics, studies have been carried out indicating differences in working conditions between foreigners and Spaniards in the labour market in general, so there have been more foreign workers than Spaniards who had an indicator of working hours of more than 40 hours per week: while in that year 21.1% of Spaniards worked more than 40 hours, The percentage of foreigners rose to 25.4%, although this gap was progressively reduced until it approached both groups in 2009 (18.7% of Spaniards and 19% of foreigners), due to a sharp reduction in the rate of the immigrant population. In any case, the greatest gap in relation to the indicator of working days of more than 40 hours was registered in the field of women, since while foreign women reached 14.8% in 2009, Spanish women remained at 11.6% in the same year, ⁴¹in fact the sectors with a high concentration of immigrants, such as households that employ domestic staff, the indicator of working hours of more than 40 hours was much higher in foreign workers, although also in construction or hospitality, where the latter also suffered higher rates, the rates of high working hours tended to be high for all workers (see ARAGÓN

24. Do migrants in an undocumented situation (without authorization to reside or work) have the right to employment when working in the care sector in your country? Please provide your views on this issue. [This question concerns third-country EU nationals]

Migrants in an irregular situation do not have the right to work recognized, and therefore cannot be employed in the labour market, nor therefore in the care sector.

In any case, they can obtain a residence and work permit through exceptional means, in particular the labour tie, the social or the professional roots. The common denominator of the first two is that to obtain the corresponding temporary residence permit (and therefore for the foreigner to become documented), he or she must have stayed in Spain for a minimum time and prove that he or she is working (see art. 124 of Regulation 557/2011). Thus, in the case of labour roots, foreigners who wish to regularize their situation must certify their continuous stay in Spain for a minimum period of two years and demonstrate the existence of employment relationships whose duration is not less than six months and that at the time of the application for entrenchment they are in an irregular situation. Article 124 of Regulation 557/2011 states that for the purposes of accrediting the employment relationship and its duration, the interested party must present any means of proof that proves the existence of a previous employment relationship carried out "in a legal situation of stay or residence", for these purposes the realization of the work will be accredited in the last 2 years. of a work activity involving, in the case of an employed activity, at least a working day of 30 hours per week in a period of 6 months or 15 hours per week in a period of 12 months, and in the case of self-employment, a continuous activity of at least six months. On the other hand, through the "social entrenchment" they will be able to obtain the residence permit if they can prove that they have been continuously staying in Spain for a minimum period of three years and have an employment contract signed by the worker and the employer that guarantees at least the minimum interprofessional wage or the established salary, as the case may be. in the applicable collective bargaining agreement, at the time of the application, and the sum of which must represent a weekly working day of no less than thirty hours in the overall calculation and guarantee at least the minimum interprofessional wage.

⁴¹MEDINA, J.; MARTÍNEZ POZA, A.; CRUCES AGUILERA, J.; ROCHA SÁNCHEZ, F.: The labour integration of immigrants in Spain. An approach to employment and working conditions. Reports from the 1º de Mayo Foundation. June 2010. Madrid, 2010, p 113).



25. Has there been a court ruling on this matter [undocumented worker working in the care sector] in your country? If so, please summarize or comment on them. [This question concerns third-country EU nationals]

There is a sentence in the Court of Criminal No. 1 of Barakaldo, case number 244/2013, a judgment was issued on June 11, 2015. The court found that between 2010 and 2012, Gregoria employed several individuals from Nicaragua, Peru, Bolivia, and Honduras who were in Spain illegally. These individuals were hired to care for elderly and sick people in hospitals and private homes. They had no written employment contracts and no health coverage, working up to 12 hours a day without adequate rest. They were paid 5 euros per night hour and 4 euros per day hour, without differentiation between working days and holidays.

Gregoria was convicted of a crime against workers' rights. She was sentenced to 2 years and 6 months in prison, disqualified from the right to passive suffrage for the duration of her sentence, and fined 2,100 euros.

Gregoria appealed the judgment, requesting revocation and acquittal. She argued that there was an error in the evidence assessment and improper application of Article 312.2 of the Penal Code. She claimed she did not exploit the workers and that the lack of Social Security registration was due to the infeasibility of making the work profitable. She denied imposing harsh working conditions, arguing that the workers voluntarily accepted the terms.

The Court of Appeal reviewed the initial judgment and concluded that the evidence assessment was appropriate and logical. The court found that Gregoria employed individuals under conditions that restricted their labour rights. The appeal failed to undermine the evidential assessment, or the legal qualification made in the initial judgment.

As a result, the appeal was dismissed, and the initial judgment was fully upheld. The legal costs of both instances were declared ex officio. The judgment is final, and no ordinary appeal can be filed against it.

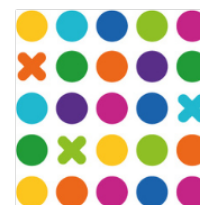
26. With the onset of the Covid-19 pandemic, did the State adopt measures to allow "undocumented" foreign personnel to obtain residence or work permits, both structural and extraordinary? [This question concerns third-country EU nationals]

Mention should be made of Royal Decree-Law 13/2020, of April 7, 2020, adopting certain urgent measures in the field of agricultural employment, published in the Official State Gazette of today, Wednesday, April 8. Even if it is only focused on the agricultural field, they contain promotions of interest in terms of labour contracting in the agricultural sector for foreigners.

Secondly, the Covid-19 pandemic led to the adoption of other regulations:

1. The First Instruction *on the Renewal of temporary residence and work permits of the Directorate-General for Migration, included in DGM Instructions 5/2020, which it published on 8 June 2020, should* ⁴²be noted.

⁴² See DGM INSTRUCTIONS 5/2020 ON THE RENEWAL OF RESIDENCE AND/OR WORK PERMITS IN THE CONTEXT OF COVID 19. Ministry of Inclusion, Social Security and Migration:



This is an instruction that, in terms of the renewal of temporary residence and work permits, is based on considering the application of the procedure provided for in article 71, with the effects of article 72 of Royal Decree 557/2011. In this sense, one of the cases that enables renewal consists of accrediting "the continuity in the employment relationship that gave rise to the granting of the authorization whose renewal is sought", the Instruction indicates that such continuity is maintained in cases in which the foreigner is registered in the Special System for Domestic Employees of the General Social Security Regime and there has been a reduction, total or partial, in your working hours.

On the other hand, another of the cases that also grounds the renewal of temporary residence and work permits is that, at the end of the period of the authorization to be renewed, the foreigner has been awarded a contributory unemployment benefit, or when he or she is the beneficiary of a public economic assistance benefit aimed at achieving his or her social or labour insertion (art. 7.1.2d) of the Royal Decree 557/2011 in relation to articles 38.6b) and c) of LO 4/2000). For the purposes of renewing the corresponding authorizations, the Instruction that is being commented on includes within these precepts, "those other benefits that may be implemented, the minimum vital income, the exceptional unemployment subsidy for the end of a temporary contract and the extraordinary subsidy for lack of activity for people integrated in the Special System for Domestic Employees of the General Social Security Regime".

2. The fourth Instruction of DGM Instructions 5/2020 that are being referenced is intended to address the renewals of residence permits under family reunification. In fact, in art. 61 of Royal Decree 557/2011 establishes as requirements that the sponsor must meet if he or she is the holder of a valid residence permit, who has a job and/or sufficient economic resources to meet the needs of the family in an amount that represents 100% of the IPREM monthly, computing for these purposes the income from the social assistance system; as well as that they have adequate housing to meet their needs and those of their family, and that it must be their habitual residence.

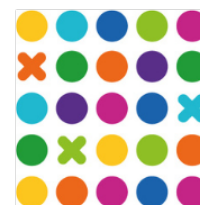
In the aspect related to employment, the Fourth Instruction states that it will be understood to have been fulfilled in those cases in which the sponsor (or his or her spouse or partner in the cases of reunification established in article 61 of Royal Decree 557/2011), is registered in the Special System for Domestic Employees of the General Social Security Scheme and there has been a reduction. in whole or in part, during their working day.

3. Finally, it is worth mentioning DGM Instructions 6/2020 on the procedures initiated relating to social roots in the context of COVID-19, published on 8 June 2020.⁴³ As far as our object of study is concerned, these instructions deal with applications for temporary residence permits for reasons of social roots, which are regulated in article 124.2 of Royal Decree 557/2011, in particular with respect to those applications in which a report is provided exempting the foreigner who intends to settle from having an employment contract. for which the accreditation that you have the economic means to reside temporarily in Spain must be assessed.

In this regard, the Instruction states in relation to the sufficiency of economic means, a non-assessed assessment of the circumstances in each case must be carried out, thus, the existence of an employment contract or the development of a self-employed activity and the stability of these as sources of resources could be assessed, among other elements, in terms determined in the instruction. In this sense, it would be confirmed that there is

http://extranjeros.inclusion.gob.es/ficheros/normativa/nacional/instrucciones_sgie/documentos/2020/INSTRUCCION_renovaciones.pdf

⁴³ See the website of the MINISTRY OF INCLUSION, SECURITY AND MIGRATION: http://extranjeros.inclusion.gob.es/ficheros/normativa/nacional/instrucciones_sgie/documentos/2020/INSTRUCCION_iniciales.pdf



an employment contract (and, therefore, there is stability), in those in which the family member has suffered a reduction, total or partial, in the working day in relation to people integrated in the Special System for Domestic Employees of the General Social Security Regime.

The Instruction states that for the purposes of assessing the economic resources of the sponsor, the recognition and/or receipt of the minimum vital income will also be taken into consideration, as well as the extraordinary subsidy for lack of activity for people integrated in the Special System for Domestic Employees of the General Social Security Regime.

27. From the beginning of the Covid-19 pandemic to the present, have measures been taken by the State to allow "undocumented" foreign personnel providing services "in the care sector" to obtain residence or work permits? [This question concerns third-country EU nationals]

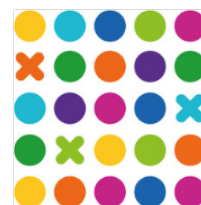
It is worth mentioning the initiative developed by the Autonomous Community of Catalonia, which resulted in the approval of *Decree-Law 25/2020, of June 16, 2020, on extraordinary measures in social, fiscal, and administrative matters*. Article 1 creates a subsidy specifically aimed at the "creation of new jobs" in the field of care. In fact, the subsidy takes the form of an economic benefit aimed at employers or non-profit entities, with the aim of promoting employment in the field of care for the elderly or dependents. The determining factor of this new subsidy is that it will be granted to beneficiaries who offer an employment contract to carry out care work for the elderly or dependent for a minimum of 12 months, to people who have not been registered with Social Security in the last 2 years from the date of signing the contract or to people who meet the requirements established to be able to obtain an authorisation in accordance with the provisions of Article 124.2 of Royal Decree 557/2011.

Consequently, an economic benefit is granted to employers so that they can either create informal work in the care sector or have at their service foreigners in an irregular situation who meet the requirements to put down roots socially and thus obtain a temporary residence and work permit as an employee. Among which will be precisely the accreditation of the employment relationship of at least one year.

I find this initiative very interesting, although, despite being a policy that would seek to mitigate to some extent the effects of the crisis resulting from the COVID-19 pandemic, the immense scope of this may have been an impediment to reducing the effects of that policy. The aid intended for the heads of the family household, not for regular migrant workers themselves, but with undeclared work, or subject to an irregular situation, may have had limited effects when, as we have seen above, the health and economic crisis has hit these women particularly hard about the reduction of working hours or the termination of their contracts. In other words, employers are subsidized when the data show that they have taken a significant number of decisions to terminate the employment relationships of the family home service with respect to informal or irregular workers, and those who have mainly suffered those decisions are left without social coverage.

28. If there are equality bodies or organizations fighting racial, ethnic or religious discrimination in your country, have they taken any action or produced any reports in relation to the rights of migrant workers in the care sector? If so, please describe this report. [This question concerns third-country EU nationals]

According to a search conducted at the Council on Racial or Ethnic Discrimination, no reports have been found specifically referring to immigrants in the care sector.



29. If there are equality bodies or organisations fighting racial, ethnic or religious discrimination in your country, have they taken any action or produced any reports in relation to the rights of people, whatever their nationality, working in the care sector? If so, please describe this report. [This question concerns both EU nationals and EU nationals and third-country EU nationals]

According to a search of the Council on Racial or Ethnic Discrimination, no reports specifically referring to the care sector have been found. In any case, in 2020 the report "Perception of discrimination based on racial or ethnic origin by potential victims in 2020" was published.

Of interest is what is said in this report with respect to the people surveyed to prepare the report. Among the sample made, the report assumes that women are concentrated in jobs in the cleaning sector and domestic workers (25%), salespeople or dependents (14%), and caregivers or nursing assistants/geriatrics (8%).

The report also points out that, in general, in the field of employment, the perception of discrimination is reduced, which is still very high among certain groups, especially (people of African descent, North Africans and Roma). However, this statement is qualified by noting that there seems to be an increase in the social valuation of the contribution to employment of these people who cover essential jobs (in agriculture, care, and hospitality, among other sectors), many of which are not covered by the rest of the population. However, the report ends by pointing out that in general terms, it is observed that the population under study feels a greater rejection in the workplace than in the neighbourhood or in the children's school. The aversion is greater when it comes to the Roma population than among other immigrant population groups.

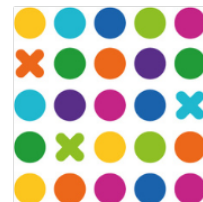
The report also points out that people's sex explains some differences related to the role that men and women tend to develop in society: in this sense, the perception of discrimination is higher among women in the areas most related to the family and care environment (health and education), while in the case of men their perception of discrimination increases with respect to them in public and social spaces. in police treatment.

30. Please comment on whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Indicate whether the worker's employer (including migrant workers) can be held liable for such situations. [This question concerns both EU nationals and EU nationals and third-country EU nationals]

The issue of harassment is regulated by Spanish law: firstly, the Workers' Statute Law recognises the right of every worker to respect for his or her privacy and to due consideration for his or her dignity.

Within this right to dignity, the Workers' Statute Act expressly includes the right to protection against harassment based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, and against sexual harassment and harassment based on sex.

On the other hand, and deepening the previous right, Law 15/2022, of July 12, 2022, comprehensive for equal treatment and non-discrimination, regulates discriminatory harassment. According to this law, any conduct carried out on any of the grounds of discrimination provided for in the law, with the objective or consequence of



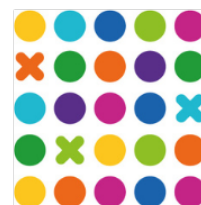
violating the dignity of a person or group of which he or she belongs and of creating an intimidating, hostile, degrading, humiliating, or offensive environment constitutes discriminatory harassment.

The person responsible for these situations can be the employer or any other type of worker in the company.

31. Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with respect to undocumented or irregular migrant workers (without residence permits). Comment on whether, in these cases, migrants in an irregular situation can file a complaint or have access to the courts in cases of exploitation and labour exploitation. In addition, there are cases in the legislation in which they can obtain a residence permit. [This question concerns third-country EU nationals]

The regulations on foreigners, in particular *Royal Decree 557/2011 of 20 April 2011, which approves the Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009, include a chapter on the granting of temporary residence and work permits in exceptional circumstances of foreigners who are victims of trafficking in human beings (which includes the exploitation of foreign workers in Spain).*

In this regard, one of the main issues to be taken into account is that the police authorities, as soon as they have reasonable indications of the existence of a potential victim of trafficking in foreign human beings in an irregular situation, shall inform him or her reliably and in writing, in a language that is understandable to him, of the provisions provided for in both said Royal Decree 557/2011 and Organic Law 4/2000, of the Rights and Duties of Foreigners in Spain, which are mainly the following: the granting of a period of recovery and reflection so that the victim can decide whether he or she wishes to cooperate with the authorities in the investigation of the crime of trafficking in human beings; Also, once the victim is declared exempt from liability, he/she may be provided, at his/her option, with an assisted return to his/her country of origin or a residence and work permit for exceptional circumstances when he/she deems it necessary because of his/her cooperation for the purposes of investigation or criminal proceedings. or in view of their personal situation, and facilities for their social integration.



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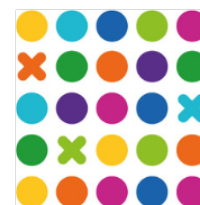
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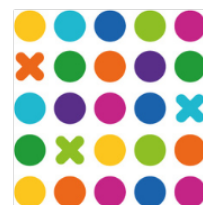
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