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Labour Law Department

MAIN MISTAKES WHEN PREPARING AN EQUALITY PLAN

On 7 March 2021, in accordance with Royal Decree Law 6/2019, all companies with more than 100 employees are required to have equality plans. RD-L also sets fines of between 626 and 6,250 euros for those companies that do not have one. Furthermore, companies with a workforce of between 50 and 100 employees are also required to have one, so those reaching these thresholds should currently be negotiating equality plans, in accordance with Royal Decree 901/2020.

Below we set out in detail ten of the main avoidable mistakes made when preparing an Equality Plan:

1. **Counting workers**. To determine whether or not drawing up an Equality Plan is mandatory, workers must be counted at least in June and December of each year. **It is a mistake to count only the total workforce number as of the date on which the plan is prepared**. The right thing to do is to add to the workforce all those fixed-term contracts that, having been in force in the company during the previous six months, have come to an end before the count is carried out (every 100 days worked would be counted as an additional worker).

   In the specific case of companies that have temporary agency staff working for them, it is a mistake not to take them into account when it comes to counting workers. Temporary agency workers should be included, both those providing their services at the date of preparation of the Equality Plan and those who have done so in the previous six months.

2. **Negotiation process.** There are set deadlines for preparing the Equality Plan. There is a maximum period of three months to start the negotiation process from the date on which the company has the number of people on staff requiring one, and a maximum period of one year to negotiate, approve and submit the application to register the Plan. The plan must be presented to the Register within 15 days of it being signed. **The agreement should be reached within one year, a simple majority vote from the negotiating committee being sufficient.**

3. **Group Equality Plan.** The possibility of implementing Group Equality Plans is allowed, but a prior analysis of each company forming part of the same is essential. **It is a mistake to assume that if only one of the companies comprising the Group is required to prepare an Equality Plan this Plan can be unilaterally extended to the rest of the Group**. In addition to duly justifying the desirability of implementing a Group Equality Plan, the activity of each undertaking and the specific collective agreements that apply to each of them must be considered separately.

It is essential to set aside the idea that any form of unitary representation that there may be in one of these companies will have legitimacy in the remaining companies belonging to the Group. The negotiating committee must be appropriately constituted, even if when looked at separately the companies do not reach the number of employees for which the law requires an Equality Plan, they must all be represented. Furthermore, it is a requirement that all the companies belonging to the Group have an appropriately analysed assessment, one for each business unit, so that specific measures can be considered which take into account the particular uniqueness of each of them.

4. **Negotiating committee.** If there is no legal representation, the most representative trade unions in the sector to which the undertaking belongs with standing to be part of the negotiating committee for the agreement must sit on it.

   It is a mistake to assume that a unitary representation will be considered a valid interlocutor in all cases. Thus, in companies without unitary representation, or with some workplaces where there is such worker representation (works council or staff representatives), and others where there is none, or for workplaces lacking such representation, it will not be sufficient to form an *ad hoc* committee; **rather a trade union committee, from those unions that are considered more representative in their respective field, must be called upon, and asked to provide such representation**. If it is desired to agree a Voluntary Equality Plan, in circumstances where it is not mandatory for the company, again, an *ad hoc* committee will not do, a trade union must sit on that committee.

   This is a fundamental and drastic change for when the Equality Plan must be negotiated, and the rule itself indicates that external support and advice can be sought.

5. **Assessment.** The minimum content for the assessment is contained in the standard with special reference to the Job Assessment System (*Sistema de Valoración de Puestos*, SVP), as well as vertical segregation.

   Preparing the assessment is mistakenly confused with mere data collection. This phase is considerably more complex, since it is intended to give some depth to the data analysis. The regulation covers the minimum content of the Equality Plan and the preliminary assessment (e.g., that relating to female under-representation in certain SVP posts) in some detail. This will also be the subject of negotiation.

6. **Recording pay and measures for preventing sexual harassment.** The regulation requires that a remuneration audit be attached to the Equality Plan. Likewise, there will also be, in any event, a **remuneration register that is not optional, but will apply, even if the number of workers on the workforce does not make preparing an Equality Plan mandatory**. On the other hand, the regulations require the implementation of protocols to prevent sexual harassment and these must be annexed to the Plan. RD 902/2020 and Organic Law 3/2007 refer to these matters.

7. **Duration of Equality Plans.** They are not indefinite. **It is a mistake to assume that once the Equality Plan has been negotiated it does not have an expiration date**. Its duration is four years, and an annual review is required with the corresponding explanatory report on the implementation of the measures included therein.

8. **Scope of application.** The provision for recording remuneration affects the entire workforce. Its subjective scope is very wide. **It would be a mistake to limit its application solely to staff covered by a collective agreement**. Senior management and senior positions must also be included.

9. **Register.** The regulations impose the obligation to register the Equality Plan in a public register. Once again, **it is a very common mistake to believe that only companies with more than 50 workers are obliged to register**. This obligation will apply not only to those Equality Plans that are legally mandatory, but also to voluntary Equality Plans, whether they have been agreed or not. This is expressly mentioned in the applicable codes (i.e., voluntary, compulsory, agreed or not).

10. **Existing Equality Plans.** Renewing and adjusting the Plan within a specific deadline is mandatory. **Having an Equality Plan which is currently in force should not lead us to believe that none of the above applies. On the contrary, its content must be adjusted to fit the regulation within a maximum period of 12 months**, after a negotiation process.