

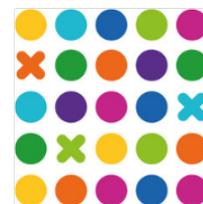
Deliverable No. D2.3: National and Comparative Job Quality and Inclusive Working Conditions Reports

# Spanish Report on Care Workers' Job Quality and Inclusive Working Conditions

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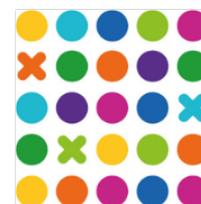
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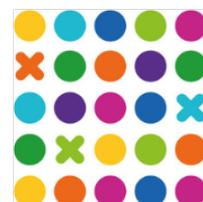


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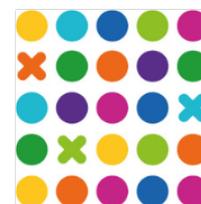
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# 1. Introduction

The aim of this national report is to analyse job quality and inclusive working conditions of care workers in Spain. The report will include analysis of law and policy, labour market characteristics, and industrial relations, as well as analysis of the interplay between national law and EU/European and international law.

A socio-legal research methodology will be applied.

The outline of the national report is as follows. Section 2 discusses various aspects of care work and domestic work, including occupations, labour market characteristics, overall regulatory framework, and current debates. Section 3 addresses fundamental trade union rights, social partners, collective bargaining, and industrial relations. Section 4 presents a discussion on employment status, flexible forms of employment, and employment protection, while Section 5 presents a discussion on wages and benefits. Section 6 focuses on working time, health and safety, implications of the COVID-19 pandemic, and training and competence development. Section 7 discusses social security coverage and benefits. Section 8, finally, contains a concluding discussion.

## 1.1. Main characteristics of the labour law and industrial relations system and welfare state model in Spain

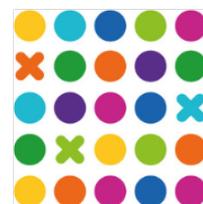
Spain is a social, democratic state governed by the rule of law; hence the 1978 Constitution establishes several mandates that reflect its status as a Social State. For example, Article 35 recognises that all Spaniards have a duty to work and the right to work, as well as the right to free choice of profession or trade, to promotion through work and to sufficient remuneration to satisfy their needs and those of their families, with no discrimination on grounds of sex. The same article establishes the need for a workers' statute to be regulated by law. This need has been met with the *Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law*<sup>1</sup>. This law grants minimum labour rights to employees, i.e. people who work voluntarily and for pay for an employer or company, which directs or organises their work. It applies across the board, in all areas of the public and private sector. Both the Spanish Constitution and Royal Legislative Decree 2/2015 include the right to collective bargaining between employers and workers' representatives to reach collective agreements which, in general, provide for working conditions that enhance those established by labour legislation.

Moreover, Article 41 of the Spanish Constitution<sup>2</sup> also provides that the public authorities shall ensure a public social security system for all citizens, guaranteeing sufficient social assistance and benefits in situations of need (e.g. health care, retirement benefits, sickness benefits, etc.). In accordance with this mandate, the Social Security system is public and universal (providing protection to all citizens). However, one of the foundations of the public social security system is that a person's entitlement to benefits in case of need is largely conditional on that person having previously worked, i.e. having contributed to the payment of the corresponding social security contributions derived from his or her employment. If the person has not worked, the system also provides "welfare" protection, although not to the same extent as other social security benefits.

In addition to the above-mentioned area of protection, the Constitution also establishes specific indications for

<sup>1</sup> *Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law, BOE-A-2015-11430 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430>.*

<sup>2</sup> *Spanish Constitution, BOE-A-1978-31229 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229>.*



the protection of persons with disabilities as well as the elderly. In this respect, Spain has created a public system, the System for Autonomy and Care for Dependency (SAAD), to protect, through a range of social benefits, those persons who, for reasons arising from age, illness or disability, and linked to the lack or loss of physical, mental, intellectual or sensory autonomy, require the care of another person or persons or substantial help to carry out basic daily living activities (see *Law 39/2006 of December 2006 on the Promotion of Personal Autonomy and Care for Persons in a Situation of Dependency*)<sup>3</sup>. Being registered in the SAAD entitles the beneficiary to various protection measures: telecare; home help provided by a carer; financial benefits for family care; financial benefits for the purchase of a service (residential care; day/night centre; or home help service); financial benefits for personal care; or financial benefits for family care.

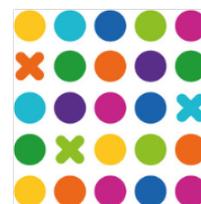
## 1.2. Relevant aspects of research methodology and availability and selection of materials

The labour relations and social protection system in Spain has a number of important and easily accessible information sources. These include legislation; court rulings on labour and social security matters which have undergone a fundamental development and have influenced the very content of labour regulations; administrative practice, and academic doctrine which has studied, analysed and provided proposals for improvement to the above sources. However, in terms of care, it was only since the Covid-19 pandemic of 2020 that the debate on the importance of the care system, or more specifically, on its “crisis” began to emerge with force due to the inadequacy of the State to cover all the care needs of working people and the burden that women are taking on as a result through unpaid work. In this regard, the Spanish government has already drawn up a roadmap leading to the adoption of a State Care Strategy, for which it has set up a Care Advisory Board. Since September 2021, this Board has functioned as a space for reflection of governmental agents, public administrations, trade unions and business associations, professional care associations and other entities, on the design of public intervention in the area of care. The first result has been the drafting of a *Basic Document for Care*, published by the Institute for Women in April 2023<sup>4</sup>, the content of which will be dealt with in this report.

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<sup>3</sup> *Organic Law 3/2007, of March 22, 2007, for the effective equality of women and men, BOE-A-2007-6116 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2006-21990>.*

<sup>4</sup> *The Women's Institute, 'Women in Today's Society' (Instituto de la Mujer, 1969) <https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1969.pdf>, accessed 17<sup>th</sup> September 2023.*



## 2. Care work and domestic work: occupations, labour market characteristics, overall regulatory framework, and current debates

### 2.1. Main characteristics of the care sector in Spain, and the role of domestic work in care work

#### 2.1.1. Main characteristics of the care sector, including public and private care elements

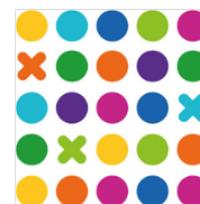
The basic labour legislation is the *Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law*. This basic regulation grants minimum rights to employees who thereby provide their services to an employer or company. These minimum rights are established by law and therefore cannot be reduced by agreement between employer and employee. Application is general, i.e. the Royal Legislative Decree 2/2015 applies to all areas of the public and private sectors in which employment contracts are agreed upon between the employer and the employee. The establishment of an employment relationship to which the Workers' Statute Law applies activates the entire social security system (payment of contributions by the employer and the employee, and in case of need of the employee, triggers the activation of social security benefits).

This common or standard employment regime is therefore applicable in many of the occupations in the care sector, in particular when carers work for an employer or company. For example, nursing staff in public or private hospitals or nursing homes for the elderly, or also professional carers employed by a care provider or a public authority to look after people in need of care in their own home.

However, this common or standard regime has exceptions in application depending on the characteristics of certain activities, for example, in the area known as "family household services" (generally equivalent to domestic work). This is an employment relationship entered into between the head of a family household and a person working in the household to carry out domestic duties. These tasks include "care or assistance of family members or persons forming part of the domestic or family environment". This type of relationship between the head of the family household and the person who performs domestic tasks is considered to be an employment relationship, i.e. the workers and employees are recognised as having a set of employment rights. However, these rights do not come under the common or standard regime, but under specific regulations for this sector of the domestic service.

These specific regulations typically undercut the minimum rights that apply in the common or standard regime (in fact, in this type of specific regulations such as for domestic work, the power of control and management of the employer is often increased).

Differences between the regulation of the common or standard regime (generally more protective for the worker)



and that of the special employment relationship in the domestic sector can be referred to as “protection gaps”<sup>5</sup>. In Spain, the regulation governing domestic service is *Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship for family household services*<sup>6</sup>.

However, it should be recalled that art. 2 of Royal Decree 1620/2021, which regulates the special employment relationship for the provision of services in the family home, excludes from its application those employment relationships that are arranged by the provider companies or those carried out through temporary employment agencies (to which the common or standard regime would apply); but also the relationships of professional caregivers hired by public institutions or private entities, in accordance with *Law 39/2006, December 14, 2006, on the Promotion of Personal Autonomy and Care for Persons in a Situation of Dependency (mentioned above)*; and finally the relationships of non-professional caregivers consisting of the care provided to dependent persons in their homes, by family members or members of their environment, not linked to a professional care service, in accordance with Law 39/2006, already referred to.

Within this regime of professional or professionalized caregivers, one could also include nursing assistants or auxiliary nursing care technicians, who are hired by companies providing care services to provide their services in homes. In fact, these nursing assistants, who in English would be included in a general notion of “Social and care worker” (in Spain, the translation that we use for this study is equivalent to assistants or nursing assistants), have a secondary education to be able to access the realization of courses or training studies specifically accredited by public agencies. The tasks to which they are qualified include taking care of the hygiene of patients, providing logistical support to the activities of doctors and nurses, supporting patients in the administration of food, etc. and they can work both on a self-employed basis, as well as being employed in nursing homes and hospitals.

The legislation applicable to these groups is not, as a general rule, the specific legislation applicable to people who are hired to work in the family home service (Royal Decree 1620/2011), but they are subject to the common or standard labor regime, or they can also work as self-employed.

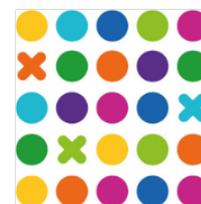
In any case, it has been detected that in some cases, the owners of the family home hire people to take care of other dependent persons under the modality of Royal Decree 1620/2011, which has been criticized: the State Association of Directors and Managers in Social Services<sup>7</sup> recognizes that “domestic service” contracts (Royal Decree 1620/2011) are used for personal assistance tasks within the framework of the dependency system, and in the face of this reality it is concluded that the regulation of the most suitable professional profiles to carry out such care tasks cannot be postponed, since the use of “domestic service” contracts (Royal Decree 1620/2011) for this purpose -which do not reflect the work to be carried out nor presuppose professionalization and which obviously clearly do not protect the workers-, is not the right way to go and the managing administrations should not admit these formulas, for which other formulas should be urgently enabled.

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<sup>5</sup> Mercader Uguina, J.R., FJ. Gómez Abelleira, AB. Muñoz Ruiz, P. Gimeno Díaz, 'Job Quality and Industrial Relations in the Personal and Household Services Sector – Reference: VS/2018/0041 PHS-Quality Project. Country Report of Spain' (VS/2018/0041 PHS-Quality Project, 2018).

<sup>6</sup> Organic Law 3/2011, of January 28, which regulates the use of electronic media in the Public Sector, BOE-A-2011-17975 (Spain): <https://www.boe.es/buscar/doc.php?id=BOE-A-2011-17975>.

<sup>7</sup> State Association of Directors and Managers in Social Services, 'XXIII Report of the Observatory of Dependency' (Asociación Estatal de Directas y Gerentes en Servicios Sociales, 2023) <https://directoressociales.com/xxiii-dictamen-del-observatorio-de-la-dependencia/>, accessed 13<sup>th</sup> February 2024.



## 2.1.2. The role of domestic service in care work

Based on the report of the International Labour Organisation published in 2019: *Care work and care jobs for the future of decent work*<sup>8</sup>, Spain is characterised by a medium to high level of employment in the care sectors (20% of total employment counting all care-related occupations), a percentage level reached by the admittedly high proportion of care staff who are employed in domestic service, i.e. employed by households, comprising approximately 3% of total employment.

It should be remembered that the domestic service regulated by Royal Decree 1620/2011 can be contracted by households to carry out functions related to any domestic task, including those corresponding to the care or support provided to family members or persons forming part of the domestic or family environment. This channel can therefore be used by households to hire domestic staff to perform care functions.

Looking more closely at the data available, according to data from the Ministry of Social Security and Migration of the Spanish Government<sup>9</sup>, in August 2022 there were 373,101 people affiliated to the Special System for Domestic Employees, of which, to put the figures into perspective, 16,963 were men and 356,138 were women.

In addition to the above, a review of the statistics corresponding to foreign workers affiliated to the Social Security in the data published in 2021 shows that out of a total of 168,535 foreign workers affiliated to the Special System for Domestic Employees, 9,960 were men and 158,562 were women, most of them from Latin America (90,465)<sup>10</sup>.

Consequently, the domestic service sector in Spain is characterised by a high proportion of immigrant women, which, incidentally, results in the fact that domestic service has become more of a labour niche for female foreign workers.

On the other hand, and as has already been shown by studies addressing this issue, family household services are a favourable environment for the informal employment of both Spanish and migrant female workers. In fact, there could be as many as 172,599 persons in domestic service who, despite providing their services for employer households, are not registered with the social security system.

However, one of the problems of this framework of foreign labor in domestic service is that a good part of the personnel is in undocumented status. In fact, it is worth mentioning that although there are no statistics on the presence of foreign workers in an irregular situation in Spain in the care sector in general, according to the 2022 Report of the *Forum for the Social Integration of Immigrants* on “The situation of migrants and refugees in Spain, in the field of domestic work it is estimated that more than 600,000 women work in this sector<sup>11</sup>. Among them,

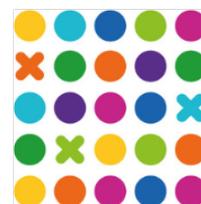
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<sup>8</sup> ILO, 'Global Wage Report 2020-2021' (ILO, 2020) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_737394.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_737394.pdf), accessed 20<sup>th</sup> November 2023.

<sup>9</sup> Ministry of Inclusion, Social Security and Migration, 'August 2022 Statistics' (Ministry of Inclusion, Social Security and Migration, 2022) <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10>, accessed 20<sup>th</sup> November 2023.

<sup>10</sup> Ministry of Inclusion, Social Security and Migration, 'August 2022 Statistics' (Ministry of Inclusion, Social Security and Migration, 2022) <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10>, accessed 20<sup>th</sup> November 2023.

<sup>11</sup> *Forum for the Social Integration of Immigrants, 'The situation of migrants and refugees in Spain' (Foro para la Integración Social de los Inmigrantes, 2022)*



the Report states that 70,000 are undocumented migrants<sup>12</sup>. The report goes on to state that some 40,000 women work as interns and 9 out of 10 of them are foreign and concludes that many of the workers in an irregular situation are forced to accept precarious work in order to survive with excessive working hours, even working with few or no days off, and are exposed to violence and abuse by their employers, even more so in the case of intern caregivers.

### 2.1.3. Existing practices of contracting and subcontracting in the care sector, carried out by both private and public care providers

In the care sector, the main actors involved are households, companies providing care services and public administrations with care staff. However, the introduction of budget cuts in the public sphere for care policies, as well as the privatisation of previously public care services, has led to an increase in the individual search for solutions to the need for care, including the outsourcing or contracting out of care services to companies.

One of the areas where this increase in subcontracting or contracting out service provision to companies has occurred most is in the field of care linked to children and also from the System for Autonomy and Care for Dependency (SAAD). Note that other benefits granted by the SAAD include the financial benefit to beneficiaries to hire personal carers; the financial benefit to beneficiaries linked to the purchase of a service (e.g. residential care); or the provision of home help (it must be said, however, that cutback policies have affected the budget allocations for these benefits, which has been one of the factors for people covered by the SAAD to seek more financial support for the care of a relative).

In addition, there has been a consolidation of digital platforms that manage care services, including in the health sector, where problems have been detected in the way the labour relations they provide are qualified.

Nevertheless, as the *Basic Document for Care*, published by the Institute for Women in April 2023, states, an intense debate is taking place in Spain on the participation of for-profit business entities in the field of care. In particular, the position of public administrations in providing services considered fundamental rights (as the right to care is being constructed) is under discussion, in terms of whether they should be provided in their entirety and directly by public administrations or whether they should be outsourced to third parties. Nowadays, the latter dynamic has become a common form of action in the provision of care, and proposals are being made to involve “social economy enterprises” that are both specialised in the field of care and non-profit making.

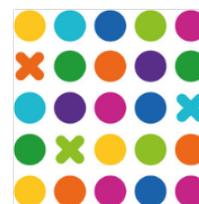
## 2.2. The notion of care worker in Spain

The main occupations related to the carer concept in Spain are the following:

1. On the one hand, there are people who “provide services for the family home” (commonly referred to in

<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>, accessed 15<sup>th</sup> November 2023.

<sup>12</sup> Oxfam Intermon, 'Essential and disenfranchised' (Oxfam Intermon, 2021) <https://cdn2.hubspot.net/hubfs/426027/Oxfam-Website/oi-informes/esenciales-sin-derechos-informe-completo.pdf>, accessed 15<sup>th</sup> April 2024, p. 47.

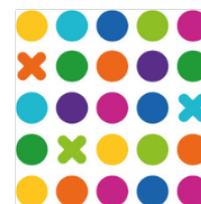


English as “home caregivers”). They can be hired by the owner of the family home, in which case they have a “special employment relationship” subject to Royal Decree 1620/2011, or they can be hired by a service provider company to work in a family home. In the latter case, they are covered by the ordinary or standard employment regime. These persons are not required to have specific care qualifications.

2. Mention should also be made of services provided by so-called “professional carers”:
  - a. Care services are provided to any person within the SAAD system referred to above, i.e. carers who carry out their care functions for people in a recognised situation of “dependency” either in a home or in a residential home or centre. As a rule, if they provide services in a home, professional carers are employed by companies providing care services. If they are employed in residential homes, they are employed by the care home or centre itself.
  - b. Within this regime of professional, or professionalised, carers, one could also include nursing assistants or auxiliary nursing care technicians, who are employed by care service providers to provide their services in private homes. These may also be care workers who provide their services on a self-employed basis.
3. Health professionals (doctors, nurses, midwives, physiotherapists, etc.) working in public institutions (nursing homes, hospitals), whether public or private. As far as nursing is concerned, it is worth mentioning the statistics of the National Institute of Statistics on registered healthcare professionals, which include the nursing staff, which is the largest group (35.5% of the total), followed by medical staff (30.9%) and pharmaceutical staff (8.4%). Focusing on the former, in the year 2022, a total of 336,321 people are included as nurses, of which 53,023 are men and 283,928 are women (specifically, 656 men and 9,206 women as nurses with the title of midwife). In fact, the National Institute of Statistics confirms that the healthcare function has a majority female presence, since in 2022 there were more women than men registered in 13 of the 15 professions analyzed by this statistic of registered healthcare professionals. It also states that the groups with the highest percentage of women were speech therapists (93.1% were women), occupational therapists (90.4%) and nurses (84.2%)<sup>13</sup>.
4. Finally, it should be noted that the 2019 Report of the International Labour Organisation entitled “Care Work and Care Jobs. For the Future of Decent Work” also includes as care workers early childhood teachers (up to the age of 3), as well as pre-primary school teachers (from the age of 3 up to school age) and basic or compulsory school teachers (primary and secondary) from the age of 5 or 6, depending on the country<sup>14</sup>. In any case, we must remember that in the research project that concerns us (Care4Care Project, we care for those who care), the people who care for children, especially teachers, are not part of the object of study of this project.

<sup>13</sup> INE, 'Registered Health Professionals. Year 2022' (INE, 2022) [https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica\\_C&cid=1254736176781&menu=ultiDatos&idp=1254735573175](https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176781&menu=ultiDatos&idp=1254735573175), accessed 19<sup>th</sup> June 2024.

<sup>14</sup>ILO, 'World Employment and Social Outlook - Trends 2019' (ILO, 2019) [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_633135.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf), accessed 19<sup>th</sup> June 2024.



## 2.3. The impact of ILO Convention N° 189 on Domestic Workers in Spain

In Spain, the special employment relationship for the provision of services for the family home (equivalent to domestic work) is regulated by a 2011 government regulation, namely *Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship for family household service*. Subsequently, this regulation underwent an intense modification in 2022, through a law, specifically *Royal Decree Law 16/2022, of 6 September, for the improvement of working conditions and Social Security for domestic workers*<sup>15</sup>.

Under this new legislation, the Spanish State moved forward to provide domestic workers with rights before the ratification of the *International Labour Organisation's Domestic Workers Convention, 2011 (No. 189)* on 28 February 2023. The measures of this Convention shall enter into force for Spain on 29 February 2024 (see the Instrument of Accession to the Convention concerning Decent Work for Domestic Workers, signed in Geneva on 16 June 2011)<sup>16</sup>.

Finally, as mentioned above, labour regulations for domestic service in Spain are of a special nature, i.e. they have their own regulations (Royal Decree 1620/2011, amended in 2022), which differ from the standard or common regulations that apply to all other workers in Spain (to which the Workers' Statute Law applies). In general, this has meant that labour rights for domestic workers have been poorer than for workers covered by the standard or common regime.

Main ideas that can be contributed to this question:

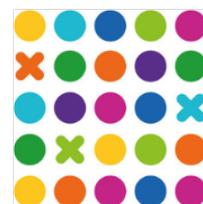
1. As mentioned above, domestic work in Spain is highly feminised and composed of an immigrant population. As the International Labour Organization's 2019 Report *Care Work and Care Jobs. For the Future of Decent Work* states, domestic workers account for 6.5 per cent of female employment (and 0.7 per cent of male employment), with 55 per cent being foreign-born.
2. Although the provisions of Convention 189 are not yet in force for Spain, it must be confirmed that with the regulation adopted in 2022 through Royal Decree Law 16/2022, the rights of persons employed in family households have been increased. Thus, for example, their right to health and safety at work is recognised in accordance with the Law on Occupational Health and Safety, which applies to all workers. Household workers are entitled to unemployment benefits at the end of their employment relationship. Domestic workers are also covered by the Wage Guarantee Fund, which will therefore be able to pay outstanding wages in cases of insolvency of the family unit employing the domestic workers. Permanent employment in domestic work is also encouraged and it is ensured that domestic workers are informed of the essential conditions of their employment contract. Finally, the possibility for the owner of the family home to terminate the contract on the sole grounds of his or her decision to withdraw from the contract has been repealed.

These regulatory improvements in domestic work, including the ratification of Convention 189, due to enter into force in 2024, have been positively assessed by the Care Advisory Board, which has drawn up the *Basic Document*

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<sup>15</sup> *Royal Decree-Law 7/2022, of September 20, on urgent measures to alleviate the effects of the economic crisis generated by the COVID-19 pandemic, BOE-A-2022-14680 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2022-14680>.*

<sup>16</sup> *Law 7/2023, of April 26, on environmental protection, BOE-A-2023-8304 (Spain): [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2023-8304](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-8304).*



for Care, stating that these measures represent an important step forward to dignify care work, an advance in its professionalisation and an improvement in the status of women workers in the sector as a whole.

## 2.4. The regulatory framework in the care sector in Spain

With regard to the various issues raised in this question, the following ideas stand out:

1. Care work is carried out in a wide variety of situations which may give rise to the application of different legislation and collective agreements. For example, it should be borne in mind that two different regulations with different degrees of protection apply to domestic care work: if the employer is the owner of the family home, the domestic work regulations apply; if a service provider sends a worker to look after another person in his or her home, the common regulations apply. This is without counting the possibility that other types of care provided by specialised carers may be carried out autonomously.
2. On the other hand, there are sectors where the adoption of collective agreements between workers and companies are well developed, for example in the health sector (e.g. nursing), while there are other sectors that lack this type of collective bargaining, for example domestic work.

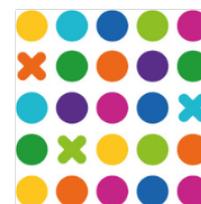
The *Basic Document for Care* under discussion, published in 2023, also warns that one of the measures to be taken to improve working conditions is the revision of existing collective agreements. According to the Document, the improvement of working conditions is achieved, among other things, by adapting and modernising agreements that have become obsolete due to their age or changes in the sector to which they refer. A review of existing agreements is therefore proposed in order to identify those on which work can be done to improve working conditions.

3. It should also be noted that the work of the Court of Justice of the European Union has been instrumental in improving working conditions in domestic service. In particular, its decision of 24 February 2022 (C-389/20), was decisive in Spain having to recognise the unemployment benefits of domestic workers when their employment is terminated. It was considered that the lack of this entitlement amounted to indirect discrimination on the basis of sex, as it deprived mainly women of this right.

## 2.5. The key current debates on working conditions, job quality, labour law, and labour market issues in relation to care workers, care work, and the care sector in Spain

In general, it is worth mentioning a significant precariousness of care labour, which reflects a general undervaluation of this type of work. The cost-cutting policies of service providers, which exacerbate working conditions such as wages, thus widening the gender pay gap, are also being discussed.

In the field of care homes for the elderly, studies have shown that this is a sector made up of workers with a low level of training, since more than half of them (55.5%) have completed only primary education, with or without first-degree vocational training, while the rest are distributed between 20.5% with secondary or post-compulsory



education and 24% with higher education. The issue of (little) training in the field of care should be given special attention, since in order to avoid the precarious employment situations that arise in many cases of care work, it is necessary to professionalise care work through the provision of training and professional certification of the experience acquired, which, moreover, should go hand in hand with formulas for formalising employment relationships (especially in the field of care in the home<sup>17</sup>). In this area, it is interesting to bring up the proposal of the Basic Document for Care published by the Women's Institute in April 2023, which calls for workers in care and health centres (nursing homes, mental health centres, etc.), social and health care assistants, personal assistants and domestic workers to have their professional skills recognised by means of professional certificates. In addition, the document states that each of the professional categories should have a specific training plan with the aim of improving the conditions of workers and their users<sup>18</sup>.

Another element of interest that has been detected by the studies carried out with respect to the staff of care homes for the elderly is the low average annual remuneration of the staff, since in 2019 it is 20% (18,136€) lower than the average for the service sector in Spain (22. 723), and if compared to the average annual salary of the whole economy in Spain, the difference reaches 26%, which would explain the difficulty in attracting workers to this sector, as it is expressed that those with social and healthcare credentials prefer to work in hospitals or health centres, where working conditions are better. As to whether or not these salaries are gender-biased, there is an interesting debate as to whether salaries in care homes for the elderly are low because most of the workers are women or because the staff in the 'front line of care - three quarters of the total - are in low professional categories of the Social Security, with salaries that are close to the minimum wage (SMI)<sup>19</sup>.

On the other hand, in the field of domestic work, a problem to be addressed in the family household sector is the persistent informality of work carried out regardless of the nationality or migratory status of the carers: although it is not possible to ascertain specific data on informality as this is naturally not recorded by its very nature, it is nevertheless presumed to be high if we compare the data for all persons affiliated to the Special Social Security System published in August 2022: 373,101 persons, with the figures published by the Labour Force Survey for the second quarter of 2022 for the number of persons employed in households employing domestic staff, which is 545,700. Therefore, according to the differential parameters between both latitudes, there could be 172,599 persons in domestic service who, despite providing their services for employer households, are not registered with Social Security. As a result, it should be confirmed that the fact that this is a highly informal sector is also a favourable place for foreign workers in an irregular situation to consider it as a priority entry point to the labour market, which may also allow them to apply for an exceptional residence and work permit in accordance with the legislation on foreigners.

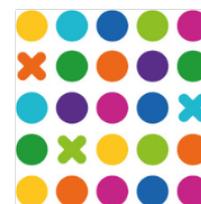
Another thing is that this informal work gives rise to situations of labour exploitation, which has been denounced by social organisations such as *Caritas*<sup>20</sup>, for which this situation is a breeding ground for the defencelessness of women who are often unaware of suffering exploitation, normalising it and thinking that it is a necessary step to

<sup>17</sup> María Gema Quintero Lima, "The value of care: the need for professionalization, although not only", in AA.VV., *Economía de la Inclusión, el reto de la desigualdad y la vulnerabilidad social* (Fundación Mutualidad de la Abogacía, 2023) 650 and following.

<sup>18</sup> Women's Institute, 'Basis for Care Document' (Women's Institute, 2023) <https://www.inmujeres.gob.es/publicacioneselectronicas/documentacion/Documentos/DE1969.pdf>, accessed 15<sup>th</sup> June 2023.

<sup>19</sup> Julia Montserrat Codorníu, "The impact of the pandemic on nursing homes for the elderly and the new staffing needs in the post-COVID stage", *Revista Panorama Social*, no. 33 (first semester 2023).

<sup>20</sup> Cáritas, 'Cáritas denounces that the labor rights of domestic workers are "gravely unprotected"' (2022) <https://www.caritas.es/noticias/caritas-denuncia-que-los-derechos-laborales-de-las-empleadas-de-hogar-estan-gravemente-desprotegidos/>, accessed 3<sup>rd</sup> July 2023.



get a better job; Caritas adds that in the case of immigrant women, being outside their country of origin, they assume that they must ‘put up with’ everything; in fact, although many of them are aware of suffering violations, they do not report them for fear of losing their jobs, believing that they are useless or because they do not feel legitimised to do so.

Finally, as an aspect that can be considered as a lowest common denominator to the different care functions, the issue of occupational accidents, or in other words, the high number of occupational accidents reported by the 2022 statistics of the Ministry of Labour<sup>21</sup> in relation to the employment of health and care workers, which include care workers in health services, others providing care services, and also personal service workers, should be highlighted.

The care sector is particularly sensitive to occupational accidents leading to sick leave. The fact that many female care workers do not appreciate the limits of the physical effort they are making or do not know, due to lack of training, how to manage physically or psychologically a person who requires their care may be factors that may increase the accident rate. Other reasons are well known, such as health burnout, for example, of geriatric workers due to the low expectations of recovery of the sick<sup>22</sup>, as well as the stress of care workers in general, but even more so when it is exercised with respect to seriously ill or very disabled people. To this could also be added those related to psychosocial risks at work such as violence or harassment at work, or stress. Furthermore, it should be borne in mind that violence, especially sexual violence, is a widespread situation in the domestic sphere.

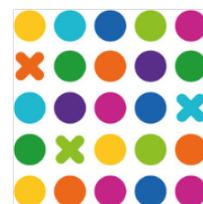
In this framework, we offer some considerations on the debates that are taking place, as expressed in the *Basic Document for Care* published by the Institute for Women in 2023 (cited above):

1. A priority debate is how to address the recognition of professional qualifications of carers. This debate arises precisely because these qualifications are so poorly recognised.
2. Another important debate concerns the unfavourable handling of regulations in the care sector due to the diversity of situations that occur. This leads to different regulations or collective agreements and insufficient enforcement of existing legislation.
3. The third issue which, according to the Basic Document under discussion, needs to be reviewed is the systems of control or supervision of working conditions and of the companies or intermediary agencies operating in the care sector.
4. The need to complement the adoption of new legislation to protect care workers with instruments or mechanisms to ensure their implementation is also being discussed.

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<sup>21</sup> Ministry of Labor, *Bulletin of Statistics on Occupational Accidents: Occupational Accident Statistics: ATR-I.1.8. Incidence rates of occupational accidents with sick leave, by occupation of the injured worker (2022)* [https://www.mites.gob.es/es/estadisticas/monograficas\\_anuales/eat/2022/index.htm](https://www.mites.gob.es/es/estadisticas/monograficas_anuales/eat/2022/index.htm), accessed 8<sup>th</sup> February 2024.

<sup>22</sup> María Ángeles Durán, *The invisible wealth of care* (Universitat de València, 2020) p. 446.



## 3. Fundamental trade union rights, social partners, collective bargaining, and industrial relations

### 3.1. The regulation of fundamental trade union rights in Spain

The Spanish Constitution recognises as Fundamental Rights the Right to Freedom of Association and the Right to Strike (Art. 28). These fundamental rights have also been recognised by the Constitutional Court for undocumented migrants, i.e. migrants who are in Spain in an irregular situation. Furthermore, Article 37 of the Constitution establishes the duty of the law to guarantee the right to collective bargaining between workers' and employers' representatives, as well as the binding force of agreements (a matter that has been regulated by the Workers' Statute Law).

The same rights are, of course, also recognised for workers in the care sector. However, their effective application depends to a large extent on issues such as the establishment of trade unions in the different occupations that make up the care sector, which may have repercussions on their ability to reach collective agreements with companies; on the presence of Spanish or European women or third-country migrants, the latter being more likely to be unaware of their basic rights; and, among non-EU immigrants, on whether or not they have residence papers.

In this respect, for example in the health care sector, e.g. in hospitals or nursing homes, trade union organisation is adequate, although the precariousness of labour relations is also visible.

As outlined in the document of the Trade Union CCOO -Comisiones Obreras-: *Proposal for a Comprehensive and State-wide Care Pact - Confederal Working Group - Secretariat for Women, Equality and Working Conditions (Propuesta de Comisiones Obreras (CCOO) por un Pacto Integral y Estatal de Cuidados Grupo de Trabajo confederal Secretaría de Mujeres, Igualdad y Condiciones de Trabajo)*<sup>23</sup> there was intense labour unrest among workers in care homes (for the elderly, people with disabilities, etc.) in 2022, mainly to demand wage increases and the improvement of other working conditions, such as favouring full-time over part-time contracting.

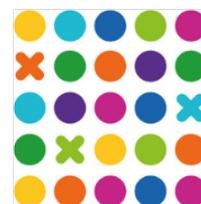
This has also been the case for workers assigned by companies to help people at home (home help sector), where there have also been different protests and intense labour unrest.

The document (*CCOO Proposal for a Comprehensive and State-wide Care Pact - Confederal Working Group - Secretariat for Women, Equality and Working Conditions*), adds that in the care sector in general, there has also been industrial action to demand the fulfilment of the wage improvements established in the applicable collective bargaining agreements. Finally, the 8th State Agreement for the Dependency Sector was signed, effective until 31 December 2025. The signing of this agreement, which affects more than 300,000 workers, brings significant wage improvements, now and in the coming years, as well as a significant improvement in work practices.

The situation is different in the domestic work sector, particularly for domestic work under the special labour regime for family household services. Notwithstanding the existence of associations defending the interests of women workers, the lack of social agents with representation to negotiate agreements, as well as the profile of

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<sup>23</sup> CCOO, 'Proposal of the Trade Union Comisiones Obreras (CCOO) for a Comprehensive and State-wide Care Pact' (Confederal Working Group - Secretariat for Women, Equality and Working Conditions) (CCOO, 2022) <https://www.ccoo.es/8788f3fd0193b984c5ab0ca9773d593000001.pdf>, accessed 13<sup>th</sup> January 2024.



women workers and employers themselves, means that collective bargaining does not take place.

## 3.2. The social partner relations and the labour market organisation of the care sector in Spain

It can be confirmed that social dialogue exists between representatives of the Spanish government and trade unions and the care sector, as well as with associations defending the interests of carers. No representatives of business or employers' associations are present in this dialogue process.

### 3.2.1. Trade unions and employers' organisations involved in the care sector

Firstly, it should be mentioned that the main representative or majority class organisations, i.e. those defending the interests of all workers in any sector, are *Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT). Consequently, these organisations also represent the interests of workers in the care sector.

In addition to these unions, there are the sectoral and minority unions: SINTRAHOCU (Union of Domestic and Care Workers) and SINDICATO S.A.D (Union of professional municipal carers).

With regard to business associations, the CEOE (Spanish Confederation of Business Organisations) and CEPYME (Spanish Confederation of Small and Medium-Sized Enterprises) are particularly noteworthy.

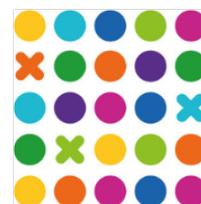
Within the CEOE there is the *Asociación de Empresas de Servicios para la Dependencia* (AESTE) (Association of Companies for Dependency Services) and the *Círculo Empresarial de Atención a las Personas* (CEAPs) (Business Circle for the Care of People).

### 3.2.2. Rates of union or business organisation membership

In Spain, of interest is a study by the CCOO trade union entitled *Un futuro sombrío: estudio de la afiliación sindical en Europa desde 2000* ("A bleak future: study of trade union membership in Europe since 2000"<sup>24</sup>), carried out in 2017, which confirmed that Spain is one of the countries with the lowest trade union density (i.e. the proportion of workers in a country who are members of a trade union), at around 15%, specifically 17% in Spain. International and comparative statistics and analysis of industrial relations in the ICTWSS database established by the OECD/IASA<sup>25</sup> should also be provided. According to these statistics, trade union density (% of employees) was 12.5% in 2019. A comparison of the two statistics may mean a decrease in union density ratios.

<sup>24</sup> CCOO, 'CCOO Proposal for a Comprehensive and Statewide Care Pact' (CCOO, 2022) <https://1mayo.ccoo.es/0e68135349e052f223712ced986a93e3000001.pdf>, accessed 13<sup>th</sup> March 2024.

<sup>25</sup> OCDE, 'The actors and scope of collective bargaining' (OCDE, unspecified year) <https://www.oecd.org/employment/collective-bargaining-database-spain.pdf>, accessed 13<sup>th</sup> March 2024.



In any case, we should mention that the adjusted bargaining (or union) coverage rate (% of employees with the right to bargain) was 80.1% in 2018; and the density of employer organisations (% of wage earners) was 77% in 2018.

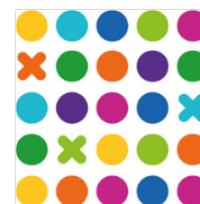
### 3.2.3. Main characteristics, tasks, strategies and challenges of these trade unions and employers' organisations

The CCOO document *Proposal for a Comprehensive and State-wide Care Pact - Confederal Working Group - Secretariat for Women, Equality and Working Conditions* states that the trade union must actively engage in the demand for the improvement of working conditions for the people who provide care, the improvement of the quantity and quality of employment and decent wages, as well as defend the quality of care services provided in all areas to ensure quality care and the right to daily wellbeing. The CCOO adds that in order to address care work to its full extent, it is essential to move towards a socially co-responsible organisation, which means that both men and women take responsibility in the public and private spheres, emphasising men's participation in the private or domestic and care spheres, and not only their co-responsibility, but also that of the State, the market and society in general. In other words, social co-responsibility. For this reason, the trade union advocates the creation of a "State and Comprehensive Care Pact".

According to the CCOO trade union, this State Pact should include the care sector in a broad sense (education, mainly for children from 0 to 2/3 years; long-term care (dependency, disability, chronically ill people, etc.), with a commitment to investment and public services as a guarantee of the right of citizens to receive professional care from the State when they need it, throughout their lives. On the other hand, it must also include an approach to the redistribution of non-professional care, a burden that continues to fall on women, so that the political and social sphere can provide a response based on the shared responsibility of all parties: State, society, citizens (men and women).

The main strategic lines set out by the trade union are:

1. To propose the adoption of this State and Comprehensive Care Pact.
2. The Pact would prioritise childcare (early childhood, vulnerable children and school recreational activities) and long-term care (disability, dependency, incapacitating old age, chronic illnesses, etc.).
3. The Pact would be based on building a public care sector that guarantees coverage and professionalism in the implementation of the different types of care within the framework in which they are provided (education, in its different forms, including early childhood education and special education, health and the social and health care sectors, home help, geriatric care, day care centres, social services, etc.).
4. The Pact would contain policies for co-responsible work-life balance and would develop co-responsibility: that of the family, promoting the involvement of men, and that of business and society.
5. The Pact should guarantee full labour rights, with decent conditions and wages, to the different care workers in the different care sectors.



### 3.2.4. Social partner relations in the care sector

In general, social partner relations in Spain are going through a phase of social agreements, which led to a major agreement on labour regulations in December 2021 that favoured the implementation of open-ended contracts in Spain. Collective agreements have been reached in the care sector, whenever workers' representatives are present in the companies or trade unions are active in the sector.

### 3.2.5. Are carers and/or employers in the care sector represented by other social actors, including NGOs?

At the national level, the following associations are in talks with the government on issues affecting the care sector: SEDOAC: Association for the defence of domestic and care workers; *Colectivo Territorio Doméstico (Porqué sin nosotros no se mueve el mundo)*; and finally, *Plataforma Unitaria Auxiliares de Ayuda Domicilio* (United Platform of Home Helpers). As an example of this dialogue with the government, the Ministry of Labour's website reports that the Ministry of Labour has held meetings with various carers' associations and trade unions to discuss the occupational health and safety protection of carers<sup>26</sup>.

## 3.3. The practical aspects and regulation of employee representation and employee influence in Spain

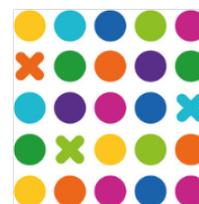
Both the Workers' Statute Law and Organic Law 11/1985 of 2 August 1985 on Trade Union Freedom<sup>27</sup> establish the possibility of a dual channel for worker representation in companies or public administrations. On the one hand, the so-called unitary representation of workers, i.e. the election of representative bodies representing all workers in a company, irrespective of their trade union membership. This unitary representation can be staff representatives, in companies between 11 and 49 workers (in companies with 6 to 10 workers, a staff representative can be elected by a majority vote); and a Works Council, in companies with 50 or more workers. On the other hand, workers who are members of a trade union are also entitled to have their trade union representative body in the company. Thus, there can be a company "trade union section", which brings together all the workers affiliated to a particular trade union; and in companies with more than 250 workers, a trade union representative can also be elected.

This regime means that domestic workers (or household employees) can join trade unions to look after their interests, but they do not have unitary representation because the entities that employ them are specific households that hire one or several people (without reaching the threshold of six) for domestic work.

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<sup>26</sup> Spanish Ministry of Labor and Social Economy, 'Díaz announces that the Government will extend the special system for domestic employees to households with minor children' (Spanish Ministry of Labor and Social Economy, May 17, 2023) <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Paginas/2023/170523-diaz-empleadas-hogar.aspx>, accessed 3<sup>rd</sup> May 2024.

<sup>27</sup> Organic Law 11/1985, of August 2, 1985, on Freedom of Association, BOE-A-1985-16660 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-1985-16660>.



Only workers assigned to a household by a company, rather than being employed directly by the owner of the family home, can be represented by staff representatives or a committee, depending on the size of the company.

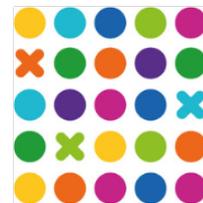
### 3.4. The collective bargaining system and the regulation of collective bargaining and social dialogue in Spain

Article 37.1 of the Spanish Constitution affirms the right to collective bargaining between workers' and employers' representatives and the binding force of collective agreements that shall be guaranteed by law. This means incorporating into Spanish law Conventions Nos. 98 and 154 of the International Labour Organisation on collective bargaining and on the promotion of collective bargaining, acknowledging both the right to collective bargaining and the binding force of agreements, which must be guaranteed by ordinary law. This ordinary law is the current Workers' Statute Law, which regulates the requirements for workers' and employers' representatives to enter into a collective agreement. If such an agreement is reached in accordance with the requirements of the Law, the collective agreement shall have contractual and regulatory effectiveness. Normative effectiveness implies incorporating the collective agreement into the system of labour law sources subject to the principle of normative hierarchy, which simultaneously means that the conditions agreed in the agreement cannot be less favourable than those provided for in the law and that the individual contract cannot contain less favourable conditions than those provided for in the collective agreement. In parallel, normative effectiveness is expressed in general personal effectiveness or *erga omnes*, i.e. the agreement will be automatically applicable to all workers included in its territorial and functional scope, whether or not they are members, without the need for express incorporation into the individual employment contract. The interest of workers in negotiating a collective bargaining agreement in compliance with the requirements of the Workers' Statute Law is thus understood.

In general, in Spain, collective agreements of a sectoral nature, agreed by provinces or territorial departments, predominate.

According to the September 2023 *Bulletin of the Spanish Government's National Consultative Commission on Collective Bargaining Agreements*<sup>28</sup>, in Spain, more than 1,500 collective agreements are normally signed every year, covering between 3 and 4.6 million workers, which means that at the same time the total number of collective agreements in force has a high coverage rate of more than 80 %. As regards the distribution of agreements and employees by operational area, it should be noted that there are a large number of company collective agreements, particularly in large companies. Thus, company-level agreements account for around 75-80%, both in terms of the agreements signed and the agreements in force each year, with the remaining 20-25% corresponding to agreements at a higher level than the company. Even though fewer collective agreements exist at the company level, these agreements affect a larger number of workers. Specifically, they cover more than 90% of the total, with the ratio of workers per supra-company agreement in 2022 standing at 11,117 workers, while the ratio of workers per company agreement stood at 236 workers. Each supra-company agreement covers around 1,100 companies (1,200 according to provisional data for 2022) with an average of 8-9 workers. In a country with a clear predominance of the service sector, most of the agreements and workers potentially affected by the agreements signed are in this sector. But the dynamics of the agreements reached depend, among other factors, on the frequency with which the agreements are renewed, traditionally on an annual or biennial basis in some activities,

<sup>28</sup> *Bulletin of the National Advisory Committee on Collective Bargaining Agreements, 2023*, [https://www.mites.gob.es/ficheros/ministerio/sec\\_trabajo/ccncc/B\\_Actuaciones/Boletin/BOLETIN\\_especial\\_no\\_87\\_CCNCC-CRL\\_portugues.pdf](https://www.mites.gob.es/ficheros/ministerio/sec_trabajo/ccncc/B_Actuaciones/Boletin/BOLETIN_especial_no_87_CCNCC-CRL_portugues.pdf), accessed 10<sup>th</sup> February 2024.



and also on whether they are drawn up by large companies, since these tend to sign their own agreements to a greater extent.

### 3.5. The regulation on whistleblowing in Spain

In Spain, *Law 2/2023 of 20 February 2023, on the protection of persons who report regulatory breaches and the fight against corruption*, has been in force since 2023<sup>29</sup>. This regulation transposes Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law<sup>30</sup>.

This law seeks to provide adequate protection against retaliation against individuals who report any of the actions or omissions to be discussed, through the procedures established by the law itself (e.g. internal company reporting systems).

In particular, under its information procedures, the law protects natural persons who report any acts or omissions that may constitute breaches of European Union law. The law also covers actions or omissions that may constitute a serious or very serious criminal or administrative offence (“all serious or very serious criminal or administrative offences involving financial loss to the Treasury and the Social Security”). In addition, the law establishes a specific procedure to protect workers who report breaches of labour law in the field of occupational safety and health.

This law applies to reporting persons working in the private or public sector who have obtained information on infringements in an employment or professional context, including: a) any person having the status of a public employee or employee; b) self-employed persons; c) shareholders, members and persons belonging to the administrative, management or supervisory body of an undertaking, including non-executive members; d) any person working for or under the supervision and direction of contractors, subcontractors and suppliers.

The law regulates the internal information systems that companies must have, but establishes this obligation only for companies with more than 50 employees. Other companies may have such an internal system, but it is no longer an obligation. Likewise, all political parties, trade unions, business organisations, as well as the foundations that depend on them provided they manage public funds, regardless of the number of employees, are obliged to have an internal reporting system.

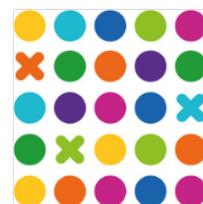
To conclude, it must be said that no administrative resolutions applying this regulation have been detected. It is worth mentioning a report by the social organisation Caritas, which denounces that the labour rights of domestic workers are “seriously unprotected”<sup>31</sup>.

According to this report, more than 518,800 people are employed as domestic workers in our country, but last January only 378,805 were affiliated to the Social Security Scheme. According to the latest Labour Force Survey

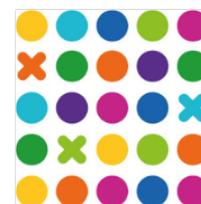
<sup>29</sup> *Law 1/2023, of February 24, on Urgent Measures for the Protection of Labor*, BOE-A-2023-4513 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2023-4513>.

<sup>30</sup> *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law*, [2019] OJ L305/17: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1937>.

<sup>31</sup> Caritas, 'Caritas denounces that the labor rights of domestic workers are seriously unprotected' (Caritas, year not specified) <https://www.caritas.es/noticias/caritas-denuncia-que-los-derechos-laborales-de-las-empleadas-de-hogar-estan-gravemente-desprotegidos/>, accessed 2<sup>nd</sup> February 2024.



(EPA), around 30 % have no contract. These low affiliation figures - together with the fact that this is a highly feminised sector (95 % are women) and most are of foreign origin - means that they are in a situation of particular vulnerability. The report adds that a sense of helplessness is often felt by women, who are often unaware that they are being exploited and normalise the situation and think it is a necessary step in order to get a better job. Migrant women, outside their country of origin, assume that they have to “put up with” everything. Many are aware that they are being exploited, but do not report it for fear of losing their jobs, believing it is pointless, or because they do not feel they have the right to do so.



## 4. Employment status, flexible forms of employment, and employment protection

### 4.1. The employment status of care workers, the extent to which care workers are employees or self-employed workers, and the regulation on employee status in Spain

In the case of family workers, the labour regime is applicable, i.e. an employment contract is formalised. There is the possibility, albeit a minority or exceptional one, that these workers may also work as self-employed workers. However, what should be emphasised is that this is an area of informal employment, both for Spanish and migrant women workers. It is not possible to ascertain specific data on informality as naturally by its very nature informal employment is not recorded, but it is presumed to be high if one compares the data for all persons affiliated to the Special Social Security System published in August 2022 (373,101 persons) with the figures published by the Labour Force Survey for the second quarter of 2022 for persons employed in households employing domestic staff, which give a figure of 545,700. Therefore, according to the differential parameters between the two areas, there could be 172,599 persons in domestic service who, despite providing their services for employer households, are not registered with the Social Security system.

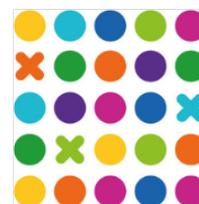
As a rule, professional carers who provide care to people who have been recognised as dependent are generally employed under a labour contract if they are contracted through care service providers to provide services in the home of the person to be cared for. In fact, within this regime of professional, or professionalised, carers, one could also include nursing assistants or auxiliary nursing care technicians, who are employed by care service providers to provide their services in the home. They can also be care workers who provide their services on a self-employed basis. Health professionals (doctors, nurses, midwives, physiotherapists, etc.) working in public institutions (nursing homes, hospitals), whether public or private, are employed under contract.

However, in the field of homes for the elderly, it is worth noting the study by Júlia Montserrat Codorniu: *El impacto de la pandemia en las residencias para personas mayores y las nuevas necesidades de personal en la etapa pos-COVID*<sup>32</sup> (The Impact of the Pandemic on Nursing Homes for the Elderly and New Staffing Needs in the Post-COVID Era), published in 2023:

- According to this author, the elderly residential care sector has grown considerably in recent years, with a consequent increase in the number of people employed in these facilities, with a high proportion of temporary and/or part-time employment. In fact, having a permanent contract is correlated with having a full-time contract: 79% of men and 82% of women. In contrast, the proportion of temporary full-time contracts drops to 70%. However, the study by J. Montserrat goes on to point out that temporary contracts were in the majority between 2015-2019. The indicator “average number of days contracted per year” for certain types of temporary contracts, with values of around three months or even four months, suggests that the function of these contracts is not “one-off”, but that they are signed by workers who complement the permanent staff, carrying out the functions of the latter.

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<sup>32</sup> Julia Montserrat Codorniu, “The impact of the pandemic on nursing homes for the elderly and the new staffing needs in the post-COVID stage”, *Revista Panorama Social*, no. 33 (first semester 2023).



As we have just read, the author points out that there would be a decrease in full-time temporary contracts, compared with the period 2015-2019. The reason for this is that there would possibly have been an increase in permanent contracts due to the adoption at the end of 2021 of *Royal Decree-Law 32/2021, of 28 December, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market*<sup>33</sup>, which was the result of an agreement with the main trade unions and business associations in Spain. This law amended Royal Legislative Decree 2/2015, which regulates the Workers' Statute. With the new regulations adopted, the indefinite-term contract becomes the reference modality of employment contracts: in fact, according to the reform carried out in art. 15.1 of the Workers' Statute Law, "Employment contracts are presumed to be concluded for an indefinite period of time". Therefore, it must be understood that according to the labour reform embodied in RDL 15/2021, the standard employment contract is the one concluded for an indefinite period of time. Article 15 of the LET no longer gives a legal option, as it did until now, for the employment contract to be either indefinite or fixed-term, subsequently establishing the cases in which the latter could be used; it now begins by including a general recognition that the employment contract is indefinite, and then goes on to say that 'only' two types of fixed-term contracts can be entered into<sup>34</sup>. The restriction on the use of temporary contracts would therefore have had a positive impact on permanent employment, also in the care sector.

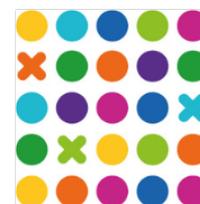
- Another feature, according to the study under discussion, is the high degree of feminisation: almost 90% (86.9%) of all workers are women. However, there is a growing presence of male workers: in 2019 they accounted for 13.1 % of all workers, up from 11.7 % in 2015.
- Moreover, according to J. Montserrat, this sector is made up of workers with a low level of education: more than half of them (55.5 %) have completed primary education, with or without first-degree vocational training; the rest is distributed between 20.5 % with secondary or post-compulsory education and 24 % with higher education.
- J. Montserrat's study also detects the participation of self-employed workers in this sector: 1.44 % of the contracted staff. In general, these are professionals who carry out essential functions within the organisation of the care home, but who work less than a full day and/or only a few days a week (occupational therapists, physiotherapists and nursing staff, among others). Hiring a self-employed worker means savings for the company in terms of social security contributions, as the worker is responsible for this, and, if applicable, also in terms of severance pay. Moreover, a self-employed person does not have the same level of social protection as an employee, because in case of illness, the benefit for temporary incapacity (TI) is very low, and in case of an accident at work, the company is not liable for it. One of the most significant consequences of employing self-employed workers during the pandemic was the fact that if they had stopped providing services, either because they had contracted COVID or because of the restrictive isolation measures, they may no longer have received their fees.

Finally, and in conclusion, J. Montserrat considers that dignifying the working conditions of workers in residential services has become an urgent issue. Reducing the temporary nature and instability of contracts is a responsibility of the authorities, which, although provided for in labour agreements, has not been implemented in reality. Increasing the salary levels of frontline staff in recognition of their workload is a pending issue. The employment

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<sup>33</sup> Law 8/2021, of June 2, guaranteeing the right to digital disconnection, BOE-A-2021-21788 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2021-21788>.

<sup>34</sup> Ferran Camas Roda, 'A labor reform to spread: 15 messages that should be applied in labor relations', Ferran Camas Digital Diary, January 20, 2022, <https://www.ferrancamas.com/blog-derecho-laboral-inmigracion/reforma-laboral/ia512>.



of low-skilled staff, low salaries and “short-term” contracts does not guarantee a quality service to users, as the companies and organisations providing the services are unable to “retain” their workers. The latter take every opportunity to move to other, better paid workplaces. As for the self-employed who carry out activities directly related to the care of people, their incorporation into the workforce would bring benefits not only for them, but probably also for the staff working in the care homes.

## 4.2. The incidence of fixed-term work, on call-work, and zero hours- contracts in Spain

In general, the employment contract regime is the same for all workers regardless of their sector.

At this point, it should be said that the Spanish government adopted a regulation in 2021 that has considerably reduced the number of fixed-term contracts in favor of indefinite-term contracts. As we have seen in the previous section, Royal Decree-Law 32/2021, of 28 December, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market, amended the Workers' Statute Law in relation, among other matters, to employment contracts, with the consequence that there was an expansive redefinition of the open-ended contract<sup>35</sup>. The standard employment contract to which the company and the employee must adhere is the permanent contract, leaving temporary contracts for exceptional cases, as we will see below. In any case, the general rule of taking the permanent contract model as a reference is strengthened, since the new legislation stipulates that companies that do not comply with the exceptional regime of temporary contracts will have the consequence that the temporary workers hired will acquire the status of permanent or permanent.

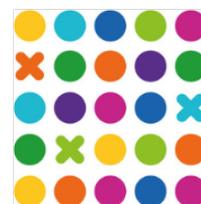
In any case, certain temporary contracts and part-time contracts are still regulated: two types of temporary contracts are regulated, which must be justified by the special temporary production needs of companies: on the one hand, a fixed-term employment contract concluded due to production circumstances, when there is an “occasional and unforeseeable increase in production, or when there are fluctuations that generate a temporary mismatch between the stable employment available and that which is required, as well as fixed-term employment contracts” to deal with occasional, foreseeable situations of a reduced duration; on the other hand, fixed-term contracts can also be made to replace people in companies.

On the other hand, strictly speaking, zero-hour contracts are not regulated or covered by the law (i.e. the possibility for a worker to be available at all times to perform a specific job). It is quite another matter that, in the labour market, such situations can arise by taking advantage of legal loopholes in the legislation (In section 4.4 some legal initiatives being taken by the Spanish Government to prevent these situations will be discussed).

It must be said, in this sense, that in Spain, part-time contracts are regulated: according to the Workers' Statute Law, a contract is considered to be part-time when it has been agreed to provide services for a number of hours per day, per week, per month or per year that is less than the working hours of a comparable full-time worker. It is also regulated that this contract must necessarily be formalised in writing, and this contract must state “the number of ordinary working hours per day, per week, per month or per year” contracted, as well as the “method of their distribution” according to the provisions of the collective bargaining agreement.

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<sup>35</sup> *Maria Amparo Ballester, The labor reform of 2021. Beyond the chronicle ( Gobierno de España, 2022).*



In any case, the law allows for 'supplementary hours' in the part-time contract, i.e. hours in addition to the ordinary hours agreed in the part-time contract. In any case, in order to carry out these additional hours, a written agreement must be made between the employer and the worker, in which the number of additional hours that the employer may be required to work must be stated. In any case, the worker must be informed of the day and time of the agreed additional hours with at least three days' notice, unless the agreement establishes a shorter period of notice. Moreover, a supplementary hours agreement may only be concluded in the case of part-time contracts with a working week of no less than ten hours per week on an annual basis.

In the field of homes for the elderly, it is worth noting the study by Júlia Montserrat Codorniu: *El impacto de la pandemia en las residencias para personas mayores y las nuevas necesidades de personal en la etapa pos-COVID* ("The impact of the pandemic on care homes for the elderly and new staffing needs in the post-COVID era"): according to this author, the elderly residential care sector has grown considerably in recent years, with a consequent increase in the number of people employed in these facilities, with a high proportion of temporary and/or part-time employment. In fact, having a permanent contract is correlated with having a full-time contract: 79% of men and 82% of women. In contrast, the proportion of temporary full-time contracts drops to 70%.

However, the study by J. Montserrat goes on to point out that temporary contracts were in the majority between 2015-2019. The indicator "average number of days contracted per year" for certain types of temporary contracts, with values of around three months or even four months, suggests that the function of these contracts is not "one-off", but that they are signed by workers who complement the permanent staff, carrying out the functions of the latter.

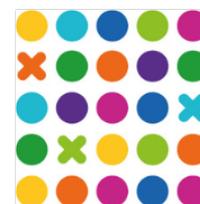
### 4.3. The of temporary agency work in care work in Spain

Temporary Employment Agencies (ETT in Spanish) have the status of a company for labour purposes, i.e. they can legally hire workers in order to transfer them to a third company (called user company). In fact, a temporary employment agency is a company whose main activity consists of providing another user company with workers hired by the ETTs, on a temporary basis. ETTs are therefore the employer of the workers they have hired, both those who provide their services at the ETTs own headquarters and those who are assigned (or posted) to another user company by formalising a commercial contract to provide the services with the user company.

The main regulation of Temporary Employment Agencies is found in Law 14/1994 of 1 June 1994, which regulates temporary employment agencies<sup>36</sup>. This law defines temporary employment agencies as those whose main activity consists of making workers hired by them available to another user company on a temporary basis. In fact, the law establishes that the hiring of workers for temporary assignment to another company may only be carried out through duly authorised temporary employment agencies. In this sense, temporary employment agencies need administrative authorisation to be able to carry out their functions, which means that they must demonstrate that they meet certain financial, human resources, infrastructure and social security requirements. It should also be noted that as workers' rights, Law 14/1994 establishes that workers hired to be transferred to user companies shall be entitled, during the periods of service provision in these companies, to the application of the essential working and employment conditions that would correspond to them if they had been hired directly by the user company to occupy the same post.

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<sup>36</sup> Law 31/1994, of July 14, 1994, for the protection of self-employed workers, BOE-A-1994-12554 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554>.



The current standard would comply with Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. A current debate in Spain regarding the application of this Directive to Spanish law stems from the fact that, according to the doctrine of the Court of Justice of the European Union, the application of the Directive is not conditional on the transferor company being a temporary employment agency. This doctrine is at the heart of a question referred for a preliminary ruling by the High Court of Justice of Madrid (order of 7 June 2023, rec. 1225/2022) which, in essence, raises the possible application of the Temporary Agency Workers Directive to contractor companies. Basically, it is about a worker who was hired by a contractor company that had an agreement with the main company. The main company did not extend the relationship with the contracting company and the contracting company dismissed the worker. The worker claims that she should be given equal rights with the workers of the main company by reference to Directive 2008/104/EC. The Spanish court asks the European Court of Justice whether Directive 2008/104/EC is applicable to an undertaking which makes a worker available to another undertaking, even if it does so without being recognised under domestic law as a temporary employment agency by means of an administrative authorisation. It also asks the European Court of Justice whether it is accepted that that directive is applicable to such situations, the Madrid Court considers that it must be determined whether the applicant worker is being made available by the contracting undertaking to the main undertaking, so that the worker must be regarded as a 'temporary agency worker' under Article 3(1)(c) of Directive 2008/104/EC. 3(1)(c) of Directive 2008/104/EC, the contracting employer as a 'temporary agency worker' under Article 3(1)(b) and, finally, the main undertaking as a 'user undertaking' under Article 3(1)(d) of Directive 2008/104/EC<sup>37</sup>.

Traditionally, they have been important in the field of temporary recruitment, managing 25% of all temporary recruitment in the last decade. However, in 2021, the Spanish government carried out a labour law reform that restricted the use of temporary contracts and promoted permanent contracts. According to reports prepared by the ETTs, as a result of the reform, the number of temporary work agencies in Spain has decreased (from 364 in 2008 to 240 in May 2023). Similarly, the number of contracts between ETTs and user companies fell from 284,000 in 2020, before the Spanish Government's 2021 labour reform, to 278,224 in 2023, and the number of workers assigned to other companies, from 191,920 in 2022 to 167,165 in May 2023.

It is also worth mentioning that, due to a legal reform in 2021, in which the Government favoured the implementation of permanent contracts, Temporary Employment Agencies (ETTs) in Spain are still in the process of finding out how this will affect them, although everything seems to indicate either the disappearance of ETTs or their unification. The number of workers they hire is also decreasing, although a Nursing Sector Journal reported that in 2017, i.e. before the reform, there was an increase in the use of ETTs by private health entities (mutual societies, nursing homes, day centres, private hospitals, etc.) to recruit nurses and auxiliary nurses<sup>38</sup>.

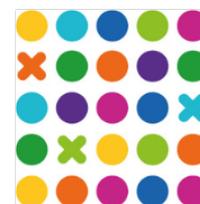
## 4.4. The incidence of part-time work in care work in Spain

As we have seen above, the regulation of part-time contracts is laid down in the Workers' Statute Law, in particular

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<sup>37</sup> Ignasi Beltrán, 'On the application of the ETT Directive to contractor companies: preliminary ruling question formulated by the TSJ of Madrid (Auto 6/6/23)', A critical look at labor relations, June 26, 2023, <https://ignasibeltran.com/2023/06/26/sobre-la-aplicacion-de-la-directiva-de-ett-a-empresas-contratistas-cuestion-prejudicial-formulada-por-el-tsj-de-madrid-auto-6-6-23/>.

<sup>38</sup> "Growth in the number of nursing staff hired through ETT" (Enfermería21) <https://www.enfermeria21.com/diario-dicen/crece-el-numero-de-personal-enfermero-contratado-mediante-ett-DDIMPORT->, accessed 24<sup>th</sup> April 2024.



in Art. 12. Its regulation complies with Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by Unice, CEEP and Ces. However, the Council of Ministers of the Spanish Government<sup>39</sup> has approved the “draft law” transposing Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. This draft bill introduces new obligations in the legislation, such as mandatory written information to be provided regardless of the duration of the employment contract, as well as written information on the duration of the contract, the duration of the “working day and its distribution”, and the length of the probationary period. In fact, it is interesting to note that in the draft bill, companies will have to record the working hours of part-time workers: they will record their working hours day by day, including the specific starting and finishing times. Also in the case of agreed supplementary hours, the number of hours, the days and the reference hours on which the worker's services may be requested must be stated in the agreement. Finally, it should be mentioned that a minimum notice period of three days is established for the performance of these hours, a period that may not be reduced by agreement. In the event of total or partial cancellation of these hours without respecting this period of notice, the worker shall be entitled to the corresponding remuneration. In fact, during the Council of Ministers' appearance to announce this draft bill, the Minister of Labour, Yolanda Díaz, said that with this regulation, they want to prohibit the use of on-call or zero-hour contracts in Spain<sup>40</sup>.

According to data from the National Statistics Institute (INE)<sup>41</sup> in 2023 (data up to 2022), the share of part-time (male) workers fell from 7.3% in 2017 to 6.6% in 2022, and from 24.2% in 2017 to 21.6% in 2022 for women in total female employment (this figure in 2022 was higher in the EU-27, standing at 29.2%).

By age group, among men, the highest percentages of part-time workers were found among 16-19-year-olds. They were significantly higher among women at all ages, standing at 22.5% (compared to 12.7% for men) in women aged 25-29 in 2022, and decreasing from the age of 30 to 64.

In the period 2017-2022, the share of female temporary employees decreased by 3.9 percentage points, representing 23.6% of women with a temporary contract out of all employees in 2022 (14.9% in the EU-27), while the share of men decreased by 7.1 percentage points.

The share of female employees with temporary contracts in the EU-27 was lower than in Spain, accounting for 14.9% of all employees (men and women) in 2022, while in Spain it was 23.7%.

On the other hand, and as mentioned above, taking as a reference the study by Júlia Montserrat Codorniu in her article: “The impact of the pandemic on homes for the elderly and the new staffing needs in the post-COVID era”<sup>42</sup>, there is a high proportion of temporary and/or part-time jobs in the sector of residential homes for the elderly.

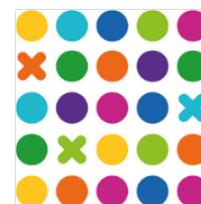
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<sup>39</sup> Council of Ministers of the Government of Spain, Preliminary Draft Bill amending the consolidated text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October, and other provisions on labour matters, for the transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council, 20 June 2019 (06-02-2024), <https://www.lamoncloa.gob.es/consejodeminstros/referencias/Paginas/2024/recf20240206.aspx#laboral>, accessed 18<sup>th</sup> October 2023.

<sup>40</sup> Newspaper, 'Díaz bans 'on-call contracts' for part-time workers' (Feb. 06, 2024) <https://www.lainformacion.com/economia-negocios-y-finanzas/diaz-prohibe-contratos-llamada-trabajadores-tiempo-parcial/2898511/>, accessed 8<sup>th</sup> February 2024.

<sup>41</sup> National Institute of Statistics (INE), [https://www.ine.es/ss/Satellite?L=es\\_ES&c=INESeccion\\_C&cid=1259925461713&p=1254735110672&pagename=ProductosYServicios%2FPYSLayou&param3=1259926137287](https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259925461713&p=1254735110672&pagename=ProductosYServicios%2FPYSLayou&param3=1259926137287), accessed 2<sup>nd</sup> September 2023.

<sup>42</sup> Magazine Panorama Social, Number 33, First Semester 2023.



## 4.5. The main elements of the regulation of employment protection in Spain

Under Spanish law, dismissal of the employee is a ground for termination of the employment contract. In general terms, dismissal is understood as the employer's decision to terminate the employment relationship, which will be valid provided that, as an unavoidable requirement, it is justified on one of the grounds set out in the Workers' Statute Law for dismissal. Basically, for breach of contract by the worker (disciplinary dismissal); for reasons corresponding to the worker's capacity or in specific business cases (dismissal for objective reasons); or finally, as a sub-type of the latter, dismissal for economic, technological, organisational or production reasons of the company affecting a significant number of workers (collective dismissal).

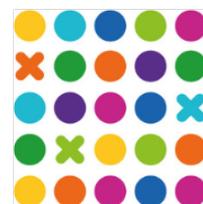
In the case of disciplinary dismissals or also in the case of dismissals for objective reasons, if the worker appeals the company's decision before the Courts of Justice and the dismissal is ruled unfair, within five days of notification of the ruling, the employer, may choose between reinstating the worker or paying compensation equivalent to thirty-three days' salary per year of service, with periods of less than one year being prorated by month, up to a maximum of twenty-four monthly payments. This compensation is considered to be low for the employer, which according to trade union officials implies a high degree of "exit" flexibility for the employer, i.e. it is "cheap" for the employer to dismiss a worker even if the grounds for dismissal are insufficient.

After dismissal, if the worker registers with the public employment services as a jobseeker, he/she can obtain an unemployment benefit depending on the period previously worked (this benefit is for a minimum of one year and a maximum of two years). In addition, they may receive a range of support measures from the public employment services to help them return to work, although it is generally acknowledged in Spain that the effectiveness of the public employment services in such placements is low, possibly also because their main target group is vulnerable or low-skilled people. Many unemployed workers seek other means to return to work.

To address this issue, an employment law was passed in 2023. This new employment legislation aims to ensure that public or private employment services enhance the role of "labour intermediation", i.e. the matching of job offers from companies with jobseekers, for placement or outplacement. In fact, specialised placement will be considered as a new activity under the law. This placement is defined as the activity aimed at the outplacement of workers or unemployed persons affected by business restructuring processes, when this has been established or agreed with the workers or their representatives in the corresponding social plans or outplacement programmes, or decided by the public employment services, *ex officio*, or at the request of the persons affected by industrial transition or transformations in the production sectors.

Special attention should be paid to the 2022 reform of the family household service (or domestic work), which has eliminated the possibility for the employer (i.e. the owner of the family household who has hired the carer) to dismiss the carer without cause or based solely on his or her unilateral decision. This had been the case in this type of work until that year.

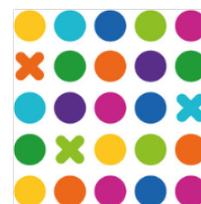
Since this reform, the sole will of the employer after payment of severance pay is no longer active as a cause for termination. Termination is now generally governed by the principle of causality, and therefore, it can only be carried out if a cause is alleged and justified, either one of those provided for in the Workers' Statute Law, or one of those specific to the family household regime now provided for in Royal Decree 1620/2011, which are as follows: a) a decrease in the income of the family unit or an increase in its expenses due to a sudden change in circumstances; b) a substantial change in the needs of the family unit that justifies the household worker being made redundant; and c) the worker's behaviour that reasonably and proportionately justifies the employer's loss



of confidence in him or her.

However, the negative aspect is that in the field of domestic work the compensation in case of dismissal of the worker is an amount equivalent to the salary corresponding to twelve days per year of service with a limit of 6 monthly payments (lower than the amount provided for in the Workers' Statute Law). In fact, it is lower than the compensation resulting from dismissals classified as unfair, i.e. in cases of objective or disciplinary dismissal of workers where the latter claim against the termination and the dismissal is classified as unfair by the courts.

Another issue that is worth noting in this case in the family household sector is that in 2022 domestic workers were recognised as being eligible for unemployment benefits at the end of their employment relationship. This decision had to be taken in accordance with the Judgment of the Court of Justice of the European Union of 24 February 2022 (case 389/2022), which declared that excluding domestic staff from entitlement to these social security benefits entailed indirect discrimination on grounds of sex, since women, as the majority group of domestic staff, were the ones who were truly disadvantaged without there being objective factors, independent of any kind of discrimination on grounds of sex, to justify it.



## 5. Wages and benefits

### 5.1. The regulation of wages and other benefits, including over-time pay, inconvenience pay, bonuses etc. in Spain

As stated in Art. 26 of the Workers' Statute Law, all economic payments made to workers, in cash or in kind, for the rendering of labour services as an employee, whether they are paid for actual work, whatever the form of remuneration, or for rest periods that can be counted as work (i.e. wages also cover workers' breaks or justified absences), are considered to be wages. Wages, therefore, include so-called cash pay (in money or legal tender), as well as pay in kind, i.e. that consisting of goods other than money. However, pay in kind cannot exceed 30% of the total salary received by a worker.

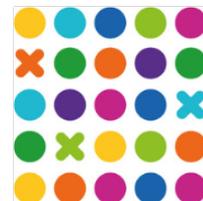
On this legal basis, with regard to wage levels among care workers, the study of the Comisiones Obreras trade union of 2023: *Cuidados sin brecha. Por hacer más ganamos menos* ("Care without a pay gap. For doing more we earn less")<sup>43</sup> This study shows that low-wage sectors have a greater weight in female than male employment. In fact, data for 2022 show that women are still more prevalent in lower-wage sectors. The seven sectors cited here with average wages well below the national average employ 41% of female employees compared to 32% of male employees. Thus, assuming that the average wage in primary employment was 2,087 euros gross per month in 2021, the seven sectors with average monthly wages well below the average are: domestic employment (858 euros); hotels and restaurants (1,226 euros); agriculture, livestock and fishing (1,353 euros); other services (personal care, associations, repair of goods) with 1,450 euros; administrative and support services (1,471 euros); artistic and recreational activities (1,655 euros); and commerce (1,670 euros).

Moreover, according to the study by Júlia Montserrat Codorniu: "The impact of the pandemic on homes for the elderly and the new staffing needs in the post-COVID era", mentioned above, the following variables can be observed:

- The estimated average annual wage of workers in residential services for the elderly, at 18,136 euros, was 20% lower in 2019 than the average for the services sector in Spain (22,723 euros), and when compared with the average annual wage for the economy as a whole in Spain, the difference was 26%, highlighting the precariousness of wages for workers in this sector. This may be one of the reasons for the difficulty in attracting workers to this sector; those with social and health care qualifications prefer to work in hospitals or health centres, where working conditions are better.
- According to the estimated results, the net salary of professionals in the lowest categories does not exceed 1,000 euros per month. The gender pay gap is 6.6%, concentrated mainly in the "middle and high" category groups, since there is hardly any difference at the lower end of the scale. The data do not support the argument that wages in homes for the elderly are low because the majority of workers are women. On the contrary, the results show that wages are low because the 10 "frontline" staff - three quarters of the total - are in low Social Security occupational categories, with salaries close to the minimum wage (SMI in

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<sup>43</sup> CCOO, *Proposal for a Comprehensive and Statewide Care Pact - Confederated Working Group - Secretariat for Women, Equality and Working Conditions (CCOO, year not specified)* <https://www.ccoo.es/663143d70d103e43733f2fedd6472ba2000001.pdf>, accessed 13<sup>th</sup> September 2023.



Spanish).

## 5.2. The incidence and regulation on minimum wages in Spain

It should be noted that Article 27 of the Workers' Statute Law establishes the basic right of all full-time workers to obtain the minimum interprofessional wage. This minimum wage is set by the government each year through a specific regulation after consultation with the most important trade union organisations and employers' associations. This minimum wage can, of course, be increased by collective agreements or individual contracts between employers and employees. Spain has not yet transposed Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union. It should be recalled, in any case, that this Directive obliges Member States to transpose it, i.e. to adopt the necessary measures' to comply with it, by 15 November 2024 at the latest). The legal design in Spain of the minimum wage is reasonably adapted to the framework regulated by the Directive, although initial studies show that some adjustments will be necessary, for example, in the criteria for setting the Spanish minimum wage in accordance with art. 27 of the Workers' Statute Law: In addition, actions to promote collective bargaining and to increase its coverage rate should be implemented, as well as changes in the management of official data and statistics on wage issues and collective agreements<sup>44</sup>.

For the year 2023, Royal Decree 99/2023, of 14 February, established the minimum interprofessional wage in 1.080 € per month<sup>45</sup>. Whereas the minimum wage for workers for 2024 is 1.134 € per month according to Royal Decree 145/2024 of 6 February, which sets the minimum interprofessional wage for 2024.

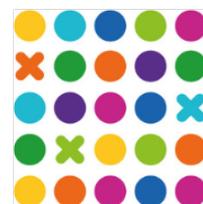
This law stipulates that the minimum wage for all activities in agriculture, industry and services, regardless of the sex and age of the workers, is fixed at 36 euros/day or 1,080 euros/month, depending on whether the wages of the workers are fixed on a daily or monthly basis.

However, Royal Decree 145/2024 states that, under Royal Decree 1620/2011, of 14 November regulating the special employment relationship for family household services, the minimum wage for domestic workers who work externally on an hourly basis, shall be 8.87 euros per hour actually worked. Under this precept, the minimum daily or hourly wage amounts are calculated solely on the basis of payment in cash, whereas payment in kind may not, under any circumstances, lead to a reduction in the full amount payable in money.

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<sup>44</sup> A. Alvarez Alonso, 'The Directive 2022/2041 on adequate minimum wages in the European Union', Brief by Asociación Española de Derecho del Trabajo y de la Seguridad Social, 2022, <https://www.aedtss.com/la-directiva-2022-2041-sobre-salarios-minimos-adecuados-en-la-union-europea/>, accessed 8<sup>th</sup> March 2024.

<sup>45</sup> Law 2/2023, of May 4, on urgent measures for the employment and social protection of self-employed workers and the fight against the irregular economy, BOE-A-2023-3982 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2023-3982>.



## 6. Working time, health and safety, implications of the COVID-19 pandemic, and training and competence development

### 6.1. The regulation of working time in Spain

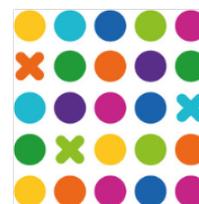
The Workers' Statute Law regulates the working hours of employees. Under this law, working time is understood to be the period of time or number of hours in which the worker performs his or her services. The working day regime is further developed in Article 40.2 of the Spanish Constitution, which assigns public authorities the duty to promote policies that ensure the necessary rest, by limiting the working day or by providing for regular paid holidays. This mandate is fulfilled by Articles 34 et seq. of the Workers' Statute Law which, starting from the premise that the duration of the working day must be that agreed in collective agreements or employment contracts, establishes a series of minimum rules to be respected by the latter. Firstly, that the maximum duration of the ordinary working week shall be 40 hours of actual work per week on average over the year; secondly, that, in general, the number of ordinary hours of actual work may not exceed nine per day. The law has made the application of this system flexible by allowing the company to modify it, either by extending or reducing the working day. Thus, the employer may establish the irregular distribution of the working day by 10% over the course of the year, respecting in all cases the workers' minimum daily and weekly rest periods; namely, that between the end of one working day and the beginning of the next there must be at least twelve hours, and ensuring the one and a half days of weekly rest to which the worker is entitled. Hours in excess of the ordinary working hours described above (40 hours per week of actual work on average per year) are considered overtime. The basic regime for these additional hours is found in Article 35 of the Workers' Statute Law, which establishes the need for them to be voluntary for the worker, and for them to be carried out within various limits. First, that they must not exceed 80 hours in a year, although the hours worked by the worker to prevent or repair accidents or exceptional damages in the company will not be factored into this calculation, nor will any overtime hours carried out by the worker compensated in the form of rest breaks within 4 months of their being carried out. However, the revised 2015 Workers' Statute prohibits overtime and night work for minors under the age of eighteen.

This legal regulation is being called into question by the Spanish government, particularly in the area of working hours, where there is evidence of an overrun of the working hours established in the employment contract, i.e. a failure to comply with the hours at which workers leave their jobs. The Spanish government is emphasising the need for a new working time regulation. According to the Minister of Labour, Ms. Yolanda Díaz, "We need a new working time regulation that firmly establishes the insurmountable limits: health, equality and decent work". The aim is to promote the idea that future regulation should guarantee the right to a more balanced use of time, reducing the working time malaise experienced by a large number of workers, improving quality of life and reducing what is known as time poverty (not having time for oneself). See the note from the Ministry of Labour<sup>46</sup>.

In fact, a number of laws focus on respecting the rest periods of workers specifically in the domestic sector. Thus,

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<sup>46</sup> La Moncloa, Press Release, "The Government approves the preliminary draft bill to regulate the mandatory recording of working hours" (June 16, 2023) <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Paginas/2023/160623-regulacion-horario-laboral.aspx>, accessed 17<sup>th</sup> June 2023.



in the Autonomous Community of Catalonia, Law 18/2003 of 4 July 2003 on Support for Families was adopted<sup>47</sup>, which provides for public administrations in Catalonia to promote measures to support families with dependent persons, making it possible for carers to rest. In the same vein, Law 2/2013, of 15 May, on Equal Opportunities for Persons with Disabilities in the Community of Castile and León<sup>48</sup>.

## 6.2. The regulation of health and safety in Spain

In Spain, the Spanish Constitution regulates that the public authorities shall ensure health and safety at work and guarantee the necessary rest by limiting the working day, while the *Law on Occupational Risk Prevention of 1995*<sup>49</sup> recognises the right of workers to effective health and safety protection at work. Under this general law, workers have the right to be directly informed of the risks to their health and safety and of the preventive measures adopted, including those foreseen to deal with emergency situations; to receive sufficient and appropriate theoretical and practical training at the time of recruitment and when the content of the task entrusted to them changes or when new technologies or changes in work equipment are introduced; to interrupt their activity and, if necessary, leave the workplace when they consider that such activity involves a serious and imminent risk to their life or health; to be guaranteed regular monitoring of their state of health, depending on the risks inherent in their job; to have access to specific protective measures when, due to their personal characteristics or known biological condition or physical, mental or psychological incapacity, they are unable to perform their work; to be guaranteed regular monitoring of their state of health, depending on the risks inherent in their job; to have access to specific protective measures when, because of their personal characteristics or known biological condition or physical, mental or sensory incapacity, they are particularly sensitive to certain risks arising from work; and to be consulted and participate in all matters affecting health and safety at work. Workers have the right to make proposals to the employer and to the participation and representation bodies (Prevention Delegates, Health and Safety Committee), through which their right to participate is exercised.

The employer must guarantee the exercise of all these rights as well as comply with the duties imposed by the law on the prevention of occupational hazards, mainly the adoption of any measures necessary for the protection of the worker, measures whose effectiveness must also include any distractions or inadvertent imprudence that may be committed by the worker. The Prevention Law establishes a series of duties that the employer must fulfil (assessing risks, informing the worker of the risks, training the worker on how to avoid occupational risks, monitoring their health, etc.). In all cases, the obligations to assess existing risks in companies and workplaces, the planning of prevention, the requirement to integrate prevention in all business decisions and the adoption of a preventive organisation are key.

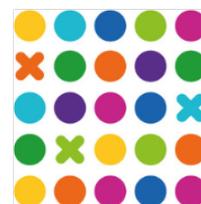
This Law is universally applicable, with the exception of certain types of work in the field of policing, civil protection and forensic expertise in cases of serious risk, disasters and public emergencies. Domestic work carried out by

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<sup>47</sup> Royal Legislative Decree 1/2003, of October 24, 2003, approving the revised text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion, BOE-A-2003-15896-consolidated (Spain): <https://www.boe.es/buscar/pdf/2003/BOE-A-2003-15896-consolidado.pdf>.

<sup>48</sup> Royal Legislative Decree 1/2013, of November 29, 2013, approving the revised text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion, BOE-A-2013-5998-consolidated (Spain): <https://www.boe.es/buscar/pdf/2013/BOE-A-2013-5998-consolidado.pdf>.

<sup>49</sup> Law 26/1995, of January 24, 1995, of partial modification of the legal regime of the Public Administrations and of the common administrative procedure, BOE-A-1995-24292 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-1995-24292>.



staff employed by a family home owner (known in Spain as “family household services”) was, incidentally, also excluded from the occupational risk prevention regulations until 2023. Finally, in 2023, legislation has been adopted whereby the owner of the family home is obliged to ensure that the work of the domestic employee is carried out under proper health and safety conditions, for which he/she must follow the guidelines imposed by the 1995 Prevention of Occupational Risks Act on all business activities (for example, imposing duties on the employer such as assessing the risks at work, informing the worker, training him/her, monitoring his/her health, etc.). However, the regulations on the prevention of occupational risks will be implemented in the manner determined by a government order. The 2023 reform regulates that domestic workers have the right to effective protection in terms of health and safety at work, especially in the area of prevention of violence against women, taking the specific characteristics of domestic work into account, under the terms and with the guarantees that are provided for in the regulations in order to ensure their health and safety. In other words, it is necessary to wait for the government to adopt a regulation to extend the protection of occupational health and safety regulations to family household services.

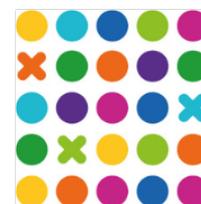
It should not be forgotten that violence, especially sexual violence, is a widespread occurrence in the domestic sphere. The aim of Spanish legislation is to combat violence in terms of its effects on a person’s health, above all by preventing the risk involved, but also by applying the measures contained in the ILO Convention on Violence and Harassment, No. 190 of 2019, which has been ratified by Spain. Moreover, the law should specifically consider situations of sexual harassment or violence when it comes to immigrant or foreign female employees, who are the main victims of this scourge.

According to a study carried out for Girona City Council by Profs. Pilar Albertín, Pakita Victòria and Mar Sibila “Women in care and domestic work. Inequalities and violence”<sup>50</sup>, in relation to situations of violence suffered by women carers, a series of variables must be considered:

1. On many occasions, women carers are victims of cross-cutting or intersectional violence, i.e. violence experienced in the workplace, racist or sexist violence in the social and family spheres, as well as, in the case of foreigners, situations of violence they may have suffered in the migratory process together with the violence they experience on arrival in the host country.
2. In cases where the caregivers are women, the care recipients, or even their spouses or families, may harass them, or turn their violence against them, e.g. situations of domestic abuse due to gender-based violence. In some cases, care companies have an alarm activated in case the man being cared for approaches or acts violently towards the woman worker.
3. Cases of care workers acting violently towards elderly people in nursing homes have also been detected.
4. However, verbal violence, insults, the use of violent language and physical violence are also common forms of violence experienced by women workers in the sector, as observed in their experiences with the people they care for or their family members.

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<sup>50</sup> P. Albertín, P. Victòria, & M. Sibila, 'Women doing care and household work. Inequalities and violence', <https://web.girona.cat/enscuidem/estudi>, accessed 13<sup>th</sup> April 2024.



### 6.3. The short-term, long-term, and post-pandemic implications of the COVID-19 pandemic for the working situation, job quality, and working conditions of care workers in Spain

The discussion in the group on this issue revolved around whether or not the pandemic has led to a greater appreciation of the work provided by carers and whether or not this has translated into the legislative, administrative or employment sphere.

The starting point is the report presented by the Economic and Social Council of Spain: *Women, work and care: proposals and prospects for the future of 2022*<sup>51</sup>. We support the claim made in the report that the pandemic has increased “familiarisation” with care, historically present in societies such as Spain’s, due to the difficulty of accessing care services that were already insufficient to meet the growing demand. The report further noted that this has exposed carers (mostly women) to work overload and physical and mental fatigue, in turn limiting their possibilities to participate in the labour market.

On the one hand, we have considered that, as the baseline document states, the Covid-19 pandemic highlighted the so-called “care paradox”. While carers are essential to the collective well-being of our societies, their work is undervalued and precarious. The Report further noted that the pandemic brought the narrative of “essential” care work into the public debate, but that this recognition was not accompanied by improved working conditions, better pay or greater stability.

In this sense, we do believe that the social perception resulting from the Covid-19 pandemic and the post-pandemic evolution has led to an appreciation of the value of care. We can see how this increased recognition has placed the problems affecting this sector (jobs in the care sector, services, etc.) at the centre of the political agenda (as expressed by Carolina Vidal in her article: *CCOO por un Pacto Integral y Estatal de Cuidados: ahora es el momento* (“CCOO for a Comprehensive and Statewide Care Pact: Now is the Time”<sup>52</sup>). This author argues that now is also the time to address the issue of care because of the demographic crisis resulting from the increasingly ageing population, especially the Baby Boomer generation, which is expected to increase the need for care of the disabled elderly population, in many cases becoming a chronic problem that can be anticipated, considering the impact of ageing in rural areas and the lack of territorial balance in terms of service accessibility.

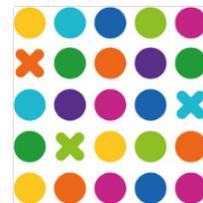
### 6.4. The regulation of training and competence development in Spain

Vocational training in Spain has historically been divided between the educational system on the one hand, which led to the student obtaining a technical qualification in a given profession, and on the other hand, the training provided by public labour authorities or companies, under which the worker could obtain a professional certification in order to carry out a job. In 2023, Spain underwent a major reform of the vocational training system. One of its main objectives has been to unify the dual system in force until now into a single training system, and

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<sup>51</sup> *Economic and Social Council of Spain, “Women, work and care: proposals and prospects for the future” (number 01/2022), <https://www.ces.es/documents/10180/5282746/Inf0122.pdf>, accessed 9<sup>th</sup> June 2023.*

<sup>52</sup> *Carolina Vidal, “CCOO for a Comprehensive and Statewide Care Pact: Now is the Time”, Gaceta Sindical, n.º. 40, June 2023, p. 291 and following.*



the other objective has been to promote dual training, generally understood as training of a person in coordination between an educational institution and a company.

The legal starting point for this training is *Organic Law 3/2022 of 31 March on the organisation and integration of vocational training*<sup>53</sup>. In an entirely innovative manner, the Law modifies the vocational training programmes that can be undertaken by any person, blurring the current system between the training provided in the education system and that provided in the workplace, to create a system of sequential and ascending training programmes (structured in five Grades A, B, C, D and E), which in each case give rise to different types of accreditations or professional qualifications. This means that a student or a worker can follow training in educational centres and in companies, or courses run by labour authorities, and obtain each type of qualification. What is important to keep in mind, however, is that the completion of all these training programmes entails a period of in-company training. In fact, the regulations now require that this period of in-company training is compulsory when training at Grade C (which leads to the award of a Professional Certificate) and D (the completion of which, through vocational training cycles, leads to the qualifications of Basic Technician, Technician and Higher Technician).

In order to carry out this training period in the company, Organic Law 3/2022 provides for collaboration between the company and the educational centre under one of the following two options: either the student's training period must be of a general nature, in which case there is no employment relationship between the student and the company, or the training period must be intensive, in which case an employment contract must be concluded with the student in training. The choice of one or the other regime will lead to less (general regime) or more (intensive regime) company involvement in the length of the training period or the participation of the company in the learning outcomes of the trainee.

In addition to the above, the new legislation also regulates other issues of interest involving companies. First, the training modality which consists of the company carrying out a specific training programme aimed directly at meeting the training needs of the company and its employees, with priority for those who have left the education system and do not have a professional qualification. Secondly, the promotion of dual vocational training by means of an alternating training contract with a worker, as regulated in article 11.2 of the Workers' Statute Law. The purpose of the alternating training contract carried out by the companies is to enable the persons hired to combine the work activity in which they are hired with training courses in the field of vocational training, university studies or from the Catalogue of training specialities of the National Employment System. In my opinion, the main objective of these regulations is to try to ensure that companies give priority to alternating training work contracts to those students from the education system who undertake training periods in the company under a scholarship scheme. I believe that this is the only way to increase the number of work-linked training contracts, which is still marginal at present.

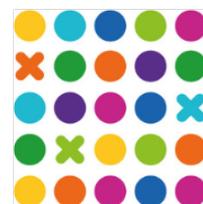
This regime is applicable to all production sectors. However, the issue of training in the care sector is becoming increasingly important:

1. On the one hand, mention should be made of the *Basic Document for Care*, published by the Institute for Women in April 2023, which contains various proposals for different occupations in the care sector in relation to training.

Generally speaking, as far as care and health care workers (nursing homes, mental health care centres, etc.), social and health care assistants, personal assistants or domestic workers are concerned, the

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<sup>53</sup> Law 7/2022, of April 28, on gender equality in the workplace, BOE-A-2022-5139 (Spain): <https://www.boe.es/buscar/act.php?id=BOE-A-2022-5139>.

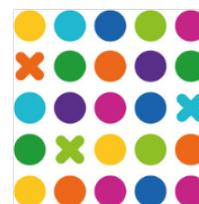


Document calls for professional skills to be recognised through professional certificates.

2. In addition, the Document notes that each of the professional categories should have a specific training plan with the aim of improving the conditions of workers and their users. Training, in addition to providing good care, should focus on specific technical issues that support and facilitate carrying out care tasks, which are by definition physically and psychologically extremely demanding. Some of the occupational illnesses that occur in the sector could probably be minimised with training schemes that inform about the limits of one's own body and appropriate techniques for different care requirements. Beyond this type of specific training, the Document underlines the usefulness of comprehensive training on care in order to understand its social relevance and dynamics in a holistic manner and beyond the specific characteristics of each activity. This issue is related to considering care as the backbone of social functioning.

The following proposals are also made with regard to care workers working in the long-term care system:

- A. Ensure that long-term care workers are able to receive high quality initial and continuing training, with access to continuing professional development programmes throughout their working lives.
- B. Provide workers with training and psychological support to cope with end-of-life care and challenging behaviour management situations.
- C. Develop training, collaboration and exchange initiatives between academia and long-term care professionals.



## 7. Social security coverage and benefits

### 7.1. The regulation of social security in Spain

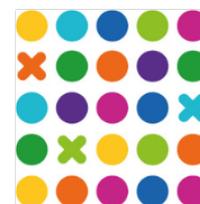
Article 41 of the Spanish Constitution requires the government authorities to maintain a “public” social security system for all citizens, guaranteeing sufficient social assistance and benefits in situations of need, especially in the event of unemployment. Moreover, assistance and supplementary benefits shall be freely available.

Under this provision, coverage by the Spanish social security system is based on a comprehensive and universalised protection module comprising health and pharmaceutical care, family protection, social services and, in certain cases, unemployment benefit. This protection is available to all citizens, under the same conditions, regardless of whether or not they have contributed to the social security system. On the one hand, the system is complemented by a contributory economic benefit scheme: i.e. the social security system provides income to replace the wages received while working (that is, if the worker in need has previously worked and contributed to the social security system); and on the other hand, by a non-contributory economic benefit scheme, aimed at providing income to offset the basic needs of those citizens who are in a situation of need but unable to make contributions to the system.

In relation to “contribution-based” economic benefits, the benefits included as part of social protection are those linked to situations of temporary incapacity (i.e. common or occupational illness that makes it temporarily impossible to work); birth and care of a child; risk during pregnancy; risk during breastfeeding; shared responsibility for infant care; care of children affected by cancer or another serious illness; contribution-based permanent incapacity and non-contributory disability; retirement, in its contributory and non-contributory modalities; unemployment, at both contributory and non-contributory levels; protection due to cessation of activity; widow’s/widower’s pension; temporary widow’s/widower’s pension; orphan’s pension; orphan’s benefit; pension for family members; allowance for family members; funeral allowance; compensation in the event of death due to an accident at work or occupational disease, minimum income for living, as well as benefits granted for special contingencies and situations determined by regulation by royal decree, at the proposal of the head of the competent Ministry, and, when necessary, Social Security family benefits.

“Non-contributory” benefits are those provided to citizens who are in need, even if they have never contributed or have not contributed for the time required to qualify for contributory benefits. In contrast to contribution-based benefits, which are awarded on the basis of period of contribution, non-contributory economic benefits are awarded to those citizens who, needing protection, lack sufficient resources to subsist under the legally established terms, even if they have never paid contributions or have not paid contributions for long enough to qualify for contribution-based benefits. Included in this category are the following pensions: a disability pension (a 65% degree of disability is one of the requirements for obtaining this pension), and the retirement pension.

In addition to financial benefits, some benefits in kind are included as part of social protection, namely health care, pharmaceuticals and social services. The purpose of social security health care is to provide the medical and pharmaceutical services necessary to preserve or restore the health of its beneficiaries and their fitness for work. It also provides the appropriate services to complete medical and pharmaceutical benefits, paying special attention to the physical rehabilitation necessary to achieve the complete recovery of the worker. Article 42 of the aforementioned LGSS/2015 also states that, in addition to the benefits included in the previous section, social welfare benefits may also be granted.



Furthermore, to these two public and compulsory levels, there is a third, complementary, voluntary level (to which citizens are entitled to contribute voluntarily, within the framework of the private sector), made up mainly of Social Welfare Institutions and Pension Funds.

Moreover, to the public social security system, mention should be made of the social welfare system. It can be defined as a form of social protection different from social security - while social security is largely financed by contributions from workers and companies, social welfare is financed through general taxes. It has its own characteristics and can be provided by both public and private bodies (often by non-governmental organisations - NGOs) and its main objective is to meet the needs of vulnerable people or groups or those with special social integration problems.

Social welfare needs to be differentiated between “internal” and “external” social welfare. “Internal” social welfare is within the scope of social security protection: in particular, it complements the financial benefits provided by social security and is intended for persons covered by the social security system - both contributory and non-contributory - and is conditioned by proof of the claimant’s “financial need”. “External” social welfare, on the other hand, lies outside the social security system and constitutes a heterogeneous set of benefits, also financed by public funds, which are subsidiary to social security benefits and which guarantee a minimum income to groups of the population who lack subsistence resources. These benefits are subsidiary and individual.

Finally, apart from the social security system, State unemployment benefit is provided by the State (in particular by the public employment services). Unemployment benefit is paid following involuntary loss of employment. To be entitled to this benefit, you must have worked and paid unemployment contributions for at least 360 days in the 6 years prior to becoming legally unemployed. The duration of the benefit depends on the number of unemployment contributions you have made in the last 6 years, although the minimum period of entitlement is 6 months and the maximum is 2 years.

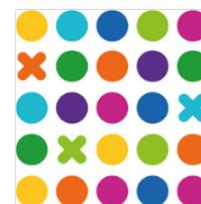
## 7.2. The social security coverage and benefits for care workers in Spain

In general, care workers are covered by the social security system, as well as by unemployment benefits.

Historically, an exception was made for domestic workers employed by the family household owner, i.e. people who provide services for the family household, as they are subject to a special employment regime which until 2023 excluded them from unemployment benefits.

The reform of the legislation on family household services in 2023 has meant that domestic workers are now recognised as eligible for unemployment benefits at the end of their employment relationship, if they meet the corresponding requirements. The Spanish State had to make this modification in accordance with the Judgment of the Court of Justice of the European Union of 24 February 2022 (Case 389/2022), stipulating that the exclusion of domestic staff from Social Security benefits was actually indirect discrimination on grounds of sex, since women, as the majority group of domestic workers, were the ones to be most adversely affected. No objective factors, unrelated to any kind of discrimination on the basis of sex, could justify this.

Changing the subject, it is interesting to note the studies that are being carried out on the recognition of illnesses or ailments that can affect women workers in the care sector so that they can be considered as occupational illnesses for the purposes of Social Security, and so that the workers who suffer from them can be specially



protected.

In this regard, it is worth mentioning here the study carried out by the Instituto de las Mujeres (Women's Institute) *Revisión jurisprudencial de dolencias y patologías de las camareras de piso* (Jurisprudential review of ailments and pathologies of chambermaids), prepared in collaboration with the Asociación Española del Derecho del Trabajo y de la Seguridad Social (Spanish Association of Labour and Social Security Law), of 2023<sup>54</sup>.

The report finds that women occupy almost 80% of unskilled jobs in the service sector - excluding transport - with a higher concentration in certain particularly feminised and precarious occupations, such as care-related sectors.

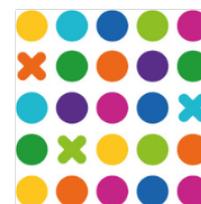
In fact, the report detects that groups such as hotel maids and chambermaids are not included in any of the pathologies contained in Royal Decree 1299/2006, of 10 November, approving the list of occupational diseases in the Social Security system and establishing criteria for their notification and registration

when, in fact, the research shows that this group of workers is subjected to a great physical burden (repetitive movements, in addition to the handling of loads, the adoption of forced working postures and prolonged standing during the performance of tasks), to which is added the mental burden derived from the organisation and accelerated rhythms of their work and the lack, on many occasions, of adequate occupational preventive measures.

For this reason, there is an 'urgent' call for a review of the treatment of occupational illnesses, which 'still revolve around masculinised work, and in which women end up as almost anecdotal mentions, poorly focused and not very comprehensive. In fact, this report seeks to 'provide the legislative body with a technical-legal document in which arguments are given, backed up by the contrast of existing case law on the subject, to demonstrate the need to update the list of occupational illnesses'. In this sense, the analysis of almost 150 rulings of the Supreme Court or of the High Courts of Justice of the Autonomous Communities has made it possible to point out the 'internal contradiction' in the approach and consideration of the same illness or pathology. Faced with these discrepancies, the changes sought in this table of occupational illnesses seek to offer more legal certainty and make it easier for it to function as a protective mechanism", Henar Álvarez Cuesta pointed out, "bearing in mind, moreover, that occupational illness refers to the usual profession, not necessarily the one being carried out at the time".

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<sup>54</sup> Women's Institute, "Jurisprudential review of ailments and pathologies of housekeepers" (2023), [https://www.igualdadenaempresa.es/recursos/estudiosMonografia/docs/Jurisprudencia\\_EP\\_CamarerasPiso2023.pdf](https://www.igualdadenaempresa.es/recursos/estudiosMonografia/docs/Jurisprudencia_EP_CamarerasPiso2023.pdf), accessed 1<sup>st</sup> April 2024.



## 8. Concluding discussion

In the preparation of this report, the various members of the research group, the researchers Andrea Cano and Anna Molina, and the teaching staff formed by Dolors Juvinyà, Antonia Barceló, Marc Sáez and the head of the group, Professor Ferran Camas, have worked in coordination to compile materials of interest, talk to agents (organisations, trade unions, etc.) related to the field of care (contacts which will be followed up in the drafting of the final comparative report), and to analyse data and statistics on the care sector.

The main conclusions are as follows:

1. The variety of situations that can be defined as care jobs (i.e. “paid” jobs) with no common legal standard to cover them. The regime that is most regulated is the common labour regime, i.e. for persons who are employed by companies, hospitals, nursing homes, etc. to provide care services (such as nurses, nursing assistants, or carers hired by a company to provide services in a home, etc.), or also the so-called special labour regime, i.e. for persons who are hired by the owner of a household to take care of a member of his or her family.

Broadly speaking, in the first case, wages tend to be low given the rising cost of living and the lack of measures to balance work and family life, while in the second case, more precarious conditions have been highlighted, since in many cases undocumented migrants are involved.

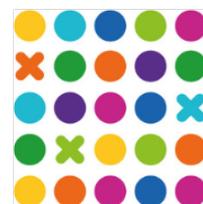
2. Specifically in relation to care work, both from the point of view of the carer and the person being cared for, the following have been discussed:
  - a. We have found in some cases that cared-for persons want to be cared for in their own language (i.e. Catalan), when the carer is not Catalan or Spanish (in many cases, Latin American people who speak Spanish, but not Catalan).

The lack of care training of many workers, whether they are employed by a company to provide home care services or directly by the head of the household, has also been a subject of debate.

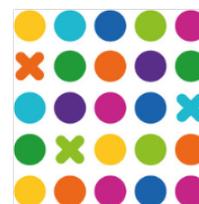
- b. In relation to carers, the debate has centred on the salaries they receive and the excessive number of hours they work, which could be causing a possible exodus of staff from the nursing sector to other EU countries with higher salaries. In the case of people who provide care services in the home, we have detected situations of harassment, especially sexual harassment, and, above all, informality in the employment relationship, which means that they do not enjoy the labour rights to which they are entitled.

The informality of employment in family households when the person is employed by the head of the family household is a major obstacle to the full application of labour rights. Moreover, this sector has begun to be occupied mainly by foreign women who lack residence permits. Gaining access to this sector is in fact the first necessary step so that, under Spanish law, after three years these workers will be able to obtain residence permits for exceptional circumstances.

3. In general, care workers are covered by the social security system, as well as by unemployment benefits. In any case, it is considered important to take into account, in terms of social benefits and social security protection, the illnesses that may result from the specific functions performed by care workers



The convenience of opening legal channels for foreigners to come to Spain to work in the care sector is considered, especially in view of the demographic change that Spain is undergoing. Indeed, Spain will become one of the countries with the highest life expectancy (83.5 years in 2070) and the lowest fertility rate (approximately 1.25 children per woman), below the fertility threshold of 2.1 considered necessary to maintain a constant population size in the absence of migration.



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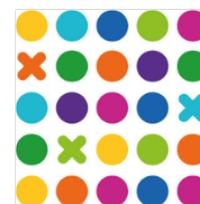
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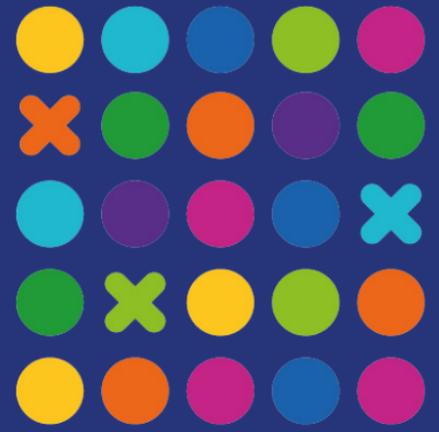
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