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Client briefing
EMPLOYMENT
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Transparency in working conditions, equal pay and tax deduction for employment income: key changes from 18 November 2026

> **Royal Decree-Law 39/2026 of 17 November, published on 18 November in Spain's Official State Gazette (BOE), changes the rules on working conditions and equal pay to transpose Directives (EU) 2019/1152 and 2023/970. It amends the Workers' Statute ("ET"), Royal Decree 902/2020, Law 3/2023 on Employment, Royal Decree 723/2026, the Labour Offences and Sanctions Law ("LISOS"), and the Public Sector Contracts Law.**
> **Royal Decree-Law 38/2026 of 17 November, also published on 18 November, amends the personal income tax deduction for employment income and the rules for calculating tax withheld from that income.**

1 WHEN DO ROYAL DECREE-LAW 38/2026 AND ROYAL DECREE-LAW 39/2026 ENTER INTO FORCE?

Both Royal Decree-Laws enter into force today, 19 November 2026, subject to specific exceptions. Chapter I of Royal Decree-Law 38/2026 enters into force on 1 January 2027, and its deduction and tax withholding measures take effect on the same date. **Royal Decree-Law 39/2026** includes specific transitional arrangements covering pay audits forming part of existing equality plans, information on working conditions for employment relationships lasting less than four weeks, and the first submission of gender pay gap data.

2 WHO IS AFFECTED?

The changes generally apply to all companies, but some obligations depend on workforce size, with thresholds of 50 or 100 employees.

3 TRANSPARENT AND PREDICTABLE WORKING CONDITIONS

- Under the amended article 8.5 of the ET, employers must provide information on the essential terms of the employment contract **even where the employment relationship lasts less than four weeks**. They must also provide that information to **statutory employee representatives.** Royal Decree 723/2026 is amended accordingly: employers must now provide information on the essential terms of

the employment relationship to **all employees, regardless of how long their employment contract lasts**.

- Under the amended article 12.5(d) of the ET, employers must give employees at least **three days' notice of agreed supplementary hours under part-time contracts**, unless a collective agreement allows a shorter notice period. Without the required notice, employees may refuse to work those hours without adverse consequences. **If the employer cancels any or all of the hours**, employees remain entitled to pay for the cancelled hours.
- The amended article 14 of the ET sets **express limits on probationary periods**, subject to certain justified exceptions. The new limits are as follows:
  - The probationary period may not exceed **six months for qualified technicians** or **two months for other employees**. In companies with fewer than 25 employees, it may not exceed **three months** for employees who are not qualified technicians.
  - For fixed-term employment contracts lasting six months or more, the probationary period may not exceed **one month**. For fixed-term contracts lasting less than six months, the probationary period must **be reduced proportionately**.
  - Collective agreements may allow a **longer probationary period if justified** by the nature of the employment, the employee's interests or the need to assess their suitability if the employment relationship is suspended.
- Under the amended article 21.1 of the ET, **employees are free to hold more than one job**. **Restrictions are exceptional** and, where based on incompatibility, must be justified by objective reasons, such as health and safety, business confidentiality, the integrity of the public service or the prevention of conflicts of interest. Employers and employees may still agree to an exclusivity arrangement in return for financial compensation.
- Under the new article 21 *bis* of the ET, employees have the **right to transition to another form of employment**. They may **apply for vacancies** offering a change in working hours, conversion from a fixed-term to a permanent contract or conversion from a permanent intermittent contract (*contrato fijo-discontinuo*) to an ordinary permanent contract. Employees with at least six months' service may also request other improvements in job security or predictability. Employers must **inform employees and their statutory representatives** of vacancies that would enable employees to exercise these rights. They must respond to each request **in writing, giving reasons**, generally within one month. This deadline may be extended to three months for employers with no more than ten employees. Failure to comply with these obligations constitutes a **serious offence** under the new article 7.11 of the LISOS.

4 STRONGER PROTECTION AGAINST RETALIATION

The reform further protects employees from retaliation in three ways:

- Article 4.2(h) of the ET recognises employees' right not to suffer unfavourable treatment for **exercising or asserting employment rights**, including by making internal complaints through their statutory representatives.
- Article 17.1 of the ET provides that **employer decisions** taken in response to such complaints or the initiation of administrative or judicial proceedings **are null and void**. For the first time, the ET expressly guarantees protection against retaliation.
- The new article 8.12 *bis* of the LISOS classifies such retaliation as **a very serious** offence.

5 CHANGES TO PAY TRANSPARENCY RULES

The reform covers six key areas.

5.1 PAY REGISTER AND AUDIT

The **amendments to article 28 of the ET** and **Royal Decree 902/2020** introduce five key changes to the rules governing pay registers and audits:

- For companies with 100 or more employees, **the threshold above which employers must justify pay differences** falls from 25% to 5%, making the duty to provide justification virtually universal for this group. The threshold remains at 25% for companies with between 50 and 99 employees.
- The **median** is now expressly recognised **as a statistical indicator in its own right, alongside the arithmetic mean**. Employers must justify the pay differential if either indicator exceeds the applicable threshold.
- Contractual clauses preventing employees from disclosing information about their own pay are expressly **null and void**.
- The **pay audit** must include a corrective action plan specifying objectives, who is responsible for implementation and a timetable for correcting pay differences within six months. It must be made available to statutory employee representatives and notified to the new **Commission for Monitoring Pay Transparency** (article 8 of Royal Decree 902/2020).
- The company **must retain** the pay register and supporting documentation for **four years**.

5.2 EMPLOYEES' RIGHT TO PAY INFORMATION

- Under article 10 of Royal Decree 902/2020, employees **may request and receive written information about their own pay and average pay broken down by sex**. The information must show basic salary and each salary and non-salary supplement separately.
- **Former employees** may also request this information for the period they worked for the company, provided they submit their request within one year of leaving.
- The company must **provide the information** within **two months** of receiving the first request.

- If unjustified gender pay gaps are identified, the company must **correct them** within six months.

5.3 GENDER PAY GAP REPORTING

Under article 11 and the second transitional provision of Royal Decree 902/2020, companies with 50 or more employees must report their gender pay gap to the **Commission for Monitoring Pay Transparency**. Reporting is annual for companies with 250 or more employees and every three years for those with between 50 and 249 employees. The first reporting dates are phased: June 2027 for companies with 150 or more employees and June 2031 for those with 50 to 149 employees.

5.4 PRE-EMPLOYMENT TRANSPARENCY AND JUDICIAL PROTECTION

The new article 5(g) of Law 3/2023 on Employment establishes the **principle of pre-employment pay transparency**. Under this principle, job offers must state the starting pay for the position, based on objective, gender-neutral criteria, and identify the applicable collective agreement. Employers must not ask applicants about their pay history. Recruitment processes, including automated selection, must be gender-neutral, accessible and non-discriminatory.

Under the amended article 59.3 of the ET, claims for breaches of the right to equality and non-discrimination in pay are subject to a **three-year** limitation period. **The period starts when the discriminatory situation ends.**

5.5 PENALTIES

- Failure to comply with pay register obligations constitutes a **serious offence** under the new article 7.15 of the LISOS.
- Failure to meet the reporting obligations to the Commission for Monitoring Pay Transparency also constitutes a **serious offence** under the new article 7.16 of the LISOS.
- Under the new article 8.12 *bis* of the LISOS, it is a **very serious offence** for an employer to take decisions that subject an employee to unfavourable treatment in response to a complaint made within the company or to administrative or judicial action to enforce rights under labour legislation.
- Under article 16.1(c) of the LISOS, it is a **very serious offence** to request legally prohibited data in any recruitment or placement process, or to make decisions that discriminate against people seeking employment.

5.6 PUBLIC PROCUREMENT CHANGES

Law 9/2017 on Public Sector Contracts is amended to incorporate the **principle of equal pay into contract performance.** Contracting authorities must include provisions and penalties in tender documents to ensure compliance by contractors and subcontractors. Serious non-compliance, established by a final decision or resulting from repeated breaches of pay transparency requirements, is a new ground for contract termination (new article 211.1(j)). The statutory representatives of the contractor's employees may also request that termination proceedings be initiated (new paragraph of article 212).

6 TAX MEASURES UNDER ROYAL DECREE-LAW 38/2026

From 1 January 2027, article 5 amends the deduction for employment income under additional provision 61 of the Personal Income Tax Law. The deduction is available where **gross annual employment income is below EUR 23,171.89** and is earned for work actually performed under an employment or statutory public-sector employment relationship. To qualify, non-exempt income from sources other than the employment income described above must not exceed EUR 6,500.

The explanatory memorandum refers to the annual minimum wage of EUR 18,004 for 2027, set by Royal Decree 1013/2026 of 18 November, published today in Spain's Official State Gazette (BOE).

7 PAYROLL CHANGES FOR 2027

From 1 January 2027, a new article 85(3) of the Personal Income Tax Regulations will reduce the portion of withholding tax proportionately attributable to the employment or statutory public-sector remuneration covered by the provision. The reduction uses the same deduction amounts and gradual reduction formula. The tax withheld cannot fall below zero.

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