# WHERE LIFE IS SUSTAINED

Rights for domestic and care workers

**INTERNATIONAL, EUROPEAN, AND SPANISH FRAMEWORK**



SEDOAC

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# CREDITS

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Author: Ismael Sánchez Jiménez, a lawyer registered with the Madrid Bar Association (ICAM) under number 116,908, has practiced labor law in defense of domestic and care workers since 2013. He has collaborated with SEDOAC since 2015 and has served as a lawyer for CETHYC since 2021, overseeing labor and social security advisory services at the center.

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# Author's Note

In recent years, a multitude of legal instruments and reports produced by national and international organizations have drawn attention to the circumstances of care workers, as well as the working conditions and rights of domestic and care personnel. However, this increasing institutional focus stands in stark contrast to the ongoing struggle that has persisted for over two decades, led by the workers themselves and their associations. They have been advocating for equal labor rights, the ratification of International Labour Organization (ILO) Convention 189, and the condemnation of the precarious and exploitative conditions that have historically defined the sector.

At the Center for the Empowerment of Domestic and Care Workers (CETHYC), we encounter a persistent challenge whenever we compile a report or document: articulating intricate legal standards without alienating the workers through technical jargon. Consequently, this endeavor seeks to employ clear, accessible, and comprehensible language while maintaining the legal precision essential for understanding the international instruments, regulations, and jurisprudence discussed in the subsequent pages.

Finally, I would like to dedicate this work to Gloria, Merceditas, Charito, Anielka, Luz Dalia, Elisa, Delia, Andrea, Gisella, Margarita, Karen, and countless other women whose effort, courage, and perseverance have enabled the progress detailed in this document. Without their contributions, this text would not exist.

I would like to express my sincere gratitude to the CETHYC technical team and the SEDOAC association, prominent organizations dedicated to advocating for the rights of women, migrants, and domestic and care workers. Thank you for your trust, your commitment, and particularly for the warmth and support you provided during my paternity leave, enabling me to return with the privilege of once again applying my knowledge in service of domestic and care workers.

With all my affection, to everyone.

Ismael Sánchez Jiménez, Labor Law Attorney, SEDOAC

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# Introduction

Housework and caregiving are essential activities for the development of life and society; without fundamental care for both the family and the home, other activities can scarcely be accomplished.

Numerous households rely daily on women who undertake essential caregiving responsibilities for the elderly, children, household cleaning, meal preparation, laundry, companionship, medication management, or simply being present to address the needs of those they care for or their employers.

Reports from international organizations align with both the internal data managed by CETHYC and the findings articulated in the Judgment of the Court of Justice of the European Union (CJEU) C-389/20 concerning the gender division within the domestic and care workers sector. This sector is predominantly occupied by women, comprising over 95% of the workforce, while men typically engage more in gardening and driving, with a significantly lower presence in direct caregiving roles, where women overwhelmingly dominate.

**Consequently, we are addressing a sector that is objectively feminized.**

Consequently, despite the significant importance of this sector in society, there exists a systematic violation of the rights of domestic and care workers, along with the precarious nature of the industry.

This historical infringement of rights and labor exploitation predominantly impacts women, particularly elderly migrant women in Madrid, Spain, with approximately 86% aged between 41 and 72 years, as reported by CETHyC 2025. The overwhelming majority, exceeding 95%, are migrant women, primarily from South American nations. Just over half of the women who approach CETHyC are residents, and among this group, nearly 80% lack both residence and work permits.
In recent years, the long-standing demands of associations representing domestic and care workers have become increasingly apparent: the State has neglected care work, providing a series of regulations and resources that are inadequate.

The State has delegated the responsibility for the care of the elderly and children, along with the execution of household tasks, to the private sector. Consequently, in a Europe that is increasingly aging and experiencing longer lifespans, adequate solutions are not being provided to prevent the entire burden of this responsibility from resting on the weary shoulders of domestic and care workers.

Consequently, due to the efforts of associations both in the streets and in the courts, a series of legal modifications have been achieved in Spain as a result of the CJEU Judgment C-389/20. This has led to a historic acknowledgment of the violation of fundamental rights stemming from discrimination based on gender, specifically against working women.

With this context established, it is pertinent to note that Spanish regulations regarding domestic and care workers have been governed by two distinct sets of rules:

Royal Decree 1424/1985, enacted on August 1, is notable for instituting two partial payments in lieu of full payments, resulting in domestic and care workers receiving lower compensation than their counterparts in other employment sectors. This decree also established an annual temporary contract, which lacked any legal justification, among other concerns.

Royal Decree 1620/2011 of November 14, which governs the special employment relationship in the family home, expanded rights compared to its predecessor by eliminating half payments and the annual temporary contract. However, it did not establish the right to unemployment benefits, occupational risk protections, time control, or benefits from the Wage Guarantee Fund, and it permitted dismissal without cause, among other provisions.

As a result of the efforts of various associations and the CJEU Judgment C-389/20, the recent royal decree has been amended through RD 16/2022 of September 6. This amendment recognizes the right to unemployment benefits and the right to benefits from the Wage Guarantee Fund. It has eliminated dismissal without cause (withdrawal) and referenced the establishment of specific regulations on occupational risks (Royal Decree 893/2024, of September 10). However, the right to time control, a critical issue for live-in workers, has not been acknowledged, and the compensation of 12 days per year worked remains unchanged.

**Nor has the "special" system within the general social security framework known as "domestic employees" been altered. This system, which encompasses domestic and caregiving workers, establishes tiered contributions and has adversely affected workers' contributions. This is attributable to the exceedingly low Interprofessional Minimum Wage (SMI) that Spain maintained prior to its consistent increase year after year since 2019, resulting in inadequate retirement pensions after many years of service.**

We will organize the text by examining international, European, and national regulations concerning the principles of equality and non-discrimination based on gender within the domestic and care worker sector. We will commence with the first point: the hierarchy of regulations and the fundamental concepts that facilitate our understanding of how the various regulations impacting the sector are structured and interconnected.

Spain has been a full member of the European Union since January 1, 1986, and has also entered into numerous international conventions and treaties. This paper will explore international regulations, necessitating a prior comprehension of certain fundamental concepts.

First and foremost, what constitutes an international agreement or treaty?
Although they are not identical in a technical sense, for the purposes of this work, we will refer to an international convention or treaty as defined by both the Instrument of Accession dated 02 May 1972 to the Vienna Convention on the Law of Treaties and the provisions established in Law 25/2014, of 27 November, concerning Treaties and other International Agreements.

In this context, international conventions are agreements between two (bilateral) or more states (multilateral) or legal entities, wherein International Law is applicable and which may be governed by institutions of International Law beyond their scope.

Article 96 of the Spanish Constitution stipulates that once an international treaty is ratified, it shall become an integral part of the national legal framework.

An international treaty can be defined as an agreement between two or more states or entities recognized under international law that, in the case of Spain, becomes part of its domestic legislation once ratified in accordance with established procedures. As previously noted, Spain is a member of the European Union (EU) and, as a Member State, is bound by its legislation.

What exactly is the European Union? In the case of a conflict of laws between Spain and the EU, which holds greater authority: EU law or the domestic law of a Member State?

The European Union (EU) is an economic and political entity comprising 27 member states, possessing its own legal personality, which grants it the full capacity to enter into international treaties and agreements in its own name.

**The European Union is governed, in straightforward terms, by two categories of regulations:**

## REGULATIONS AND FUNDAMENTAL CONCEPTS

The fundamental regulations are the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which delineate the principles, values, and objectives (TEU) as well as the operational framework concerning the competencies of the EU (TFEU).

Secondary legislation, specifically that which is promulgated by EU institutions and is binding on Member States, encompasses Regulations, Directives, and Decisions. Our focus will be on Regulations and Directives, which will prove to be particularly significant, as will be demonstrated later.

The European Union's normative hierarchy presents a complex issue; however, we will endeavor to provide a straightforward response.

This matter has prompted a multitude of rulings from both the Court of Justice of the European Union (CJEU) and national courts, as the Constitution consistently prevails over International Law due to its sovereign foundation, except in instances where Spain, as a Member State of the EU, has opted to relinquish its sovereignty to the European Union, as stipulated by Article 93 of the Spanish Constitution. In such cases, the normative hierarchy would be:

**1st Constitution and Community Law pertaining to matters delegated by statute.**

**2nd International Treaties.**

**Fourth Organic Laws.**

**Fifth Ordinary Laws.**

**6th Regulations.**

**What is the Court of Justice of the European Union?**

This institution represents the judicial authority within the EU and is tasked with adjudicating the application of EU law (or Community law), specifically determining whether Member States adhere to EU regulations (Regulations, Directives, etc.).
It is governed by Article 19 of the TEU, and its rulings are obligatory for Member States.

A crucial element of the CJEU is its preliminary rulings. This is particularly significant as the CJEU judgment C-389, which we will analyze below and which has had considerable impact, originates from a preliminary ruling.

A preliminary ruling is, in essence, a query submitted by a court or tribunal from one of the EU member states to the CJEU regarding the interpretation or application of Community Law in relation to a contested issue.

*"The gender perspective is not merely an option; it is a hermeneutical necessity."*

The preliminary question presented in the case we will examine later in the CJEU Judgment C-389 was raised by the Administrative Court No. 2 of Vigo, a Spanish judicial authority as a Member State of the EU. This inquiry pertains to the compliance of Community Directives 79/7/EEC of the Council dated 19 December 1978, concerning the gradual implementation of the principle of equal treatment between men and women in social security matters, and 2006/54/EC of the European Parliament and of the Council dated 5 July 2006, regarding the enforcement of the principle of equal opportunities and equal treatment between men and women in employment and occupation matters. Specifically, it questions the exclusion of unemployment protection within the Special System of employment in the family home of the General Social Security Scheme (art. 251.d) LGSS).

This preliminary question emerges within the framework of a lawsuit involving a domestic worker who sought contributions to the unemployment contingency from the General Treasury of Social Security (TGSS) to qualify for unemployment benefits. The TGSS denied this request by invoking Spanish regulations, specifically Article 251, letter d), of the General Social Security Law, which excludes domestic and care workers from the contribution and unemployment benefits system.

The Administrative Court No. 2 of Vigo inquires of the CJEU whether Spain's legal exclusion of domestic workers from unemployment benefits aligns with European regulations concerning gender equality in employment and social security.

The CJEU has established that the Spanish regulations infringe upon the principle of equality between women and men. As demonstrated in the Judgment, over 95% of domestic and care workers are women, and their exclusion from the right to unemployment benefits constitutes gender-based discrimination.

Therefore, with these fundamental concepts and this straightforward explanation, we can explore in greater depth the international, European, and Spanish regulations, emphasizing gender discrimination within the domestic and caregiving sectors.



### *a) Universal Declaration of Human Rights, 1948 (UDHR)*

The United Nations (UN) is the largest international assembly of nations, established in 1945 to uphold global peace and security through the promotion of cooperation among countries.

Thus, we encounter the UDHR, an international legal instrument that delineates a set of universal rights inherent to all human beings by virtue of their humanity.

As it is not an international treaty, it is not legally binding; that is, it does not impose strict obligations on States for compliance. However, it has provided a foundational basis for International Law and has served as a reference for numerous other International Treaties, including much of the European Union's regulations, as will be discussed later.

## International framework

**RIGHTS PERTAINING TO EQUALITY AND THE PROHIBITION OF DISCRIMINATION**

The UDHR acknowledges essential rights, including the following:
Article 2 enforces the prohibition of discrimination on the grounds of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth, or any other status. Additionally, no distinctions shall be made based on the political, jurisdictional, or international status of the country or territory to which an individual belongs.

Article 23 stipulates:

1. Every individual is entitled to work, to freely choose their employment, to fair and satisfactory working conditions, and to protection against unemployment.
2. Every individual is entitled, without discrimination, to receive equal compensation for equal work.
3. Every individual engaged in work is entitled to fair and favorable compensation that guarantees a life of dignity for themselves and their family.
4. Every individual possesses the right to establish and participate in trade unions for the safeguarding of their interests.

As observed, Spain excludes female workers from fundamental rights such as unemployment benefits, regulation of working hours, attendance and overtime, and FOGASA benefits, among others.

*It has infringed upon and persists in infringing upon fundamental human rights and the universal principle of equality.*

Article 22 enshrines the right to social security, which, as observed, was similarly infringed upon by Spanish regulations in the sector. Equally significant is Article 24, which affirms the right to rest, time limits, and holidays, along with Article 25, which guarantees the right to a salary adequate for family support, protection against unemployment, retirement, disability, housing, and ultimately, the right to a dignified life.

### b) The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

**T**his is an international treaty, also ratified by Spain, and thus legally binding, aimed at achieving effective equality between women and men while safeguarding women against any gender-based discrimination.
It was ratified by Spain on December 16, 1983, and constitutes an international treaty under the auspices of the United Nations.

This significant legal instrument delineates in its Article 11 the prohibition of discrimination based on gender, outlining essential provisions such as:

a **The right to work is an inalienable entitlement.**
The right to work is an inalienable entitlement of every human being.

b **Equal employment opportunities**
The right to equitable employment opportunities, encompassing the application of uniform selection criteria.

c **Unrestricted selection of profession**
The right to freely select a profession and employment, the right to advancement, job security, and vocational training.

d **Equitable compensation**
The right to equitable compensation, including benefits, and to equal treatment concerning work of comparable value.

**Social Security**
e The entitlement to social security, especially in circumstances of retirement, unemployment, illness, disability, old age, or other forms of work incapacity.

f **Health safeguarding**
The right to health protection and safety in the workplace, encompassing the preservation of reproductive health.

To prevent discrimination against women based on marriage or maternity and to ensure the effectiveness of their right to work, States Parties shall implement appropriate measures to:

- Prohibit, under the threat of sanctions, termination on the grounds of pregnancy or maternity leave, as well as discrimination in dismissals based on marital status.
- Implement paid maternity leave or equivalent social benefits without the loss of prior employment, seniority, or social advantages.
- Promote the establishment of essential social support services that empower parents to balance family obligations with work responsibilities and engagement in public life, particularly by fostering the creation and expansion of a network of childcare services.
- Ensure special protection for women during pregnancy in occupations that have been demonstrated to be detrimental to their health.

It establishes significant obligations concerning equal pay, the prohibition of discrimination in labor and social security matters, benefits, the prohibition of dismissal due to maternity, work-life balance, and more.

This regulation has resulted in the incorporation of several significant provisions within Spanish law, including the nullification of dismissal due to pregnancy and maternity as outlined in Article 55.5 of the Workers' Statute, which is entirely applicable to domestic and care workers, as will be discussed later.

## c) International Labour Organization (ILO) Convention No. 189

The demand from domestic and care workers for the implementation of ILO Convention 189 has been unprecedented.

This struggle has persisted for many years, fought by the workers themselves and their associations. In the Spanish context, it culminated on June 9, 2022, a historic day when Congress approved the law ratifying ILO Convention 189.

The ILO is a United Nations agency focused on labor law and social security. It comprises three constituent groups: government representatives, labor representatives, and employer representatives.
Its mission is to create agreements that are binding for the States that endorse them, along with recommendations.

In this instance, Convention 189 is the agreement that establishes the effective equality of rights for employed workers, including those in domestic and caregiving roles.

The agreement was ratified in June 2022, four months after the CJEU Judgment C-389 issued on February 24, 2022, propelled by the efforts of domestic and care workers organized in associations.

### What alterations did the ratification of this Convention introduce?

The modification of Royal Decree 1620/2011, dated November 14, which governs the special employment relationship within the family home, was enacted by Royal Decree-Law 16/2022 on September 6, aimed at enhancing the working conditions and Social Security of domestic workers. This includes the regulations pertaining to domestic and care workers in Spain, which introduced:

**Eligibility for unemployment benefits**

The right to contribute was established on October 1, 2022, raising the question of the status of workers who had been contributing for years prior to that date.

**Entitlement to FOGASA benefits**

The Wage Guarantee Fund disburses severance payments, wages, and salary-related items (such as vacation and overtime) in cases of employer insolvency.

This right is crucial because prior to its approval, a domestic and care worker who had a favorable judgment regarding owed amounts would not receive any compensation from FOGASA if the employer was insolvent, resulting in the loss of their entitlement.

Under the previous regulations, if a worker obtained a final judgment indicating that the employer owed her €5,000 in severance pay and €10,000 in wages and overtime, the worker would not receive her €15,000 if the employer passed away and the heirs renounced the inheritance.

With the recent regulatory changes, FOGASA will compensate this worker within the parameters set forth in Article 33 of the Workers' Statute, similar to all other employees. Consequently, following the reform of September 2022, instigated by the ratification of ILO Convention 189 and the CJEU Judgment C-389, this worker is safeguarded against non-payment in the event of the employer's insolvency.

The notion of "withdrawal" has been abolished. This notion pertained to a termination without cause, accompanied by two stipulations:

**20 days' notice**
The employer was obligated to provide a minimum of 20 days' notice prior to the dismissal.

**Compensation of twelve days annually**
Compensation equivalent to twelve days' salary was disbursed for each year of service.

This figure has been supplanted by a standard decline in domestic workers with 3 causes:

**Significant alteration in family circumstances**
Substantial alterations in the composition or conditions of the household that warrant its dissolution.

**unexpected economic factor**
Unforeseen economic circumstances that hinder the continuation of the employment relationship.

**Demonstrated erosion of trust**
Justified violation of the essential trust inherent in the unique employment relationship within the household.

Although another form of discrimination against domestic and care workers existed due to the concept of "withdrawal," which was not present in any other employment relationship, its elimination signifies an equalization with other employed workers by establishing a legitimate cause for termination.

However, discrimination endures and necessitates reform, as the amendment of Royal Decree 1620/2011, enacted subsequent to the ratification of ILO Convention C-189, has upheld the compensation of 12 days per year of service. This arrangement constitutes a distinct and evident disadvantage relative to other workers, given its inadequate compensation.

To exemplify this discrimination, Spanish labor law stipulates that a compensation of 12 days per year is granted to workers with temporary contracts from the year 2015 onward, in accordance with the eighth transitional provision of the Workers' Statute.

In straightforward terms, compensation for temporary contracts, which cannot exceed 1.5 years within a 2-year period as stipulated in Article 15 of the ET, is being aligned with an indefinite employment relationship. Regardless of whether the duration is 1 year or 10 years, if this type of termination is selected, the compensation will remain consistent: 12 days for each year worked.

**Compensation of 33 days for each year of service.**
The compensation for unfair dismissal or termination that does not adhere to the stipulated requirements has been revised from 20 days to align with Article 56 of the Employment Act: 33 days for each year of service.

**Occupational Risk Mitigation**
Amendment of Law 31/1995 to establish specific regulations for domestic workers regarding occupational risks, along with a protocol addressing violence and harassment (RD 893/2024 of September 10).

These are the primary additions; however, the Social Security contribution system remains unchanged, continuing to disadvantage domestic and care workers in comparison to other employees. The exclusion of the right to time tracking for overtime hours persists, and the longstanding issues concerning the retirement of domestic and care workers, as well as the conditions surrounding live-in workers, have not been addressed.

Considering the aforementioned, an examination of ILO Convention 189 reveals in Article 3 the obligation of States to acknowledge the Human Rights of domestic and care workers, as well as the duty to implement measures aimed at eradicating any form of discrimination.

## d) ILO Recommendation 201

In conjunction with ILO Convention 189, ILO Recommendation 201 emerged, which we wish to emphasize due to its provisions that considerably enhance the rights established in C-189.

Point 3 addresses the promotion of measures aimed at preventing and eradicating all forms of discrimination related to health issues, medical assessments, and similar matters.

Point 5 is particularly relevant to domestic and care workers, as it elaborates on the provisions of Article 7 of ILO Convention C-189, which delineates the elements that must be included in the employment contract.

At this juncture, it is essential to recall the obligation to delineate the working conditions within the employment contract in writing, as mandated by Article 5.4 of RD 1620/2011 in conjunction with Royal Decree 1659/1998, dated July 24.

Point 5 of the recommendation is especially pertinent as it broadens the content that must be included in the employment contract concerning the job description, licenses and permits, remuneration or compensation for overtime, and availability, among other aspects.

This matter is particularly significant, as the clarity of the employment contract content provides greater assurance and protection for domestic and care workers. For instance, when delineating working hours for live-in employees, it is crucial to define actual working hours, on-call hours, overtime, and rest periods, as well as to specify the precise tasks for which they have been engaged. Frequently, domestic and care workers find themselves undertaking a variety of responsibilities, including caring for the elderly or minors, cleaning, and managing household operations at all levels.

It is unlawful for a domestic worker to undertake all tasks specified by employers without limitation, as this not only raises issues of justice but also presents a potential abuse of power, a violation of working conditions, or even the risk of mobbing or workplace harassment.

Indeed, point 8 of Recommendation 201 stipulates that States are required to ensure timekeeping and recording in compliance with the provisions outlined in Article 10 of C-189.

Similarly, point 9 addresses hours of attendance and their corresponding system of remuneration or compensation, including rest periods.

Section 20.2 articulates the recommendation to refrain from discrimination against domestic and care workers concerning social security and contribution rights.

Point 21 is notably compelling, advocating for States to implement a range of public resources and measures aimed at the protection and support of domestic and care workers. This includes the establishment of a national helpline, oversight by authorities during the employment of migrant workers, an emergency accommodation network, mechanisms for lodging complaints, and resources to educate them about labor and migration rights, all designed to prevent violence, abuse, and exploitation of domestic and care workers.

Another pertinent point is 25.1.b) and c), which advocates for the formulation of regulations to ensure work-life balance. This issue remains unresolved, as neither C-189 nor national legislation addresses it for domestic and care workers, instead referencing the common basic rights outlined in the fundamental legislation, specifically the Workers' Statute.

## e) International Covenant on Civil and Political Rights. New York, 19 December 1966; ratified by Spain on 30 April 1977.

Finally, we have the ICESCR, a legal instrument of the United Nations that, grounded in the Charter of the United Nations and the Universal Declaration of Human Rights, articulates a framework of values, principles, and, most importantly, fundamental rights for the signatory States.

Thus, Article 2 prohibits discrimination on the grounds of race, gender, origin, language, religion, political opinion, birth, and other factors. Article 7 addresses the right to work in decent conditions, to rest, to fair remuneration for family support, and to safety and health, among other provisions.

We will now proceed to examine European regulations concerning equality and non-discrimination based on gender to establish a framework prior to analyzing the judgments of the CJEU that we will study.

## a) Charter of Fundamental Rights of the European Union

This legal instrument, established in 2000, became binding on EU member states starting in 2009.

This legal document delineates a set of values, principles, and rights that are shared across the European Union and its Member States.

In this context, it is evident that Article 1 asserts the right to human dignity, a crucial and significant right considering the severe instances of labor exploitation encountered daily by domestic and care workers, particularly live-in domestic workers.

In this legal document, we also encounter Article 3, which addresses the right to physical and mental integrity. This right is directly linked to the right to health protection and the prohibition of all forms of violence and harassment against domestic and care workers.

Article 5 enshrines the prohibition of slavery and forced labor; however, it is important to note that this prohibition is also articulated in several international instruments previously referenced, including the UDHR and the ICESCR.

Articles 20 and 21 enshrine the right to equality and prohibit all forms of discrimination based on ethnic or social origins, genetic characteristics, language, religion or beliefs, political or other opinions, membership in a national minority, heritage, birth, disability, age, sexual orientation, or nationality.

Article 23 mandates the obligation to uphold equality between women and men, particularly in its initial section concerning employment.

Article 31 guarantees the right to equitable working conditions, Article 33 affirms the right to balance family and professional life, and Article 34 enshrines the right to social security and social assistance.

**European framework**

**EQUALITY AND NON-DISCRIMINATION**

***"Caregiving presents a significant challenge in European societies."***

## B) Directive 2006/54/EC of the European Parliament and of the Council dated 5 July 2006 concerning the implementation of the principle of equal opportunities and equal treatment for men and women in employment and occupation matters.

This Directive serves as a recasting of earlier Directives that, from 1976 to 1997, established regulations prohibiting discrimination based on gender and promoting equality between women and men.

Similarly, it is important to note concerning the right to equality between women and men in relation to employment that prior to the TEU and the TFEU, there existed the Treaty of Rome of 1957, followed by the Treaty of Amsterdam of 1997. Article 119 of the former and Article 141 of the latter ultimately culminated in Article 157.1 of the TFEU.

This Directive is particularly significant as it not only enshrines in Article 1 the right to effective equality between women and men concerning employment, remuneration, working conditions, and social security rights, but also, in Article 2, provides compelling definitions that will assist the CJEU in elucidating and interpreting the application of the rules in cases of gender discrimination.

Thus, we observe that Article 2 delineates the explicit tenor of the subsequent provisions:

**Direct discrimination**
The circumstance in which an individual is, has been, or may be subjected to less favorable treatment based on sex compared to another individual in a similar situation.

**Indirect discrimination**
The scenario in which a seemingly neutral provision, criterion, or practice disadvantages individuals of one sex relative to those of the other sex, unless it can be objectively justified by a legitimate objective and the means employed to achieve it are appropriate and necessary.

This distinction between direct and indirect discrimination elucidates which circumstances or legal provisions may be deemed discriminatory and, as we will explore, will be highly pertinent in the CJEU judgments discussed below.

Article 4 of the Directive enshrines the prohibition of both direct and indirect discrimination concerning working conditions and remuneration, while Article 5 delineates the prohibition of direct and indirect discrimination in relation to social security contributions and benefits.

Article 9 delineates specific instances that exemplify acts of discrimination, among which we emphasize:

> **Section (e)**
> Establishing distinct criteria for the allocation of benefits or reserving these benefits exclusively for employees of one gender.

> **Section (k)**
> To establish distinct regulations or rules applicable solely to employees of a specific gender, except as stipulated in points (h) and (j), concerning the assurance or preservation of the right to deferred benefits upon the worker's departure from the scheme.

Other pertinent issues outlined by this Directive include the requirement to provide compensation in instances of discrimination (Art. 18) and the provisions regarding the shifting of the burden of proof (Art. 19), which stipulate that the defendant must demonstrate that the alleged discrimination did not occur once evidence has been presented.

The following articles mandate the establishment of entities that foster equality between women and men, as well as the advancement of social dialogue on this issue.

### c) Directive 79/7/EEC of 19 December 1978 concerning the gradual implementation of the principle of equal treatment for men and women in social security matters

This European Directive is highly significant as it established equal rights in social security matters for women and men as early as 1978.

This principle of equality is articulated in Article 1.

One of the most significant provisions of this Directive is Article 4, which asserts that the principle of equal treatment outlined in Article 1 entails the prohibition of any discrimination based on sex, whether direct or indirect, particularly concerning marital or family status in relation to contributions, both in terms of calculation and payment, as well as the overall benefits system.

As will be discussed later, this article of the Directive will be pivotal to the CJEU Judgment c-389.

### d) Directive 2003/88/EC of the European Parliament and of the Council dated 4 November 2003 concerning specific aspects of the organization of working time

This Directive seeks to establish the fundamental health and safety requirements pertaining to the organization of working hours.

Thus, this Directive mandates that Member States implement measures to ensure that all workers are entitled to a minimum daily rest period of 11 consecutive hours within each 24-hour period (Art. 3), as well as an uninterrupted rest of 24 hours within a 7-day period (Art. 5).

Concerning the maximum length of the working day, Article 6 of Directive 2003/88 stipulates that appropriate measures must be implemented to guarantee that the average work duration does not surpass 48 hours, including overtime, within any 7-day period.

This Directive is particularly significant, as the subsequent one we will examine, specifically the CJEU Judgment in case C-531/23 dated 19 December 2024, determined that the exclusion of timekeeping control over the working hours of domestic and care workers constitutes discrimination based on gender.

### e) European Social Charter, executed in Strasbourg on 3 May 1996 and ratified by Spain on 11 June 2021

The European Social Charter (ESC) is a significant European standard that has gained considerable relevance in recent years. This is particularly evident as the European Committee of Social Rights (ECSR) has asserted in Recommendation CM/RecChS(2024)44 that the compensation outlined in Article 56 of the ET, which stipulates 33 days of compensation per year for unfair dismissal, is evidently inadequate in light of Article 24 of the ESC.

The CSE establishes, in accordance with all previously stated regulations, the principle of equality between women and men and the prohibition of gender-based discrimination, specifically in Article 20 of the CSE.

Consequently, the aforementioned Article 24 b) of the CSE stipulates that workers dismissed without just cause are entitled to fair compensation or other suitable remedies.

In relation to this particular matter, the Spanish regulations concerning compensation for unfair dismissal previously established a rate of 20 days for each year worked. However, following the reform introduced by Royal Decree 1620/2011 and subsequently amended by Royal Decree-Law 16/2022 on September 6, 2022, this provision was abolished. Consequently, as of September 2022, domestic and care workers are entitled to compensation of 33 days per year when their dismissal is deemed unfair.

This demand is justified for this sector, particularly because the compensation of 12 days per year, as stipulated in Article 11.2 of RD 1620/2011 dated November 14, for the termination of employment contracts due to the three aforementioned causes, remains in effect. We, representing associations of domestic workers and professionals in the field, deem this provision discriminatory and manifestly inadequate.

*"The exclusion of domestic workers from the right to unemployment benefits represents discrimination based on gender."*



# JURISPRUDENCE EUROPEAN

TWO SIGNIFICANT RULINGS

## CJEU JUDGMENT C-389/20, DATED 24 FEBRUARY 2022

This ruling is critically significant for the sector as it determines that the historical exclusion of domestic and care workers from both the contributory and non-contributory unemployment benefit systems constitutes discrimination based on gender.

### Contextual information

In 2019, a domestic and care worker submitted an application to the General Treasury of Social Security (TGSS) to contribute to unemployment insurance and thereby qualify for benefits.
The TGSS denies the application by resolution based on Spanish regulations that exclude domestic and care workers from the unemployment benefits system (art. 251 letter d).

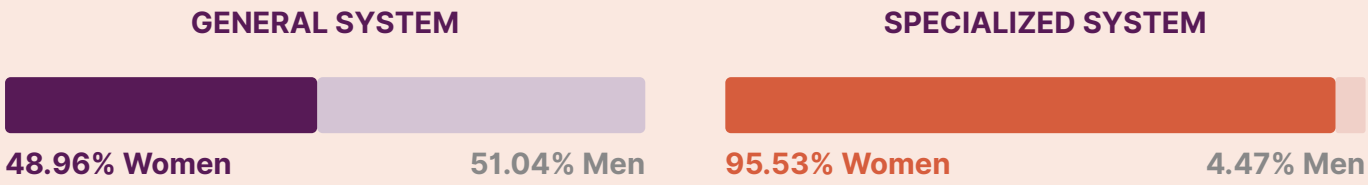
This denial is contested in court before the contentious-administrative jurisdiction, specifically assigned to Court No. 2 of the contentious-administrative court in Vigo. This jurisdictional body suspends the proceedings and submits a preliminary question to the Court of Justice of the European Union, inquiring whether Spanish regulations contravene European regulations concerning the exclusion of domestic and care workers from the unemployment benefits system, particularly regarding potential gender discrimination, as this group predominantly consists of women.

### The essence of the issue

As demonstrated by the preceding European regulations, the conflict of rules in this instance arises from Article 4, paragraph 1 of Directive 79/7 and Article 5, letter b of Directive 2006/54, both of which establish the principle of equality between women and men concerning employment and social security benefits.

Conversely, the Spanish regulation concerning conflict is the now-repealed article 251 d), which asserted that: “the protective measures of the Special System for Domestic Employees will not encompass those related to unemployment.”

Consequently, section 45 of the Judgment delineates the data regarding the affiliation of women and men to both the general social security system and the specialized system for domestic employees as of May 31, 2021:




This data underscores the fact that the majority of domestic and care workers are women, a consequence of the unequal allocation of care responsibilities in society, which is tied to the relationships and traditional gender roles inherent in a patriarchal framework.

The Spanish government rejected the notion that Spanish regulations are discriminatory based on gender, emphasizing the unique nature of the special employment relationship in domestic service, the necessity to combat the underground economy, the effort to prevent potential fraud, and the stability of the financial system.

The CJEU examines each of the arguments presented by the Spanish government, ultimately dismissing all of them.

## Conclusion

Finally, the CJEU determines:

> *Article 4(1) of Council Directive 79/7/EEC, dated 19 December 1978, concerning the gradual implementation of the principle of equal treatment for men and women in social security matters, must be construed as prohibiting a national provision that excludes unemployment benefits from the social security benefits afforded to domestic employees under a statutory social security scheme. This is particularly relevant if such a provision places female workers at a distinct disadvantage relative to their male counterparts and is not substantiated by objective factors unrelated to any discrimination based on sex.*

In other words, the CJEU determines that Spanish regulations subjected women domestic and care workers to a condition of indirect discrimination based on gender, specifically due to their status as women.

## B) JUDGMENT OF 19 DECEMBER 2024, CASE C-531/23

This ruling establishes that the exclusion of domestic and care workers from a system that monitors their overtime hours on par with other employees is discriminatory.

### Contextual information

A worker is terminated and subsequently files a lawsuit in the Social Court No. 2 of Bilbao, seeking a declaration of unfair dismissal and requesting compensation for the overtime hours claimed, along with the settlement of accrued vacation time.

The Social Court No. 2 of Bilbao rendered a judgment on January 11, 2023, declaring the dismissal to be unjust and mandating the appropriate settlement, while rejecting the claim for overtime hours. This dismissal was based on the lack of evidence for both the hours worked and the claimed salary, as the absence of a time record provided by the employers does not imply otherwise, given that Royal Decree 1620/2011 exempts employers from the obligation to maintain a time record for their employees.

The domestic and care worker submits an appeal against the ruling to the High Court of Justice of the Basque Country (TSJPV), which subsequently raises a preliminary question to the CJEU. This inquiry addresses whether the evidentiary challenges arising from the exclusion of domestic and care workers from time control under Spanish regulations places them at a disadvantage compared to other workers, in light of the CJEU Judgment of 14 May 2019 (case C-55/18, CCOO against Deutsche Bank) and the aforementioned Directive 2003/88/EC of the European Parliament and of the Council dated 4 November 2003 concerning certain aspects of the organization of working time.

In this instance, the TSJPV also references the CJEU Judgment c-389/20 and inquires whether the exclusion of timekeeping controls, in accordance with the aforementioned judgment, could represent indirect discrimination based on gender, considering that 95% of domestic and care workers are women.

## The essence of the issue

In this instance, the conflicting regulations include, on one hand, Directive 2003/88, specifically Articles 1.1, 3, and 5 (as discussed in the section on European regulations), and Article 17, which pertains to the exceptions applicable to the time limitations set forth in the preceding articles. Additionally, there is Directive 2006/54, which, as previously noted, defines direct and indirect discrimination and establishes the principle of equality between women and men concerning employment rights, prohibiting any discrimination based on gender (Articles 1, 2, 4, and 14.1).

Conversely, Spanish legislation, particularly Article 34.9 of the Workers' Statute (ET), mandates that companies ensure a daily record of working hours. This requirement, established by the amendment on March 8, 2019, through Royal Decree-Law 8/2019 concerning urgent measures for social protection and the combat against precarious employment, necessitates the inclusion of specific start and end times for each employee's workday.

Additionally, Article 35.5 of the ET stipulates that, for the purposes of overtime, the working hours of each employee shall be recorded daily by the company and totaled within the designated remuneration payment period, providing a copy of the summary to the employee in the corresponding receipt.

Concerning the specific regulations for domestic and care workers, we refer to Article 9.3 of Royal Decree 1620/2011, dated November 14, which governs the special employment relationship of domestic service. Section 3 states: “The regime for overtime hours will be that established in Article 35 of the Workers' Statute, except as provided in its section 5.”

## Conclusion

The Court of Justice of the European Union asserts:

Articles 3, 5, and 6 of Directive 2003/88/EC of the European Parliament and of the Council, dated 4 November 2003, concerning certain aspects of the organization of working time, must be interpreted in light of Article 31(2) of the Charter of Fundamental Rights of the European Union as precluding national legislation and its interpretation by national courts or administrative practices based on such legislation that exempt domestic employers from the obligation to implement a system for recording the working hours of domestic employees. This exemption effectively denies employees the ability to objectively and reliably ascertain the number of hours worked and their distribution over time.

We will now examine Spanish law and evaluate the impact of the aforementioned rulings, along with European and international regulations, to ascertain the current status of rights for domestic and care workers.

## SPANISH CONSTITUTION (CE) OF DECEMBER 29, 1978

The Spanish fundamental law enshrines in Article 14, under the title of fundamental rights, the principle of equality and the prohibition of discrimination based on birth, race, sex, religion, opinion, or any other personal or social condition or circumstance.

Article 9.2 mandates that public authorities foster conditions that ensure the genuine and effective freedom and equality of individuals and the groups to which they belong; it requires the removal of obstacles that impede or obstruct their full realization and the facilitation of all citizens' participation in political, economic, cultural, and social life.

Article 35 delineates the obligation to work and the entitlement to employment, ensuring fair compensation to meet individual and familial needs.

Concerning Article 14 of the Spanish Constitution, the Constitutional Court has frequently addressed this issue, affirming equality as a fundamental value and the cornerstone of any democratic society (Constitutional Court Judgment 8/1983 of February 18). It has also determined that the responsibility for upholding this principle lies not only with the judicial bodies and the administration but also with the legislator himself (Constitutional Court Judgment of July 2, 1981, unconstitutionality question 223/1980).

## B) ORGANIC LAW 3/2007, DATED MARCH 22, CONCERNING THE EFFECTIVE EQUALITY OF WOMEN AND MEN.

This Organic Law adheres to the provisions of Articles 9.2 and 14 of the Constitution and elaborates on the principle of equality between women and men as articulated in significant international instruments such as CEDAW, in accordance with the international regulatory framework.

Therefore, for the purposes of this study, we emphasize Article 5, which ensures equality between women and men and prohibits discrimination regarding access to employment, professional training, promotion, and working conditions.

Article 6, akin to Directive 2006/54, delineates the definitions of direct discrimination and indirect discrimination in identical terms.

Article 8 deems any differential treatment associated with pregnancy, maternity, or the exercise of work-life balance rights as discriminatory.

Article 9 defines as discriminatory on the basis of gender any adverse treatment or negative impact experienced by an individual as a result of submitting their complaint, claim, denunciation, demand, or appeal of any nature, aimed at preventing their discrimination.

This principle connects discrimination with the prohibition of reprisals and the assurance of immunity, which also entails the safeguarding of a fundamental right as outlined in Article 24 of the Spanish Constitution, specifically regarding the prohibition of defenselessness.

Article 15 mandates the integration of the principle of equality between women and men in the development, implementation, and evaluation of all regulations, public policies, and administrative actions.

### C) LAW 15/2022, DATED JULY 12, CONCERNING COMPREHENSIVE EQUAL TREATMENT AND NON-DISCRIMINATION.

This legislation enacts Article 14 of the Spanish Constitution and signifies a substantial advancement in the realm of equality. In this context, Article 2.1 of the Law articulates:

> *"1. Every individual is entitled to equal treatment and protection against discrimination, irrespective of their nationality, age—whether minor or adult—or legal residency status. Discrimination based on birth, racial or ethnic origin, sex, religion, belief or opinion, age, disability, sexual orientation or identity, gender expression, health condition, serological status, genetic predisposition to diseases and disorders, language, socioeconomic status, or any other personal or social characteristic is strictly prohibited."*

This suggests that the domestic and care workers sector requires an expansion of rights and protections. For instance, an action taken by the employer due to an irregular administrative status or illness may be deemed discriminatory.

This Law signifies an extension of the provisions outlined in Article 14 of the Spanish Constitution, as well as those in Organic Law 3/2007.

Furthermore, Article 4 explicitly prohibits all forms of discrimination, while Article 6 delineates the definitions of direct and indirect discrimination and broadens these definitions to include discrimination by association, discrimination by mistake, multiple and intersectional discrimination, discriminatory harassment, inducement, orders or instructions to discriminate, and reprisals against complaints or claims regarding discrimination.

Article 9 asserts the right to equal treatment and non-discrimination in employment, designating the Labor and Social Security Inspectorate as the authority responsible for ensuring adherence to the principle of equality and sanctioning actions that contravene this mandate.

Subsequently, Chapter I of the Law delineates the measures and safeguards designed to uphold the right to equality and non-discrimination.

In this regard, Article 26 stipulates the invalidity of any discriminatory action.
Articles 27 and 28 delineate the obligation to compensate for and rectify the harm inflicted by discriminatory acts, as well as ensuring effective judicial protection for this purpose.

Article 30 integrates into the regulations the concept of the reversal of the burden of proof. This jurisprudential construct was established by the Constitutional Court in rulings such as STC 87/2004, dated May 10, appeal for protection no. 3534-2001, and STC 171/2005, dated June 20, appeal for protection no. 4600-2003. Since 2022, it has been incorporated into what is referred to as "positive law," meaning it is acknowledged in the statutes and is thus directly applicable.

This principle of reversing the burden of proof stipulates that an individual who has experienced a violation of their fundamental rights, such as gender-based discrimination—illustrated by a domestic worker dismissed due to pregnancy—must provide reasonable evidence indicating that their right to non-discrimination has been infringed. It is then the responsibility of the employer to demonstrate that their actions were unrelated to any discriminatory motives.

Chapter IV delineates sanctions in Articles 46 and subsequent for individuals who engage in discriminatory acts as safeguarded by this law.

## D) ROYAL LEGISLATIVE DECREE 2/2015, DATED OCTOBER 23, APPROVING THE CONSOLIDATED TEXT OF THE WORKERS' STATUTE LAW (ET)

This is the fundamental principle governing the rights of all employees, which also extends, albeit in a supplementary manner, to domestic and care workers, with the exception of those employed directly by a company.

Naturally, the ET is a regulation encompassing numerous rights across various matters; therefore, we will concentrate on the most pertinent issues for the domestic and care workers sector, as well as on gender equality.

In this context, Article 17 of the ET broadly articulates the previously mentioned prohibition of discrimination in labor relations based on age or disability, as well as instances of direct or indirect discrimination on the grounds of sex, origin—including racial or ethnic origin—marital status, social condition, religion or beliefs, political ideologies, sexual orientation and identity, gender expression, sexual characteristics, affiliation or non-affiliation with trade unions and their agreements, familial connections with individuals associated with the company, and language within the Spanish State.

Orders to discriminate and employer decisions that result in adverse treatment of employees in response to a complaint lodged within the organization or to an administrative or judicial action seeking enforcement of the principle of equal treatment and non-discrimination shall also be deemed null and void.

Failure to adhere to the obligation of implementing protective measures against discrimination and violence aimed at LGBTI individuals, as outlined in Article 62.3 of the Law for the Real and Effective Equality of Trans People and for the Guarantee of the Rights of LGBTI Individuals, will lead to the assumption of responsibility by employers in accordance with Article 62.2 of the same legislation.

Consequently, it asserts that any action will be rendered null and void.

It safeguards the equality of women and men and encompasses a broad spectrum of protections against discrimination. Furthermore, it establishes the principle of guarantee of immunity, which prohibits reprisals for making any claims based on discrimination.

This particular issue is supported by extensive case law from both the Supreme Court and the Constitutional Court, including rulings such as the STS of January 17, 2008, which addresses the concept of the guarantee of inviolability, as well as STC 14/1993, dated January 18, FJ 2, and 38/2005, dated February 28, FJ 3.

Article 22.3 et seq. of the Workers' Statute delineates the prohibition of both direct and indirect discrimination within the professional classification and promotion system, as well as in remuneration, among other areas. Specifically, Article 28.1 of the Workers' Statute addresses equality and the prohibition of discrimination between women and men concerning salaries.

One of the issues we face in the ET concerning the CJEU Judgment C-389 lies in Article 33 of the ET, which was amended by RDL 16/2022 on September 6 to incorporate domestic and care workers into the FOGASA benefits system. This modification addresses the discrimination that arose from the exclusion of domestic and care workers from this essential right.

Concerning articles 34.9 and 35 of the ET, they have been influenced by the CJEU Judgment c-531/23. As previously noted, article 34.9 mandates the daily recording of the working day, while article 35.5 requires the documentation of working hours, specifically pertaining to overtime. Consequently, the latter provision is no longer applicable.

Royal Decree 1620/2011, dated November 14, which governs the special employment relationship within the family home, explicitly excludes the application of Article 35.5 of the Workers' Statute, thereby negating the requirement to record the total hours worked by an employee for the calculation and remuneration of overtime.
In 2011, when the royal decree amending the regime for domestic workers was published, timekeeping for the calculation of overtime hours was explicitly excluded.

Subsequently, 11 years later, when the significant regulatory change was enacted through Royal Decree-Law 16/2022, dated September 6, aimed at enhancing the working conditions and Social Security of domestic workers, which facilitates an expansion of rights that will be discussed later (including access to unemployment benefits, FOGASA, etc.), Article 9.3 of Royal Decree 1620/2011 remained unaltered. Consequently, the exclusion of timekeeping for the calculation of working hours to monitor and compensate for overtime hours continued to be in effect in 2022.

However, in 2019, Royal Decree-Law 8/2019, dated March 8, concerning urgent measures for social protection and the combat against precarious employment during working hours, was published. Article 10 of this decree introduces a modification to the Workers' Statute, adding Article 34.9, which mandates that all workers implement a time control system that delineates the commencement and conclusion of the workday.

In summary, Royal Decree 1620/2011 excludes the application of Article 35.5 of the Workers' Statute, but not Article 34.9 of the same legal framework. Consequently, since May 12, 2019, there has been a mandate to maintain a time record that includes both start and end times, which also extends to the domestic and care workers sector. It is noteworthy that Article 35.5 has been deemed discriminatory by the CJEU Judgment c-531/23, which asserts that the regulations exempting the calculation of overtime hours for domestic and care workers, a sector predominantly comprised of women, are discriminatory based on gender.

Article 34 of the ET, in addition to the aforementioned, encompasses significant rights aimed at reconciling family and work life through the reduction and adaptation of working hours. This provision is fully applicable to domestic and care workers, as they lack well-defined reconciliation rights within their own regulations, as will be discussed.

In this context, Article 37 delineates the rights to paid leave and work-life balance for domestic and care workers.

In relation to the termination of the employment relationship, one article merits scrutiny as it places domestic workers at a disadvantage relative to other employees due to the specific nature of the services they render.

We refer to Article 49 g) of the Workers' Statute, which designates the death, retirement, or incapacity of the employer as valid grounds for the termination of the employment contract. In instances of retirement and incapacity, considering the inherent nature of the work undertaken by a domestic worker and caregiver, there would be no complications. However, complications arise in the event of the employer's death, as the regulations mandate the payment of one month's salary as compensation.

In other words, a domestic worker who cares for an elderly individual for 20 years until their passing will be entitled to compensation equivalent to one month's salary, representing a single month's work.

This issue is highly pertinent as it directly impacts domestic and care workers, who consistently and routinely provide care for elderly individuals and, furthermore, reside in their homes.

Conversely, Article 55.5 of the Workers' Statute stipulates the nullification of dismissals based on discrimination or infringement of fundamental rights. It further details the safeguards against the dismissal of pregnant women from the onset of pregnancy, throughout maternity leave and breastfeeding leave, extending up to one year post-birth.

In this context, it is important to emphasize the doctrine of both objective and subjective protection against the dismissal of pregnant employees, as established in rulings such as STC 41/2002, dated February 25. This doctrine safeguards against direct discrimination resulting from dismissals based on pregnancy and renders any unfair dismissal null and void if the employee is within the protection period outlined in Article 55.5, irrespective of the employer's awareness of the pregnancy status.

### E) ROYAL DECREE-LAW 6/2019, DATED MARCH 1, CONCERNING URGENT MEASURES TO ENSURE EQUAL TREATMENT AND OPPORTUNITIES FOR WOMEN AND MEN IN EMPLOYMENT AND OCCUPATION.

This Royal Decree-Law significantly influenced gender equality by amending several provisions previously established in labor regulations, including those outlined in LO 3/2007.

Furthermore, it amends various provisions of the General Social Security Law pertaining to the expansion, enhancement, and safeguarding of benefits.

### F) ROYAL LEGISLATIVE DECREE 8/2015, DATED OCTOBER 30, WHICH APPROVES THE CONSOLIDATED TEXT OF THE GENERAL SOCIAL SECURITY LAW (LGSS)

This law does not explicitly prohibit discrimination, as observed in others. However, we reference it because Article 2, in addressing the guiding principles of the General Social Security Law, incorporates the principle of equality.

We reference this regulation due to the significant impact of the CJEU ruling C-389, as Article 251 d) has been expressly repealed by Royal Decree-Law 16/2022, dated September 6, aimed at improving the working conditions and social security of domestic workers. It is important to note that while this regulation was officially approved in September 2022, it had effectively been repealed since the issuance of the CJEU ruling C-389 in February 2022.

### G) ROYAL DECREE-LAW 16/2022, DATED SEPTEMBER 6, CONCERNING THE ENHANCEMENT OF WORKING CONDITIONS AND SOCIAL SECURITY FOR DOMESTIC WORKERS.

This regulation amends Royal Decree 1620/2011, dated November 14, which governs the special employment relationship of domestic service. It serves as the primary regulation that delineates the working conditions for domestic and care workers in Spain.

This modification resulted from years of advocacy by domestic and care workers, the CJEU ruling C-389, and the ratification of ILO Convention 189 by the Spanish government.

This regulation thus facilitated the integration of Health Protection and Occupational Risks within the workplace by mandating the establishment of its own regulations. It amended the LGSS to remove article 251 d), thereby granting domestic and care workers access to the unemployment benefit system. Additionally, it modified article 33 of the ET to extend FOGASA benefits to domestic workers and eliminated withdrawal as a means of terminating the employment relationship without cause.

However, despite the CJEU ruling C-389 and the ratification of ILO Convention C-189, Spain has not fully adhered to regulations concerning domestic and care workers. The second transitional provision states that "Contributions for unemployment and the Wage Guarantee Fund in the Special System for Domestic Employees, established in the General Social Security Scheme, until December 31, 2022," indicates that contributions for unemployment and FOGASA contingencies would commence on October 1, 2022.

However, what becomes of domestic and care workers who have been contributing to social security for years under the specialized system for domestic employees?

The agency tasked with administering unemployment benefits is the State Public Employment Service (SEPE), which interpreted the regulation literally and, consequently, did not acknowledge contributions made prior to October 1, 2022, for the special social security contribution system for domestic workers. As a result, a worker who had contributed for six years before October 1, 2022, was still required to wait one additional year of contributions to qualify for four months of unemployment benefits. In contrast, had she contributed for six years to the unemployment system, she would have been entitled to the maximum unemployment benefit of two years.

Consequently, domestic and care workers initiated legal action in response to this situation.

As an example, we will reference the Judgment of the Social Court 29 of Madrid, number 201/2025, dated October 14, concerning a fellow domestic and care worker from CETHYC.

The SEPE has officially acknowledged, through resolution, the entitlement to unemployment benefits for 566 days of contributions, amounting to a total of 180 days of benefits since the contributions were recognized, in accordance with the second transitional provision of RDL 16/2022 dated September 6, effective from October 1, 2022.

The worker submitted a legal claim challenging this decision, seeking recognition of the 1655 days for unemployment benefits, which would yield 540 days of benefits instead of the 180 days acknowledged by the SEPE. Additionally, she requested further compensation for the infringement of fundamental rights, asserting that the SEPE's decision is discriminatory based on gender.

Ultimately, the claim is upheld, recognizing that contributions made prior to October 1, 2022, to the special social security system for domestic employees must be acknowledged, even in the absence of contributions to unemployment insurance. This is due to the fact that the exclusion from the right to contribute to unemployment insurance arises from a regulation deemed null and void as discriminatory according to the CJEU Judgment C-389. Consequently, “this situation has not been rectified by the reform enacted through Royal Decree-Law 16/22, as it does not address the issue of potential prior beneficiaries, but rather pertains only to events that give rise to entitlement after its implementation. Furthermore, the interpretation of the regulations must be conducted in a manner that is most advantageous to the discriminated group (those included in this special system), with a gender perspective, given the undeniable female bias—if not character—of its members. Additionally, judges are obligated to apply and interpret the regulations with a gender perspective, as this incorporates a higher value within the legal system.”

While several rulings have already acknowledged the right to consider contributions made prior to October 1, 2022, for domestic and care workers—such as the Cantabria High Court ruling of September 18, 2024, the Madrid High Court ruling of March 18, 2024, and the ruling of the Vigo Social Court No. 2 No. 113/2025 of March 13, which mandated the SEPE (State Public Employment Service) to pay €15,000 in compensation for breaching the principle of equality and the prohibition of gender discrimination—it is noteworthy that the aforementioned ruling of the Madrid Social Court No. 29 integrates both aspects. It affirms the right to receive unemployment benefits by incorporating the prior contribution period and mandates the payment of compensation (in this instance, €1,800) for the infringement of fundamental rights, specifically the principle of equality and the prohibition of discrimination as outlined in Article 14 of the Spanish Constitution and related legislation.

Finally, the SEPE has decided to amend the criteria and, as of November 7, 2025, it officially announced that it will begin to recognize both contributory and non-contributory unemployment benefits by taking into account the contribution periods of domestic workers prior to October 1, 2022.

## H) ROYAL DECREE 893/2024, DATED SEPTEMBER 10, WHICH GOVERNS THE PROTECTION OF SAFETY AND HEALTH IN THE DOMAIN OF DOMESTIC SERVICE.

While this royal decree does not explicitly reference equality between women and men, its existence embodies the prohibition of gender-based discrimination, as it serves as the regulation governing the protection of safety and health for domestic and care workers.

This regulation arises from the mandate of the ratification of ILO Convention 189 and the regulatory amendment of Royal Decree-Law 16/2022, dated September 6th. It establishes the right to an occupational risk assessment at the commencement of employment, ensures the protection of safety and health in the workplace, and mandates periodic medical evaluations, among various other provisions.

To this end, the National Institute for Occupational Safety and Health (INSST), operating under the Ministry of Labor, has developed a straightforward web tool for employers to conduct occupational risk assessments for their homes, following consultations with associations of domestic and care workers. This tool is accessible at www.prevencion10.es.

Furthermore, the second supplementary provision of this royal decree mandates that the relevant authority shall establish an anti-violence and harassment protocol for domestic and care workers.

This protocol was developed by the INSST following consultations with associations representing domestic and care workers. It was published in February 2026 on the INSST website: violence and harassment in domestic service.

This protocol is highly comprehensive and offers robust safeguards. It delineates clear and straightforward definitions, presents numerous common examples, and supplies information and support services. Furthermore, it outlines the procedures to follow in instances of violence and harassment, details the complaint filing process, and includes QR codes linking to additional information for both employers and domestic and care workers.

## JUDGMENTS REGARDING GENDER PERSPECTIVE

A judicial system designed to uphold the comprehensive array of regulations we have examined concerning gender equality and the prohibition of discrimination based on gender is ineffective if justice is not administered with a gender perspective.

In this context, it is important to emphasize the Supreme Court ruling of January 29, 2020 (appeal 3097/2017), which determined that the gender perspective is not merely an option but a hermeneutical necessity in the interpretation of regulations. This perspective is a legal obligation stemming from the principle of equality, serving as a safeguard to rectify and avert the potential adverse effects that ostensibly neutral rules may have on women.

Other prior rulings have advanced the gender perspective within the jurisdictional domain, such as the STSJ of the Canary Islands dated July 2, 2019, and May 2, 2017, indicating that the gender perspective must be applied in three specific phases: first, the application of the rules; second, the processing of the procedure; and third, the assessment of the evidence.



# CONCLUSIONS

After examining the diverse international, European, and national regulations, as well as rulings from various courts, we concluded that significant progress has been made in the past five years toward equalizing the rights of domestic and care workers, a group of women who have endured and continue to face the adverse effects of discriminatory regulations based on their gender.

They not only endure discrimination under the law but also face daily abuse and exploitation by employers, with the numerous international standards addressing human rights, dignity, and equitable working conditions remaining largely unimplemented in the lives of domestic and care workers. Consequently, significant efforts are still required from both the workers and their associations to attain justice.

Caregiving presents a significant challenge in European societies, driven by an aging population and rising life expectancy. Historically, caregiving has been predominantly the responsibility of women for centuries. In Spain, the state's inability to sufficiently address societal care needs has resulted in this responsibility increasingly resting on domestic and care workers, primarily migrant women aged 41 to 71, as indicated by statistics compiled by CETHYC.

## Challenges

As previously indicated, significant advancements have been achieved regarding rights. Today, in contrast to five years ago, domestic and care workers are entitled to both contributory and non-contributory unemployment benefits, the right to have their working hours monitored, access to FOGASA benefits, specific regulations concerning occupational risks, and a protocol addressing violence and harassment. Additionally, the termination of employment requires a just cause, and workers are entitled to compensation of 33 days per year, as opposed to 20 days per year, in cases of unfair dismissal, among other rights.

However, regrettably, there remains considerable work to be accomplished.

Contributions persist to a framework referred to as the "special system for domestic workers," despite the fact that it ought not to exist as a distinct system within the overarching scheme and should not categorize these individuals as "employees," considering that, as evidenced, 95% of the sector comprises women. Additionally, contributions continue to be tiered, which fosters under-contribution among domestic and care workers who endure unfavorable working conditions in return for employment necessary for survival.

Timekeeping is addressed in the CJEU ruling C-531/23, as the exclusion of overtime monitoring remains in the regulations. It should be mandated by law to provide greater assurances, and a system should be implemented that enables the worker to track actual hours of effective work, hours of presence, and overtime hours.

In this context, live-in workers are the most affected by the infringement of their labor rights and discriminatory regulations. According to internal data from CETHYC, slightly more than half of the legal consultations provided at the center pertain to live-in workers. Among these, 80% lacked an employment contract or social security registration due to the absence of a residence and work permit, resulting in conditions of extreme job insecurity and exploitation.

In alignment with ILO Recommendation 201, broadening the information required in employment contracts may serve as a solution to alleviate the exploitation of live-in workers. By clearly delineating specific tasks, contract schedules, hours of presence, remuneration, and/or compensation in writing, a significant reduction in fraudulent practices can be achieved, thereby offering enhanced protections for domestic and care workers in safeguarding their rights.

Access to a respectable and dignified retirement presents a significant challenge, as the system for addressing gaps, the minimum interprofessional wage—which prior to 2019 was entirely inadequate—and the tiered contribution structure necessitate intervention. This is essential to ensure that women who have contributed to social security for years are not left vulnerable in their retirement.

The compensation of 33 days per year for unfair dismissal has been criticized by the CDECS, which concluded that it is inadequate in accordance with Article 24 b) of the ECSC. Additionally, the compensation of 12 days per year for the termination of the employment relationship, as stipulated in Article 11 of Royal Decree 1620/2011, is fundamentally discriminatory and undignified, as it fails to match the 20 days per year for objective dismissal outlined in the Workers' Statute and is instead comparable to the compensation provided for the termination of temporary contracts.

Conversely, for the anti-harassment and anti-violence protocol to be effective, the Labor and Social Security Inspectorate must be allocated additional resources. Without an increase in resources, there is a risk of a surge in complaints that cannot be addressed with the necessary urgency due to this deficiency.

In relation to occupational diseases, it is essential to consider an extensive list to safeguard the health of domestic and caregiving professionals.
In alignment with point 21 of ILO Recommendation 201, States should advocate for the allocation of sufficient public resources, including:

**A)**

Establish a national helpline that includes interpretation services for domestic workers in need of assistance.

**B)**

Devise a schedule of visits, prior to placement, to the residences that will engage migrant domestic workers.

**C)**

Establish a network for emergency accommodations.

**D)**

Enhancing employer awareness of their obligations by supplying information on best practices concerning the employment of domestic workers.

**E)**

Ensure that domestic workers have access to grievance mechanisms and the capacity to file legal appeals in both civil and criminal matters.

**F)**

Establish a public assistance service that educates domestic workers, in languages they comprehend, about their rights and pertinent legislation.

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