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# Amendments to equal opportunities code introduces new regulatory interventions on gender equality at work

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## Introduction

Following the publication of Law 162/2021, significant changes have been introduced in relation to equal opportunities between men and women in the workplace, with several amendments that apply to the equal opportunities code (the Code).<sup>(1)</sup>

This article provides a brief summary of the regulatory interventions that came into effect on 3 December 2021. Of particular interest are articles 2-5 and related innovations, which include:

- the legal definition of discrimination;
- renewed methods of drafting;
- content of the biennial report on personnel; and
- the introduction of the certification of gender equality (with the prevision of a rewarding system for companies in possession of this).

## Article 2 – direct and indirect discrimination

Article 2 amends article 25 of the Code, which defines the notion of "discrimination in the workplace". According to this provision, any act, practice or behaviour, as well as an order to engage in an act or behaviour, could constitute discrimination if it:

- produces a prejudicial effect by discriminating against job candidates or workers on the basis of their sex – namely, direct discrimination; or
- puts candidates or workers of one sex at a particular disadvantage compared to workers of the other sex, unless they concern essential requirements of the activity in question – namely, indirect discrimination.

In addition, the reform expressly extends the protection against discrimination for the potential recruits (previously, the Code mentioned only "workers") and provides a new general definition of "gender discrimination in the workplace". This definition covers any treatment or modification of the organisation of working conditions that could limit the career progression of employees based on their:

- sex;
- age;
- personal or family care needs;
- pregnancy status; and
- maternity or paternity status (which includes adoptive parents).

## Article 3 – report on personnel situation

Article 3 amends article 46 of the Code, which provides for the regulation of the "report on the personnel situation". Under this rule, the reform extends the requirements related to submitting said report to companies with more than 50 employees; previously, the threshold was 100 employees. Further, this report should be submitted every two years.

The Ministry of Labour has been asked to issue a provision to specify the information to disclose in the report, which must include the number of:

- current female and male employees;
- possibly pregnant workers; and
- women and men hired during the relevant year.

It must also include:

- the differences between the initial salaries of employees, based on gender;
- contractual classification and the function performed by each employee; and
- the distribution among full-time and part-time employees, as well as the amount of the total remuneration paid:
  - indemnities;
  - bonuses; and
  - any other benefit in kind or payment that may have been awarded to employees.

The report must also include information and data on:

- the selection processes during the recruitment phase;
- recruitment processes;
- procedures used to access professional qualifications and managerial training;
- tools and measures made available to promote the reconciliation of work-life balance;
- presence of company policies to guarantee an inclusive and respectful working environment; and
- criteria adopted for career progress.

For privacy purposes, the data referred to in the report must not indicate the identity of the employee or candidate – only their gender must be specified.

Failure to comply with the obligation to transmit the report may lead to the penalties and the suspension of any social contribution benefits that the company enjoys. The release of false or incomplete declarations can lead to administrative fines up to €5,000.

#### **Article 4 – certification of gender equality and article 5 – equality reward**

Article 46-bis of the Code introduces the certification of gender equality in order to certify:

- policies and concrete measures adopted by companies to reduce the gender gap in relation to the opportunities for growth in the company;
- wage equality with equal duties;
- policies for the management of gender differences; and
- protection of maternity.

The identification of the parameters and methods to obtain the certification will be provided by prime minister's decrees.

The reform also set up a bonus system for the companies that obtain the certification, which comprises a reduction of the social security contributions of a maximum of €50,000 per year for each company (within the spending limit set at €50 million). This benefit is currently limited to 2022 but may be extended subject to the allocation of the necessary financial resources.

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#### **Endnotes**

(1) Legislative Decree 198/2006.