

APPROVAL OF MEASURES TO PROMOTE REMUNERATORY EQUALITY BETWEEN WOMEN AND MEN FOR EQUAL WORK OR OF EQUAL VALUE

LAW 60/2018 OF 21 AUGUST 2018

What is the subject?

Approval of measures to promote remuneratory equality between women and men for equal work or of equal value and first amendment to Law 10/2001, 21 May 2018, which establishes an annual report on equal opportunities for men and women (article 1, no. 2, paragraph e)), to Law 105/2009, 14 September 2009, which regulates and amends the Labor Code (nos. 5 and 8 of article 32), and to Decree-Law 76/2012, 26 March 2012, which approves the organic of the Commission for Equality in Labor and Employment (CITE) (article 3, paragraphs b) and q)).

What are the main objectives?

Ensure the existence of a transparent remuneration policy in employers, based on the evaluation of the components of the functions, according to objective criteria, common among men and women, in accordance with article 31 of the Labor Code, being up to the employers to demonstrate, in case of an allegation of remuneration discrimination, that they have a remuneration policy, in particular with regard to the employee who claims to be discriminated in comparison with other(s) employee(s) to whom he considers to be discriminated against.

What are the main innovations?

■ At Administrative Competencies Level

Statistical information - The department of the ministry responsible for the labor area competent for statistical treatment develops and makes available the following information in the first semester of the calendar year: i) a general and sectoral barometer of remuneratory differences between women and men, and ii) a balance sheet of remuneration differences between women and men by company, profession and qualification levels, which is developed based on legal and administrative sources, namely the information on the social activity of the company provided by the employer, under the terms of article 32 of the Law 105/2009, 14 September 2009, which regulates and amends the Labor Code.

Evaluation - The employer is notified by the inspection authority of the Ministry responsible for the labor area, within 60 days after receipt of the balance sheet of remuneratory differences between women and men by company, profession and qualification levels, in order to present an Evaluation Plan of remuneratory differences within 120 days, which shall be implemented for 12 months and is based on the evaluation of the components of the functions, according to objective criteria, in order to exclude any possibility of discrimination based on sex.

After said period of the 12 months, the employer informs the inspection authority of the Ministry responsible for the labor area about the plan implementation results, demonstrating the justified remuneratory differences and the correction of unjustified differences. The remuneratory differences that the employer does not justify are presumed to be discriminatory.

Opinion - Is attributed competence to the competent entity in the area of equal opportunities between men and women (CITE) to issue an opinion on the existence of remuneratory discrimination on grounds of sex for equal work or of equal value, which may be requested by the employee or by the trade union representative, in writing and justified, indicating the employee(s) of the other sex in relation to whom the applicant is considered to be discriminated against; the employer shall respond and make available the information on the remuneration policy, and the criteria used to calculate the remuneration of the applicant and the workers of the other sex in relation to whom the applicant is considered to be discriminated against within 30 days. The opinion issued by the authority, at the end of this procedure, is binding.

Monitoring - Is attributed competence to the competent entity in the area of equal opportunities between men and women (CITE) for monitoring this law.

■ At Relations between the Parties Level

Abusive Sanction - The dismissal or other sanction applied allegedly to punish an employment offense is considered abusive when it occurs within one year after the request for an opinion to the competent entity in the area of equal opportunities between men and women (CITE).

Invalidity - The act of retaliation that damages the employee as a consequence of rejection or refusal of submission to remuneratory discrimination, under the terms of article 25 of the Labor Code is considered invalid.

■ At Sanctioning Level

Judicial - The courts shall immediately communicate to the competent entity in the area of equal opportunities between men and women (CITE) the conviction for remuneratory discrimination on grounds of sex which has become a final judgement.

Administrative Offence:

- The violation of the obligations related to the Evaluation Plan constitutes a serious administrative offence, without prejudice to the provision of article 25, no. 8 of the Labor Code;
- An ancillary penalty of deprivation of the right to participate in auctions or public contests for a period up to two years may also be applied, pursuant to article 562 of the Labor Code;
- The binding opinion issued by the competent entity in the area of equal opportunities between men and women (CITE) is communicated to the inspection authority for the purposes of article 25, no. 8 of the Labor Code;
- It is established that the administrative offence procedure provided by the Labor Code, as well as the procedural regime applicable to labor and social security administrative offences, approved by Law 107/2009, 14 September 2009 (in its current version), and, secondarily, the General Regime of Administrative Offences, approved by Decree-Law 433/82, 27 October 1982 (in its current version), shall apply to the administrative offences provided for in this law.

■ At the Legislation In Force Level

Law 10/2001, 21 May 2001 - Amends article 1, no. 2, paragraph e), establishing that the annual report on equal opportunities between men and women should contain information about the implementation of the law that approves measures to promote remuneratory equality between women and men for equal work or of equal value;

Law 105/2009, 24 September 2009 - Amends article 32, nos. 5 and 8 by imposing, respectively, the employer the duty to make the information available to the company's employees and to send it, within the period established in the ordinance referred to in no. 2 of the same article, to the entities referred to therein and that the information provided to the employers or employees representatives, except for the remuneration with regard to the trade unions and to the competent department to proceed with statistical treatment, must be expurgated from nominative data, excluding sex.

Decree-Law 76/2012, 26 March 2012 - Amends article 3, paragraph b) and q) by conferring, respectively, competence to the Commission for Equality in Labor and Employment (CITE) to issue its opinion on the existence of remuneratory discrimination on grounds of sex for equal work or of equal value, by request of the employee or trade union representative and to develop the other actions resulting from the law that approves measures to promote remuneratory equality between women and men for equal work or of equal value, maintaining the others Commission's competences.

When does it produce effects?

- Law 60/2018, 21 August 2018 takes effect six months after its publication, that is to say, on 22 February 2019, without prejudice to the transitional provisions contained therein, namely:
 - The general and sectoral barometer of remuneratory differences between women and men is made available, for the first time, in the calendar year of entry into force of this law, that is to say, in 2019, and the balance of the remuneratory differences between women and men by company is made available, for the first time in the calendar year following the year of the entry into force of this law, that is to say, in 2020;
 - The existence of a transparent remuneration policy in employers is due six months after the entry into force of this law, that is to say, as of 22 August 2019;
 - During the first two years after the entry into force of this law (that is to say, between 22 February 2019 and 22 February 2021), the Evaluation Plan regime is applicable to employers employing 250 or more employees and extended to employers employing 50 or more employees as of the third year after the entry into force of this law (that is, as of 22 February 2021);
 - The opinion to the competent entity in the area of equal opportunities between men and women (CITE) can only be requested after six months of the entry into force of this law, that is, as of 22 August 2019.

Note: Law enforcement shall be evaluated by the competent entity in the area of equal opportunities between men and women (CITE), after consultation of the social partners, every four years, and the first assessment shall take place two years after its entry into force, i.e. on 22 February 2021.

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