PHS-QUALITY Project

Job Quality and Industrial Relations in the Personal and Household Services Sector – Reference: VS/2018/0041

COUNTRY REPORT: SPAIN

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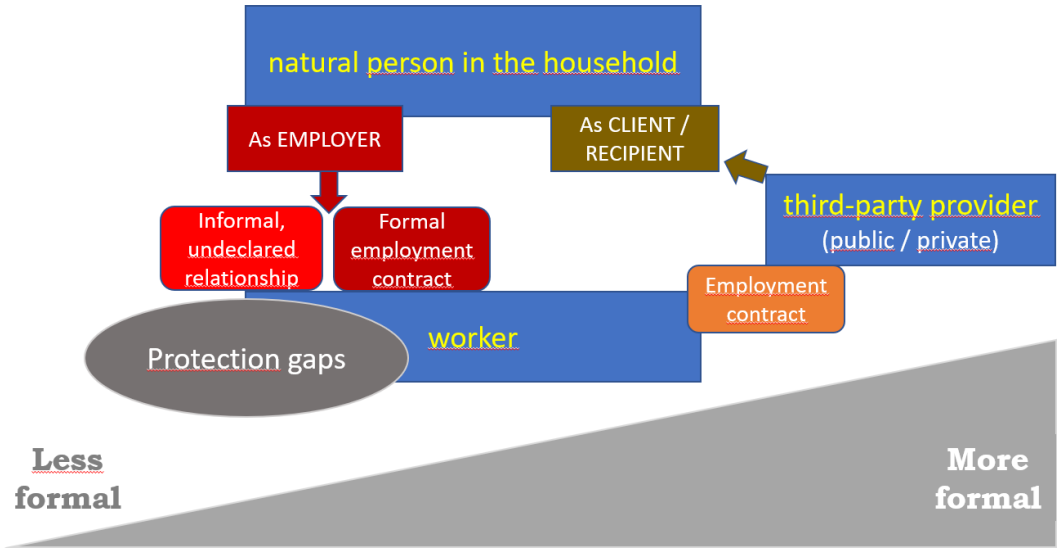
I. Introduction

Personal household services can be procured from an organization that provides this type of services or from a worker directly employed by the natural person in the household. This division is important because it conditions the work arrangements in place. The Spanish case is singular because most of the personal household services are provided under direct work arrangements between the natural person in the household and the worker, with hardly any institutional mediation from third parties. While the provision of this kind of services by third-party organizations (public or private) is usually based on formal employment relationships between these organizations and the workers, the services provided directly by workers are many times undeclared, under informal agreements, with no formal protection, no social security registration, etc. Even where there is a formal employment contract between the natural person in the household and the worker -which is normally the only lawful arrangement in such cases-, these domestic employees are normally not entitled to the kind of rights and benefits that are more or less common for regular employees. These differences can be called "protection gaps".

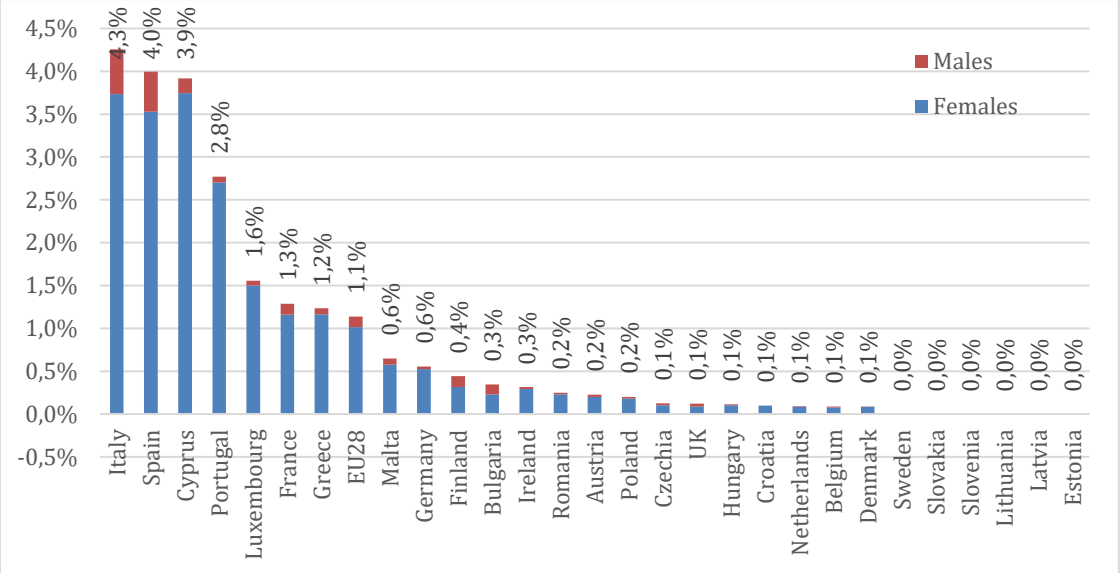


II. Structure of the PHS-sector in Spain - Recent Trends in Demand and Supply

1. Data sources

Hiring domestic workers is quite common in Spain. A review of the Eurostat Data of Labour Force Survey shows that only in Italy the proportion of employment working for households is higher than in Spain, where 4.3% of the employed population work in this sector (average of the last three available years). The proportion of employees working for households is strikingly high for women: 7.4 % among employed women work as domestic employees for households. As can be seen in Figure 1, this amount of people working for households as employers is clearly atypical; it is more than three and a half times the average of the 28 countries of the European Union.

Figure 1: Proportion of employment working for households in Europe (average 2016-2018)



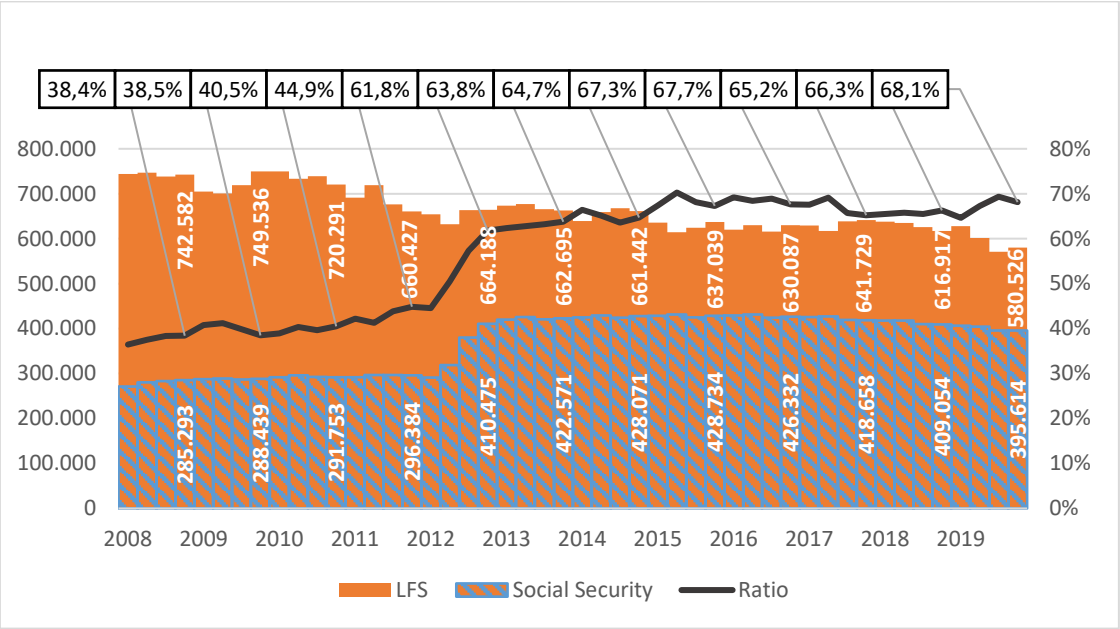
Data Source: Eurostat. LFS

For more detailed data, there are mainly two official data sources for Spain. The Labour force Survey –with microdata available– reflects the results of a wide cross-sectional household survey with detailed data on several personal and professional items. The other one is the official data from the Social Security, referred specifically to the household employees, as they used to have a specific legal frame and now, despite of being formally included in the "general regime", there are some particularities (explained later in this

study) and therefore the data for domestic workers are published separately from the rest of workers.

The latter source is, for obvious reasons, more accurate (it is not an estimation based on a survey, but the actual data registered), but at the same time it does not include non-registered workers, which are quite common in this sector.

Figure 2: Social Security data vs. Labour Force Survey



Data Source: Spanish Labour Force Survey and Social Security statistics.

A quick overview to Figure 2 shows the persistence of informal economy in this sector, as well as the positive effects produced by the reform that took place in 2011. By the end of 2008 (the implementation of NACE Rev. 2 made comparisons with previous years less reliable) social security official data registered less than 40 per cent of the employees declared in the Labour Force Survey. Even it is true that data show a positive trend in those years, the increase of registered household workers was impressive; between the first quarter of 2011 and the same period of 2013, the registered workers increased by 44%, while LFS suffered a small decrease (3%) in those two years.

In any case, Labour Force Survey microdata is not only a more reliable source of information because of the informal economy, but also offers a lot of detailed information which allows a better knowledge of the sector.

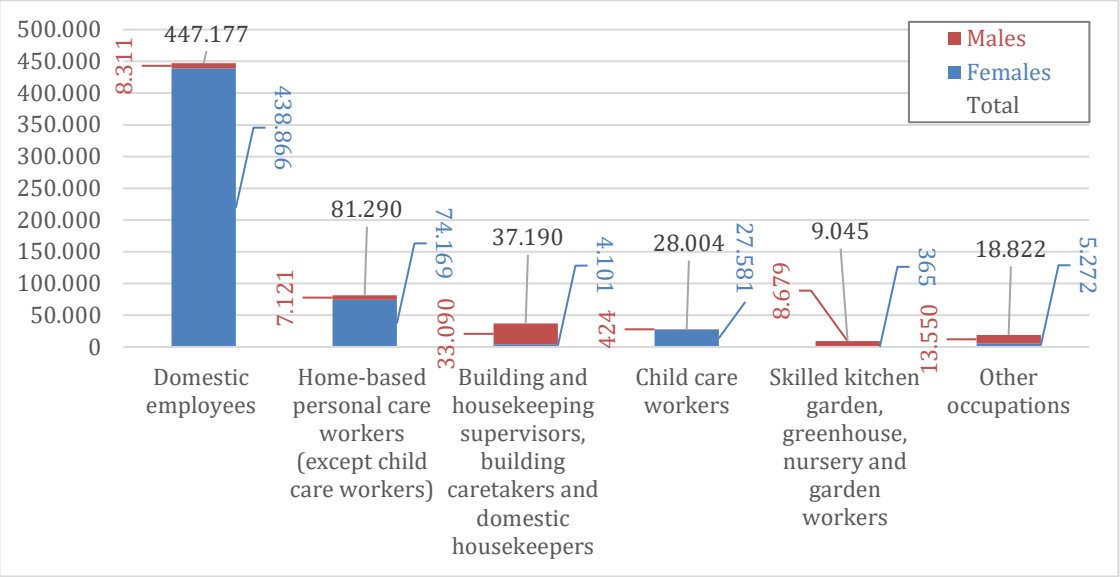
This database shows (see Figure 2 above) that in the last decade employment in personal household services (NACE code 97) has declined slowly but firmly. On average, in 2019 there were 147,791 fewer workers in this sector than in 2010, which represents a loss of almost 20% of the jobs. The reduction in employment has been most intense in the undeclared economy, or at least it has surfaced. In 2010, only 39.8% of domestic work in the Labour Force Survey was reflected in official Social Security records; the most recent data place it at 67.3%. However, it should be noted that this phenomenon stagnated in 2016, and since then there has been a slight decline.

2. Household workers profile

Labour Force Survey offers a huge amount of data that can be used to build a profile of these workers. It should be borne in mind that the margin of error grows as the sample decreases. Consequently, the accuracy of data in small categories could be compromised.

Most of the employees in household services are classified as “domestic employees”, personal care workers and childcare workers. Those three occupational groups represent 90% of the people employed by households (and approximately 97% in case of female workers). It shall be noted that the only occupation that implies some degree of responsibility (supervisors) is mainly covered by men, despite the feminization of the sector.

Figure 3: Occupation of household employees, by sex. Average 2015-2019



Data Source: Spanish Labour Force Survey

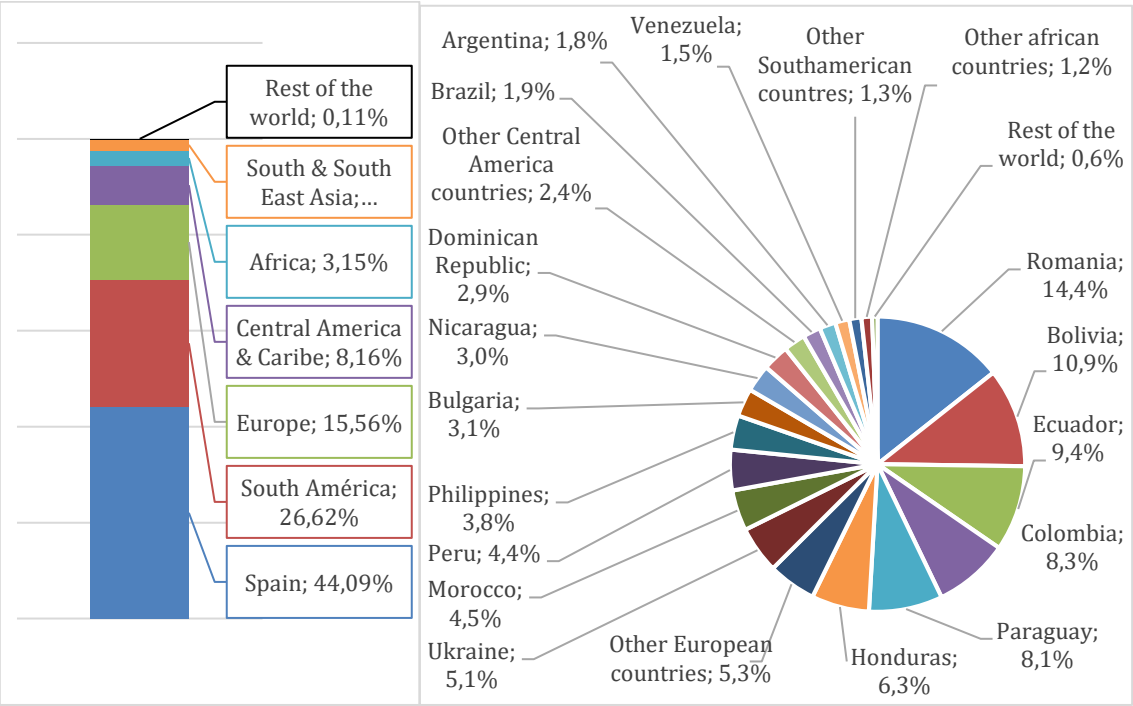
In this kind of employment, it is quite common that workers are immigrants; for the period 2015-2020, only 44.1% of PHS are only Spanish, while 10.5% have dual citizenship (Spanish and another one[1]), so the remaining 45.4% are citizens of other countries. It is a big proportion, as only 2.9% of active population has dual citizenship and 11.2% is foreigner. In other words, and focusing on female workers, one out of five of the group with dual citizenship are employed in household services, and one out of four of not Spanish female workers are in the same situation. This share is quite remarkable if it is compared with the Spanish population: only 1.7% of Spanish workers (3.2% amongst women) are occupied in this economic activity.

Obviously, being this activity low paid, the distribution of the foreign workers reflects several differences. Low-income countries of the European Union (Romania, and to a lesser extent, Bulgary) and Iberoamerican countries represent 80% of the not only Spanish domestic workers. The lack of exigence of a work authorization and having Spanish as mother tongue seem to be relevant attributes in order to work in this sector in Spain. Figure 4 shows the distribution by nationality of the PHS workers (average 2015-2019)

[1] Spain has signed several International Treaties to allow dual citizenship, mostly with Latin American countries. Citizens from these countries (and from Philippines, Equatorial Guinea, amongst others) only need two years of legal residence to be allowed to ask for Spanish nationality.

for countries with at least five thousand domestic employees un Spain (in other case, aggregated in regions).

Figure 4: Region and Country of Nationality of PHS workers. Average 2015-2019



Data Source: Spanish Labour Force Survey

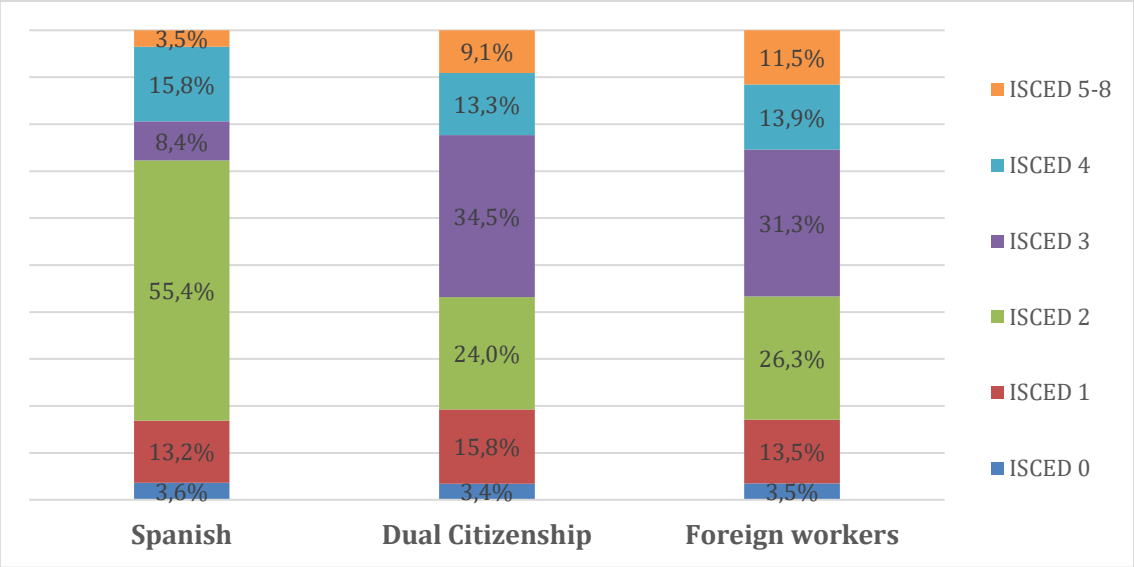
It must be remarked that foreign workers are more frequently overqualified for these activities than the Spanish ones. Figure 5 is quite clear. On average for the last five years, the Spanish domestic employees had mainly an ISCED level 3 (Lower secondary education), while foreign workers were more frequently in ISCED level 4 (upper secondary education). These differences are also be seen in tertiary education; 11.5% of non-Spanish domestic employees had a university degree (which triples Spaniards' rate).

These data quantify a perceived reality: migrant workers -in this case female migrant workers–are obliged to accept jobs with less protection and less valued by society, which implies lower salaries. Even when they have qualifications for better jobs, they have big difficulties to be hired on them.

On the other hand, it is true that in this sector foreign employees have more stability than in the rest of the economy. As is well known, the labour market in Spain has extraordinarily high rates of temporary employment. In the five years that are being described in this report the average was 26.2%, but for not only Spanish workers this rate

was 39%. In the PHS sector, temporary employment approximately the same than in other economic activities (26.3%) but there are virtually the same for Spanish and not Spanish workers (26.4% and 26.6% respectively).

Figure 5: Level of education attained. Average 2015-2019



ISCED 0: *Early childhood education ('less than primary' for educational attainment);* ***ISCED 1****: Primary education;* ***ISCED 2****: Lower secondary education;* ***ISCED 3:*** *Upper secondary education;* ***ISCED 4:*** *Post-secondary non-tertiary education;* ***ISCED 5-8:*** *Tertiary education.*

Data Source: Spanish Labour Force Survey

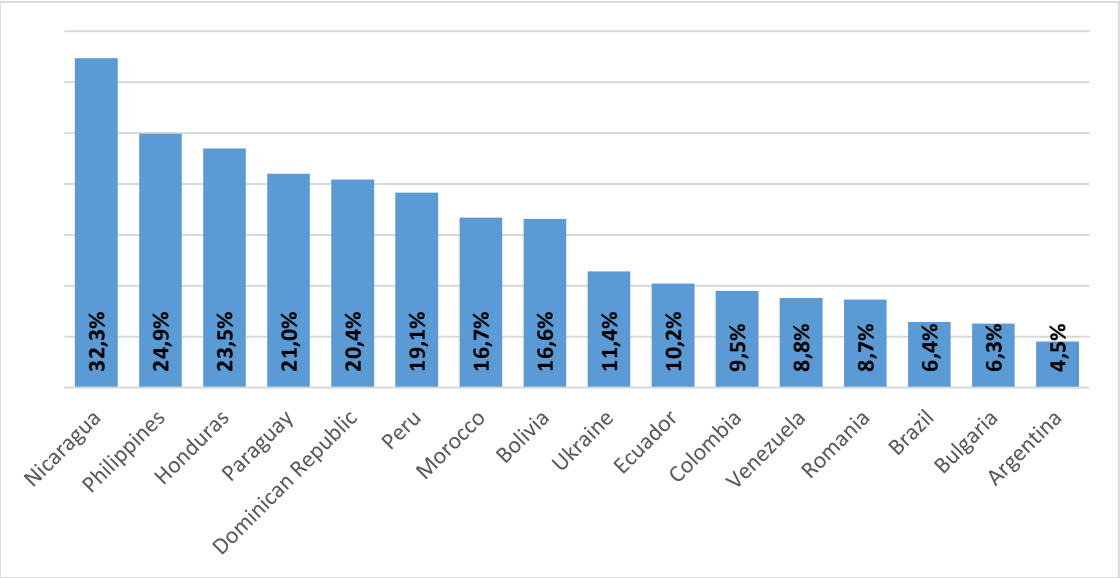
This nationality-based segmentation is particularly intense in the live-in workers. Using the variable "relation with the reference person"[2] we can know how many people live in the place where they are employed as domestic employees. Aggregate data for the last five years (2015-2019) indicates that 6.6 % of domestic employees live at their employer's home (6.8% for the last decade). But the rate for migrant workers is remarkably higher than for Spanish workers. While only 1.1% of native domestic employees are live-in workers, 10,7% of dual-citizenship workers and 15% of foreign workers. This means that only a 6% of live-in domestic workers in the last five years were Spanish.

A more detailed analysis shows that living in the household where they work is more usual for citizens of some countries (Figure 6). Thus, for five countries (Nicaragua, Philippines, Honduras, Paraguay and Dominican Republic) more than 20% of domestic

[2] LFS is a household sample survey, so all data refer to people living in the same place, regardless the relation they have to the person that answers the form.

workers were in this situation. By contrast, only 1,1% of Spanish domestic employees lived at the household where they worked (average for the last five years). This data is quite relevant, as live-in employees work in more precarious conditions, as it will be explained lately. The prevalence of Philippine workers, which is high both in "common" domestic workers and live-in domestic workers, is explained, as told in the interviews we conducted with representative associations, by their language skills in English, so when they take care of children they simultaneously have a role in their language education.

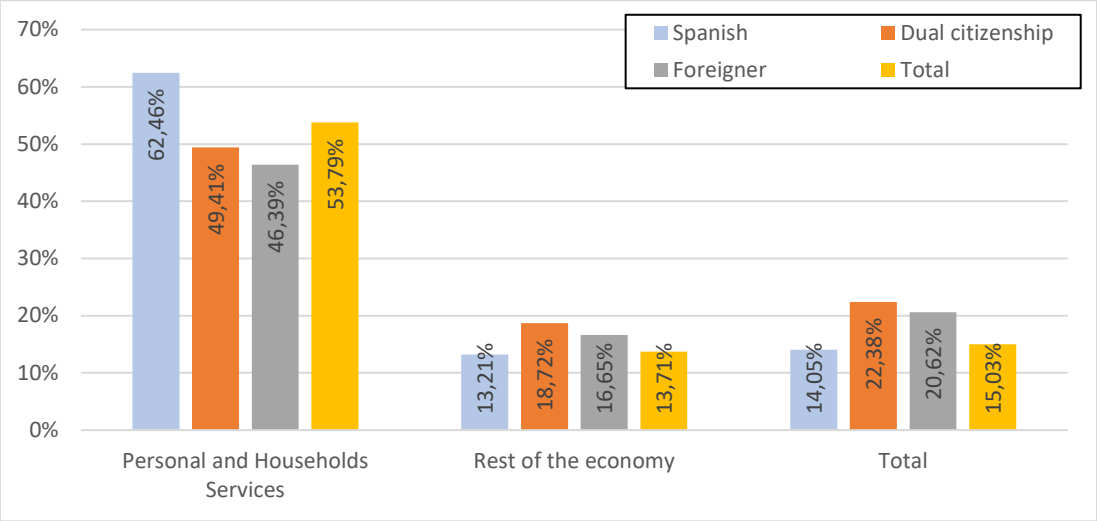
Figure 6: Ratio of live-in workers for countries with at least 5000 employees in domestic sector. Average 2015-2019



Data Source: Spanish Labour Force Survey

In relation with working time, 53.8% of them are part-time workers, which is much higher than the index for the Spanish labour market (15%). In this case, Spanish workers in PHS sector are more frequently employed for reduced working hours. However, involuntary part-time work (people who could not find a full-time job) is smaller in Spanish employees of this sector (65.7% compared with 76.4% of foreign domestic part-time employees. Seen the other way round, strictly voluntary part time employment is higher amongst native workers; 10.9% of them do not want a full time job, while only 5.1% of migrant workers are in this situation.

Figure 7:Part-time rate. Average 2015-2019

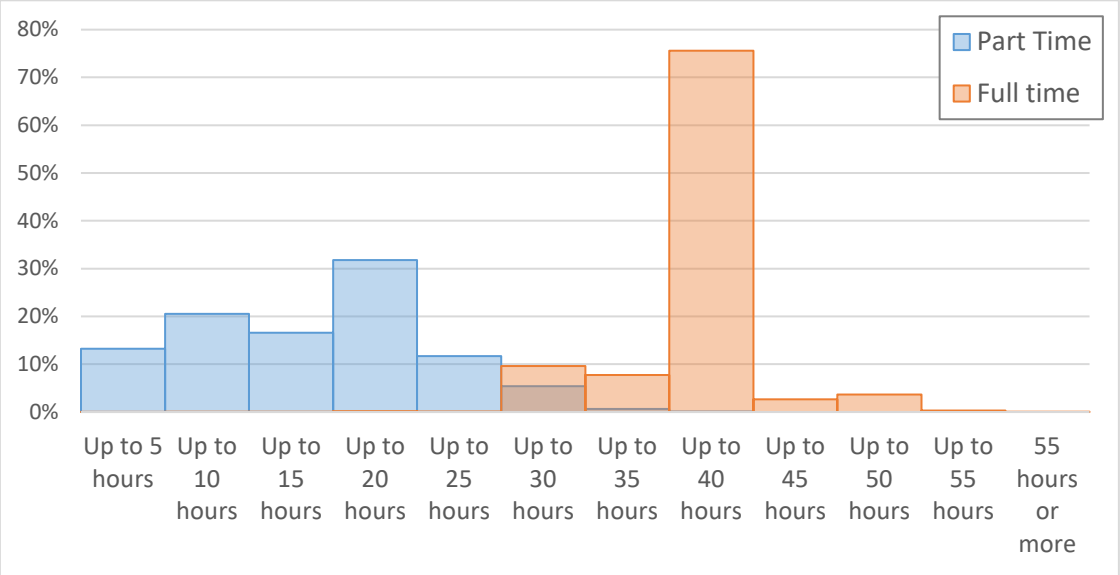


Data Source: Spanish Labour Force Survey

The working hours of PHS sector are clearly differentiated between full-time and part-time workers. Full-time workers are usually employed for the legal maximum working hours (40 hours per week). The part-time segment of the employment show greater diversity. Approximately 34% of workers have an agreed working week of ten hours or less; 18% have agreed twenty-five hours or more per week, and the most frequent value is half-time (twenty hours a week), which represents a third of the total number of part-time workers.

Surprisingly, multi-employment is not particularly common, despite the high incidence of part-time work and low wages. The data show that among those who do not work full time it is slightly less frequent than in the rest of the economy (6.4% compared to 6.8%); among those who do work full time, on the contrary, it is 39.5% more frequent for employees in the PHS sector to have a second job than in the rest of the economic activities. Even so, it is only 2.1% of PHS workers who have a second job (1.5% for the rest of economic activities).

Figure 8: Working hours distribution. Average 2015-2019

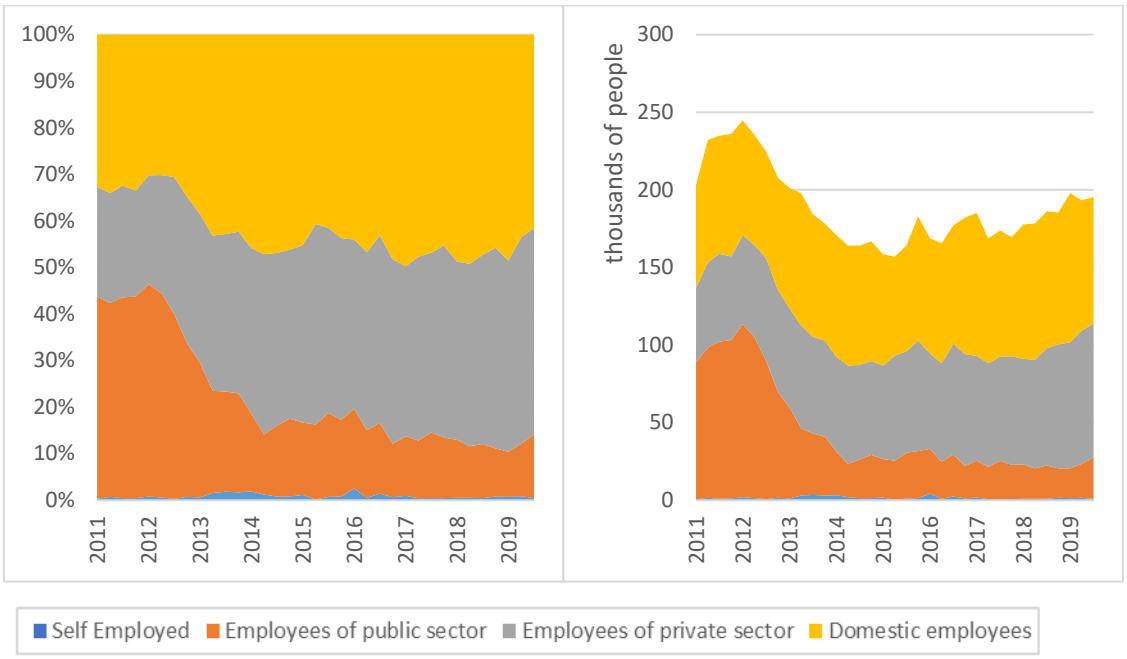


Data Source: Spanish Labour Force Survey

3. Care and assistance sector

The ageing of the population increases the need for personal care; the already almost full incorporation of women into the workforce is progressively replacing family-based care with professional care. These needs can, of course, be met through domestic work, but also through public institutions or the private sector.

Figure 9: People occupied as caretaker (except childcare workers). Average 2015-2019

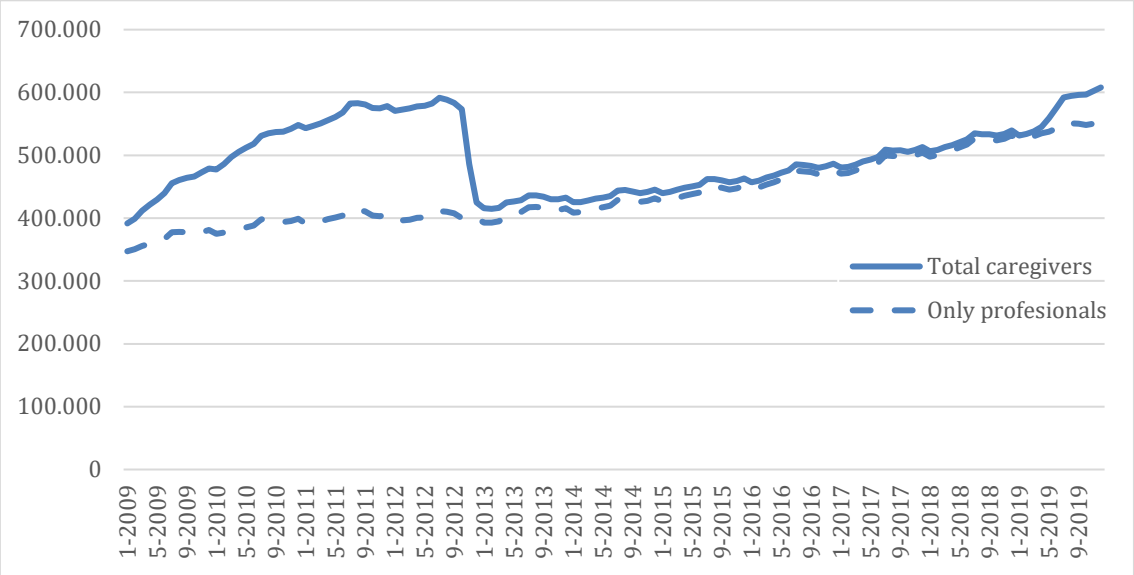


Data Source: Spanish Labour Force Survey

The data shown in the figure indicate that about 110,000 people work - outside of domestic employment - in care-related professions. The sharp fall in this type of employment in the years after 2012, concentrated mainly in the public sector, should also be noted. Although employment in this occupation has recovered in recent years, it is due to the growth of the private sector; public employment is still 20% of what it was in 2011.

The high correlation between the number of jobs in the care sector (mainly women) and the economic cycle shows a precarious employment situation. On the other hand, by virtue of the measures linked to the Dependency Act(*Ley 39/2006, de 14 de diciembre, de Promoción de la Autonomía Personal y Atención a las personas en situación de dependencia,*), there is also a significant number of people who, without being professionals in the sector, carry out care tasks. In this regard, it is worth noting the social protection initially provided to non-professional caregivers, through registration and contributions to Social Security; until 2012 and since April 2019, contributions have been paid by the government. In the interim period, as a measure to save public expenditure, this contribution was abolished. The consequence, as can be seen in the graph, was a drastic fall in the number of non-professional caregivers with contributions (and the corresponding social benefits).

Figure 10: People registered to social security in social activities (NACE 87&88)



Data Source: Spanish Social Security statistics

Unlike the sector of domestic employment directly provided to households, in this case the relationship is closer to standards. The employment relationship is established with an employer acting in the market as such, and within the framework of common regulation. Social dialogue can normally take place in this way, and there is a collective agreement at state level (VII Convenio colectivo marco estatal de servicios de atención a las personas dependientes y desarrollo de la promoción de la autonomía personal (residencias privadas de personas mayores y del servicio de ayuda a domicilio). The existence of workers' representatives and a professional employer allows for better access to the protection of labour rights. In practice, therefore, it presents fewer specific problems than domestic employment.

III. Legal framework: legislation on domestic work and implementation of the ILO Convention 189

1. Introduction

The employment relationship of domestic workers is considered a "special employment relationship" by article 2 of the Labour Act[3]. A special employment relationship is an

[3] The Labour Act is the "Estatuto de los Trabajadores", approved by Royal Decree Law 2/2015 of 23 October. https://www.boe.es/eli/es/rdlg/2015/10/23/2/con

umbrella concept used in the Spanish Employment Law to identify several employment relationships which have a specific statutory regulation, partly different from the common or general regulation of the employment relationship. Thus, as examples of special employment relationships we can find among others: top managers, professional athletes performing their activity for a club or sports entity, artists performing for the public under the direction of an organizer of public shows, and domestic workers.

The fact that these special employment relationships have a specific or ad hoc regulation, different from the general employment regulation, is in itself problematic. If certain categories of workers are treated differently, the main problem that arises is one of possible discrimination. According to the case law established by the Constitutional Court, the different treatment is allowed under the Constitution as long as it has an objective and proportionate justification. Thus, if two situations are substantially different, they may be treated differently in the regulation.

The question is if this is the case with domestic work. The judgments by the Constitutional Court justifying different treatment among different categories of employment relationships date back to the 1980s. In its decision 56/1988, the Constitutional Court declared that the existence of different regulations for different categories of workers is in accordance with the Constitution as long as it is justified on the special features of each work. In another case (decision 26/1984), the same Court held that the different regulations are not arbitrary or unreasonable because they are related to the special condition of the workers, the place of work or the kind of tasks or services carried out.

Domestic work has an additional important characteristic, which is its feminization. In light of the preponderance of women among domestic workers, the differences in the regulation deserve a closer or stricter scrutiny. As we explain below, domestic workers get less legal protection when it comes to termination of employment, do not have access to unemployment protection, are not within the scope of the protection afforded by the Wage Guarantee Fund ("Fogasa") and are excluded from the scope of the occupational safety and health legislation. In addition to these "statutory" differences, the reality of domestic work practically precludes the exercise of the right to collective representation, the right to collective bargaining and even the right to strike, all of them constitutional rights. The overall picture is rather grim.

The specific statutory regulation of the special employment relationship of domestic work is to be found in the Royal Decree 1620/2011 of 14 November[4], which repeals and replaces the original regulation approved in 1985 (Royal Decree 1424/1985 of 1 August).

2. Concept of domestic work

The special employment relationship of domestic work is mainly characterized by two facts: the employer is a natural person and the work is to be performed within the scope of that person's home or household or personal or family residence.

It must be, in the first place, a true employment relationship, meaning that the work must be performed in exchange for salary and under the direction and organization of the employer. A service rendered by a professional or self-employed worker for the household or for any person of the household that is not carried out according to the instructions of the household owner cannot be considered domestic work. To this effect, the lack of continuity and the nature of the work (skilled work) may be considered as main indicators of the existence of a civil relationship of autonomous or independent work (for instance, the services of a physiotherapist or of a piano teacher rendered in the household for a member of the family would not usually be considered dependent work).

In the same vein, if the work is not paid, there is not an employment relationship. The unpaid work often takes place where it is carried out by a member of the family, a friend, a neighbor, and is done for such motives as benevolence, personal ties, friendship, etc. In these cases, there is an informal relationship based on personal ties, with no legal obligation on the part of the person doing the work (one could find just a moral obligation in these situations). The fact that the person who is being taken care of reimburses the carer for the expenses incurred is not indicative of the existence of an employment relationship.

The so called "au pair" is generally not considered domestic work in the sense of the special employment relationship, provided the work is marginal and done in exchange for food, accommodation or reimbursement of expenses.

It is also excluded from the scope of the special employment relationship the situation of informal carers who having family or analogous ties with the dependent person provide

[4] Full text (in Spanish) can be found here: https://www.boe.es/eli/es/rd/2011/11/14/1620/con

in-home care under the law of the dependency care system, even if they are not employed by an institution providing professional care.

The object of the special employment relationship of domestic work is any "domestic task". This includes, in the first place, "household chores", such as washing, cleaning, ironing, cooking, etc. But it also includes, in the second place, the work of care (even specialized or skilled care) for members of the family, especially children and the elderly. The object of the special relationship can also be the management of the household, all or part of it. Finally, it may also include such tasks as gardening, general maintenance, chauffeuring, etc.

The special requisites regarding the employer are a distinctive feature of the special employment relationship of domestic work. The employer must be a natural person, never a legal entity or juridical person. If a legal entity, including a temporary work agency, employs someone to carry out domestic work, the employment relationship is not special but standard, subject to general or common employment law. Thus, for instance, a cook employed by an Embassy in Spain cannot be considered a domestic worker insofar as the employee carries out activities related to the official or public side of the Embassy (vgr. official receptions). The same applies where a professional career is employed by public or private entities within the scope of the dependency care system.

When the domestic work is carried out in the residence of persons with no family ties, the employer will be the person who legally possess the dwelling or the person who assumes the representation of such persons (this representation can be taken over successively by all such persons).

3. Regulation of the employment relationship

The special employment relationship is governed by Royal Decree 1620/2011 of 14 November, which contains a number of provisions than cannot be derogated from by agreement ("mandatory provisions") regarding the form of the contract, the information to be provided to the employee, the duration of the contract and the probationary period, the wages, the working hours and rest periods, and the termination of employment. The general Labor Law contained in the Labor Act ("Estatuto de los Trabajadores") applies to the special employment relationship as long as there is no special provision to the

contrary. Still, the provisions on the Wage Guarantee Fund ("Fondo de Garantía Salarial") do not apply.

The domestic employment relationship may in theory be governed by collective agreements. In practice, however, there is no actual collective bargaining for this type of employees. As we explain below (under the title "industrial relations and wage levels"), the main obstacle to collective bargaining for domestic workers is the lack of employer representatives, an obstacle which is not properly addressed by the current regulation.

Finally, the employment relationship is governed by the individual agreement between the parties, provided it respects the mandatory rules established in the Royal Decree and the Labor Act.

4. The employment contract: form and duration

The employment contract may be entered into either orally or in writing. However, a written contract is mandatory if its duration equals or exceeds four weeks. If the contract is not made in writing, the contract is presumed to be full-time and for an indefinite duration. This is a rebuttable presumption, so that the employer may prove that the contract is part time and/or for a definite duration.

If the contract duration exceeds four weeks, the employer must inform the employee of the essential aspects of the employment relationship, including the main working conditions. In addition to the information generally required in all employment relationships, the domestic worker must be informed in particular of the following additional aspects: (1) salary in kind, if it exists; (2) the duration and distribution of the periods during which the presence of the worker is required and the remuneration of those periods; and (3) the nights that the employee is required to spend in the employer's house.

The employment contract for domestic work may contain a probationary period. The clause establishing such period must be necessarily in writing. Its maximum duration is two months. During the probationary period, the employment relationship is totally subject to the rules and clauses governing the relationship except for termination, which may be caused by either party with the only requisite of providing a minimum notice of seven calendar days: no justification is necessary, no severance compensation is due.

This contract may have either a definite or an indefinite duration. While there is no legal restriction to entering a contract for an indefinite duration, the possibility of establishing a contract of limited duration is subject to the strict legal rules governing fixed-term employment contracts in general. Thus, a fixed-term domestic contract must adjust to one of the reasons allowing fixed-term contracts, such as a definite task of limited duration or the substitution of a domestic employee on leave.

5. Main working conditions: health and safety, working time, and remuneration

Domestic workers are excluded from the scope of the Law on the Prevention of Occupational Risks, which thus follows the exclusion established in article 3(a) of the Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC). However, the Law provides that the employer is under the obligation to ensure that the work is carried out in the proper health and safety conditions. The employer must adopt the effective measures to ensure the proper healthy and safe conditions. Due to lack of professionalism on the part of the employer and scarce control by the Labour Inspectorate, it is quite dubious that in practice the health and safety conditions of domestic workers are the appropriate in many cases. This is shown by some cases adjudicated by the labour courts in situations where an occupational accident took place or some personal damage was caused to the employee (for instance, as a result of the employee having to sleep in a room with inadequate ventilation).

Working time is regulated in article 9 of the Royal Decree 1620/2011. For the most part, the regulation follows the rules applicable to regular employees.

Maximum weekly working time is limited to 40 hours of actual work, which excludes presence time. Presence time may be agreed by the parties with the limit of 20 hours on average over a reference period of one month. Presence hours must be paid at a rate not below the salary of normal work hours.

The limit of 40 hours per week does not include overtime. Overtime may be agreed by the parties with the limit of 80 hours per year. Overtime must be paid at a rate not below the salary of normal work hours.

Between the end of a work day and the beginning of the next one there must be a rest period of at least 12 hours. This daily rest period may be reduced to 10 hours for sleep-in workers, provided that the employee takes the remaining hours of the mandatory rest period over a 4-week period. In addition, the sleep-in worker is entitled to a minimum of two daily hours for the main meals. This meal time is not considered working time.

Domestic employees are entitled to a weekly rest period of 36 consecutive hours. As a general rule, the weekly rest period will comprise the entire Sunday and the Saturday afternoon or the Monday morning.

Annual leave for domestic employees is the same as normal employees: 30 calendar days. The annual leave may be enjoyed in different fractions, but at least one of them must last, at least, 15 consecutive days.

In respect of remuneration, article 8 of the Royal Decree 1620/2011 requires employers to pay at least the national minimum wage to domestic workers. The national minimum wage must be paid in cash, even though a part of the remuneration may be paid in kind (boarding, meals, etc.). Salary in kind may not exceed 30 percent of the total salary. Salary raises after a 12-month period will follow the average salary increase agreed in collective bargaining agreements, an index which must be calculated and published by the Ministry of Labour. Domestic workers are entitled to a pay slip. Pay slip forms are available on the Ministry of Labour website.

6. The regime for Live-in Household employees

As noted, there are a significant number of domestic workers who serve as interns. This implies a situation of maximum dependence on the employer, since it is not only their main (and usually only) source of income, but also provides food and the place where the worker lives.

Spanish legislation hardly mentions this situation, indicating that the "overnight stay agreement", (i.e. the obligation to spend the night in the home where services are provided), must be included in the contract. In other words, a pact to work in exchange for food and shelter is illegal.

From a legal perspective, the first issue is the valuation of the goods and services that the worker receives in kind (food, accommodation). On this point, it should be noted that the

Royal Decree expressly indicates that payment in cash of at least the Minimum Wage must be guaranteed, which in the year 2020 is set at 13,300 euros per year in the case of a full working day. Although they can be valued and form part of the salary, they cannot replace it in its entirety.

The next relevant aspect is all the problems related with working time. In the absence of an entry and exit from the workplace, there is a clear risk of confusion between rest, availability and working times. In principle, outside the agreed working time, the domestic worker is free to be or not to be in the family home. However, especially when the functions assigned include the care of vulnerable persons (the elderly, persons with disabilities), the associations of workers interviewed indicate that presence in the home is required. The control of working hours, which is obligatory for the rest of the workers in Spain, does not apply in homes, so it is easy to force workers (especially in this case of interns) to provide services for longer than the agreed and paid time.

The general lack of protection of domestic work, which does not usually have co-workers or other witnesses to prove any fact, and the difficulty of access by the Labour Inspectorate, are added here to the almost infinite extension of working time.

The representatives of the associations of domestic workers interviewed highlighted some aspects relating to the special precariousness of this type of work. Firstly, they pointed out the almost total isolation to which they are subjected. In practice, living in their employer's home almost completely cancels out their circles of social contact. According to them, it is frequent that in the daily or weekly rest time they limit themselves to wandering around streets or shopping centres. The type of employment makes it very difficult to have friendships or shared leisure activities.

Furthermore, the legislation does not establish the rights of the internal employee in relation to his or her privacy space. It is not only a question of there not being a minimum standard of health or living conditions for the space assigned. The problem, as highlighted by the representatives, goes further, since no privacy or exclusive space is required for rest or recreation. Nor does the law require that the bedroom be made available to the worker on the nights of the weekly rest period. Thus, in the interviews that we have carried out with the social agents, it was explained that in some cases it is forbidden to stay at

home during the weekend, which logically means an extra cost for the worker, who has to find accommodation for those periods.

The isolation and regime that has come to be described as semi-slavery is particularly intense in cases of foreign workers in an irregular administrative situation. Ignorance of the country and of labour rights, lack of contact with others who might support them and fear of the consequences of any action to assert their rights.

7. Termination of the employment relationship

The special regulation of the domestic employment relationship provides some special rules concerning the dismissal of the employee. The most important distinctive feature of the termination of domestic employees is the possibility of termination by employer's will without the need to allege a just cause. This unjustified dismissal only requires payment of severance compensation of 12 days of salary per year worked and a 20-day notice (or 7-day notice if the employee has worked less than a year for the employer). Even though the employer is not required to provide a just cause for termination, the termination is null and void if it constitutes a discrimination (for instance, dismissal of a pregnant employee for being pregnant) or a violation of fundamental rights (for instance, termination of an employee for having filed a judicial or administrative claim against his/her employer).

In addition, in the infrequent cases in which a dismissal is declared unfair by a labour court, the severance compensation applicable to this relationship is lower than the usual compensation applicable to the standard employment relationship. If the severance compensation in case of unfair dismissal of a regular employee is 33 days of salary per year worked, the compensation due to a domestic worker in this case is only 20 days of salary per year worked.

It is not clear whether in the event of null and void dismissal the legal effect is reinstatement, as is the rule in any other employment relationship, or just severance compensation. A possible intermediate solution is to impose the severance compensation of the unfair dismissal of a regular employee (33 days of salary per year of service) plus back salary (salary due between the date of termination and the date of payment of the severance pay). This solution was accepted by the Supreme Court in a Decision of 29 January 2020 (Decision 77/2020).

8. Implementation of the ILO Convention 189 and the Social Security protection of domestic employees

Spain has not ratified ILO Convention 189 (2011). The Spanish legal framework regarding domestic work is basically consistent with the main provisions of this Convention. However, there are some aspects which should be changed in the national law to adapt to the Convention, and these aspects are the main reasons why Spain has not ratified the Convention yet. These aspects have to do with the social security protection of domestic employees.

Domestic employees have a special scheme of social security which is different from the General Régime applicable to employees in general. The main difference between domestic workers and employees in general affects unemployment protection. While employees in general enjoy unemployment protection, domestic workers do not. The extension of unemployment protection to domestic workers would probably entail an increase in the social security contributions paid by the employer and the employee.

Under the current scheme, employers and employees pay social security contributions calculated as a percentage of a contribution base. The employer's contribution is calculated by applying 25.1 percent to the base, while the employee's contribution is 4.7 percent of the same base. The base is determined as follows:

Monthly remuneration (€)	Monthly contribution base (€)	Maximum work hours
Up to 240.00	206.00	34
From 240.01 up to 375.00	340.00	53
From 375.01 up to 510.00	474.00	72
From 510.01 up to 645.00	608.00	92
From 645.01 up to 780.00	743.00	111
From 780.01 up to 914.00	877.00	130
From 914.01 up to 1,050,00	1.050.00	160

From 1,050.01 up to 1,144.00	1.097.00	160
From 1,144.01 up to 1,294.00	1.232.00	160
From 1,294.01	Monthly remuneration	160

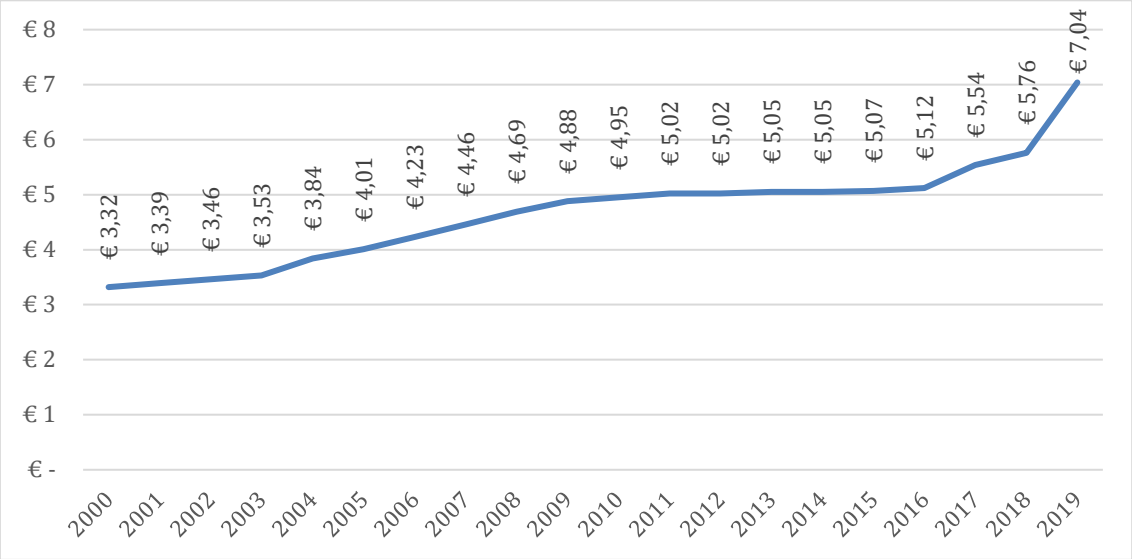
The extension of unemployment protection to domestic workers would probably require an increase in the contributions paid by the employer and the employee. Currently, unemployment protection has a total cost of 7.05 percent of the contribution base, of which 1.55 percent if paid for the employee and the other 5.5 percent is paid by the employer.

IV. Industrial relations and wage levels

The determination of the working conditions of domestic employees has been a matter for public regulation, on the one hand, and individual negotiation, on the other. A first comprehensive regulation of domestic work was approved in 1985 and was in force until 2011, when it was replaced by the current regulation. The regulation mainly deals with the duration of the contract, its termination, and the basic working conditions, especially work hours and salary. The wage levels of domestic employees have been a matter for individual negotiation. Up to 2019, the level of the minimum wage was very low, even for the Spanish labor market. Thus, for domestic employees paid by the hour (part timers, usually working for a number of households but very few hours for each household), the actual hourly remuneration was well above the level of the minimum wage, at least in the main urban areas of the country. According to a study carried out by the INE (National Statistics Institute[5]) in 2009, 40 percent of households with domestic workers paid between 8 and 10 euros per hour, when the minimum wage was around 5 euros per hour. Admittedly, social security contributions were included in the hourly rate and thus not paid by the employer in addition to that rate.

[5] Cifras INE, Boletín Informativo del INE, 3/2012, Hogares y Servicio Doméstico.

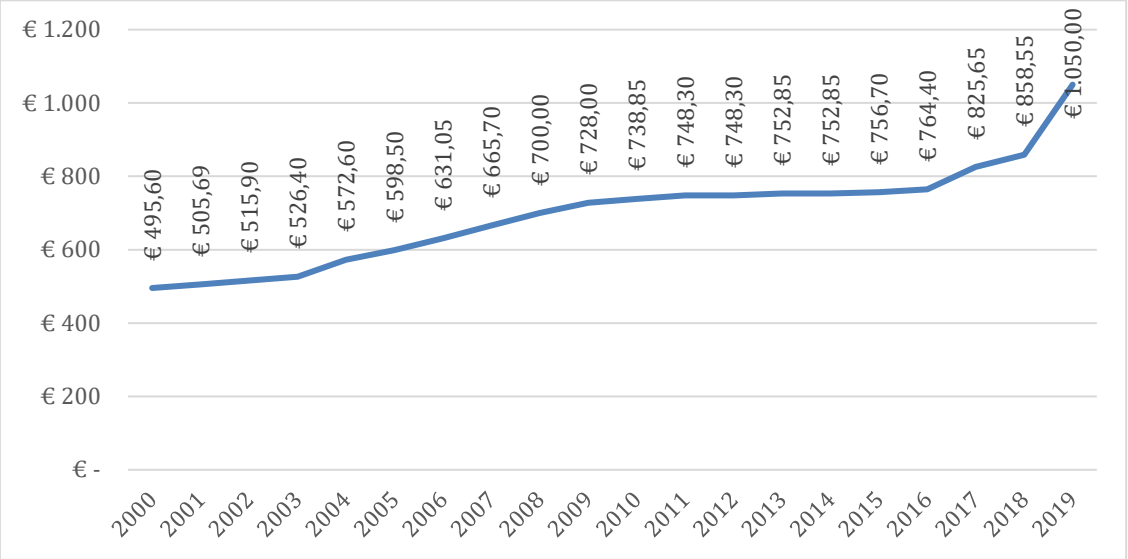
Figure 11: Hourly minimum wage for domestic workers



Data Source: Official Spanish Gazette (BOE)

Most households employing a domestic worker do so on an hourly base and with very few hours per week. Only 25 percent of households employing a domestic worker hire above 10 hours per week. For the minority of domestic employees who are remunerated on a monthly basis, working full-time for a household or working around 15 or more hours per week for a given household, the remuneration used to be above the minimum wage until 2016. The 8-percent raise in the minimum wage that took place in 2017, followed by the 4-percent raise in 2018 and, especially, the most recent 22-percent raise in 2019 have led to a situation in which the real wages of domestic workers are just the minimum wage, and usually not above this level.

Figure 12: Monthly Minimum Wage



Data Source: Official Spanish Gazette (BOE)

Thus, the dramatic raise in the national minimum wage that is taking place in Spain is affecting most domestic employees. The Government has announced its intention to raise the national minimum wage to around EUR 1,400 per month by 2023. But even what has happened so far, over the period 2016-2019, is important for the salary level of domestic employees: since 2016, when the national minimum wage was EUR 764.40 per month, to 2019, when the national minimum wage was EUR 1,050 per month, the increase has been significant, close to 40 percent in three years.

This dramatic increase in the national minimum wage has the effect of making the lack of collective bargaining in the domestic work less relevant. Collective bargaining does not exist at all for domestic work. The main reason for this is the lack of bargaining agents: there is no association of employers in the sector; in addition, the domestic workers have a low level of union membership. The collective activity of domestic workers is more common through a number of associations, usually of a local nature, different from the typical labour unions. Nevertheless, one can describe a "domestic work movement" in which non labour associations and labour unions participate with more or less the same goals, which are the improvement of the living and work conditions of these workers.

The main demand of the domestic work movement has nothing to do with collective bargaining. It is mainly addressed to the Government, not to employers who do not have an organizational face. Currently, the main demand to the Government is the ratification

of the ILO Convention 189, especially with a view to extending unemployment protection to domestic employees. Another important demand has to do with immigration issues, since most domestic employees are migrant workers.

Other demands, directly related to work conditions, either are being satisfied through the increase in the national minimum wage or are difficult to fulfill. For instance, the demand related to the abuse of work hours and of time of presence in the house (especially those workers who live in the house) is more difficult to address, since it requires an activity by the labour inspectorate which has relevant obstacles, especially of constitutional nature, linked to the protection of the inviolability of the home. Domestic work has been left outside the scope of the new employer obligation to daily record the working hours of their employees.

Another demand is the extension of the Law on Prevention of Occupational Health and Safety Risks to domestic employees. Currently, the domestic employer has a general obligation of care but is not subject to that Law. The extension of the Law could entail the need for the employer to hire the external services of professional companies in the sector of occupational health and safety.

In sum, domestic work is characterized for an almost complete lack of real industrial relations, at least in the sense of a relationship between employers and employees: there is no collective bargaining, no industrial action as such against employers and no labour unions activity in the relationship between employers and employees. The collective action of domestic workers, through a network of associations of different nature and also to a certain extent through the typical labour unions, is more focused on putting pressure on the Government, in order to obtain some of their most important claims: the most important one now is the extension of unemployment protection and the ratification of ILO Convention 189.

V. Liability in case of accidents

1. The domestic workers: an excluded group of the health and safety at workplace regulation

As we mentioned above, in Spain the domestic workers are not covered by the health and safety at workplace regulation. The European legal framework (Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work) and the national regulation (Law 31/1995 of 8 November 1995 on prevention and health at workplace, LPRL) have established that the employees are protected by those regulations with an exception: the domestic workers.

1.1. The origin of the exclusion

The exclusion was established because the domestic workers are not employees in the sense that they do not work at a enterprise. The domestic workers work at the house of one family which not comply the criteria of an enterprise. However, the legislator may have adopted an approach less strict. For example, the legislator may have approved a special regulation for them which take into account the particular circumstances of the domestic workers (the place where they carry out the job, the privacy of the family, etc.).

1.2. The practical consequences for the domestic employees

According to the case law, there have been several industrial accidents which affected domestic workers. The domestic workers had entitled the social benefits (industrial accident or professional illness). However, the domestic workers had not received an economic compensation in order to compensate the damages. The judgments have decided that there were not any violations of duties by the family because the health and safety regulation did not apply to them. The analysis of the accidents points out serious accidents even there have been deaths of some domestic workers[6].

2. The remaining duty of the head of the household

Although the legislator have excluded domestic workers, the regulation as well as the judicial cases mention that there is a remaining duty of the head of the household. It means that the household must ensure the health and safety of the domestic workers but not to

[6] STSJ Cataluña 4-12-2019 (AS\2020\962), SAP Barcelona 31-3-2017 (JUR\2017\192966), STSJ Andalucía, Sevilla, 15-2-2018 (AS\2018\828); and STSJ Madrid 17-4-2018 (AS\2018\2006).

apply the health and safety regulation. It does not seem clear how the judges may interpret the content of the mentioned duty.

The judgments have concluded that the residual duty of the head of the household to ensure that the work of its employees are carried out in the proper conditions of health and safety, for which they will adopt effective measures, taking due account of the specific characteristics of domestic work, does not have the scope provided for in Articles 14 and 15 of the LPRL requiring the employer to adopt as many measures as necessary for the protection of health and safety, including even the distraction and non-gross negligence of the worker. This is not subject to such a strict duty of vigilance as that imposed by LPRL on ordinary employers subject to its provisions.

2.1.The lack of a legal development

The analysis of the judicial cases provide some ideas on the scope of the duty. According to the case law the duty of the household has not been included into the scope of the health and safety regulation which obligate to take all necessary measures in order to protect the safety and health, even the prevention of the negligences of the employees.The judicial cases point out that the duty of the household is no strict like the duty of the employer. For example, to check if the professional tools were appropriate, we do not apply the health and safety regulation directly and fully. Two cases are a sample of these ideas. Firstly, a domestic worker suffered a fall from the top of a wall of about 2 metres that she was cleaning. As a consequence of the fall, she suffered a comminuted fracture of both heel bones, and was operated on. The employer had instructed the home worker to remove the protruding leaves from the patio wall of the house, but did not order her to go to the top of the patio wall to do so and she did not even want to use the ladder. The employee affirms that the ladder used by the worker did not have CE approval and that it was a dangerous item which was made available to the worker in order to carry out the work she was asked to do. The judgment concluded that in any case, the ladder in question cannot be evaluated by applying the provisions regarding ladders contained in Royal Decree 486/1997, of 14 April, which establishes minimum health and safety provisions in the workplace[7]. Secondly, some judgments have concluded that if the ladder provided were inadequate or defective and an accident had occurred as a result, indemnity would

[7] STSJ Islas Baleares 18.5.2018, AS\2018\1730.

be obligatory. To determine if the work equipment was adequate, the occupational health and safety standards are not necessarily directly and fully applicable[8].

2.2.The assumption of the risk by the domestic worker

In deep the risks of the workplace are assumed by the domestic worker such if he were the liable of all decisions taken into the home of the householder. Two judicial examples are very useful in order to understand the dramatic situation of the domestic workers. In the first case, there was an labour accident while the domestic worker used a cleaning product. a worker suffered an accident at work when she unblocked a bath with a liquid that exploded in her face. As a consequence of the aforementioned accident, she suffered the following injuries: - conjunctive ischemia left eye. corneal nebula- scars upper eyelid and face. In this case (...) there is no evidence of a breach of health and safety obligations by the defendants towards the worker, since her accident occurred when she unblocked a bath with a liquid that unfortunately exploded in her face, without the decision to use the product, its manipulation or its possible poor condition being able to be attributed to them, and whose circumstances of use have not, in any case, been proven. The case law concluded that the household was not liable in relation to the usage of the cleaning product. Them it does not seem relevant if the domestic worker received professional training or any information in relation to the risk of the cleaning product[9].

In the second case, a worker performed her work every other Friday (or sometimes Thursday), for €40, without written record of the payments. The worker fell from a window, after climbing onto a child's seat to unfold and clean a five-rod clothes horse anchored to the outside of the house. The worker died after being transferred to Bellvitge Hospital. The conclusion of this is that there is no evidence whatsoever that the cause of the accident was an alleged cleaning of the clothes horse, since there were also no clothes pending to be hung. In short, there is no evidence of negligence or fault on the part of the householders, since the way that the accident was produced and its causes are not recorded in any way and have not been proven. As a result of the proven facts, there is no act of fault or negligence by the defendants that gives entitlement to compensation for any civil

[8] STSJ Castilla y León 9.1.2017, JUR\2017\21792.
[9] STSJ Islas Canarias 27-11-2015, JUR\2016\42997.

liability. Since the householders were not at fault, the accident had to occur either as an act of god, or by the sole fault of the injured party[10].

However, there are some exceptions where the judgment has concluded that the household is liable. An employee fell onto a patio as a result of being given the task of cleaning the outside of a blind, which required the cleaner to adopt a strained posture from the kitchen table, with part of the body outside or over the patio, at the same time as leaning on the window sill. In this situation, one of the windowsill tiles broke, which caused the plaintiff to lose her balance and fall to the patio. A negligent act, in accordance with the circumstances of the persons, time and place, and the guidelines for behaviour of a head of household, referred to in Article 1104 of the Civil Code, due to the fact that the carrying out of the cleaning task in the aforementioned way, although considered usual in domestic work, was obviously dangerous given the cleaner needed to put part of her body over the patio and lean on an element of the sill that due to its fragility or previous bad condition gave way suddenly. The employer, who was also present in the kitchen, is not on record as ordering her employee to adopt any precautionary measure, nor did she personally adopt any, despite the fact that the possibility of the cleaner falling was foreseeable in that situation; nor can the employer take advantage of the argument that these measures corresponded to the employee, since obviously the domestic worker is not a self-employed worker (...) but is an employed worker, who must follow the instructions or indications of the owner of the house; without any appreciable omission or negligence by the latter. The family was ordered to pay compensation of €114,848.09[11].

3. The owner's responsibility

The research has identified some cases where the judge had concluded that the household was liable. However, the health and safety regulation is not the legal argument but also the owner’s responsibility based on the Civil Code.

Some judicial cases are an example of these ideas. First, the death of a domestic worker due to gas leak. In the basement of the single-family house, Mr Nicolas had given over two rooms as the bedroom of the two domestic workers, the deceased Teresa and her

[10] STSJ of Cataluña 4.12.2019, AS\2020\962.
[11] SAP Asturias 27.1.2005, JUR\2005\61466.

partner Gregoria. In the same basement there was a boiler room and a living room for both employees. The room where Teresa slept, which had no external ventilation, communicated by a door to a wardrobe-dressing area and this in turn, as an anteroom, to the boiler room. The worker was in her room as it was free time for her outside the working day, so that her death occurred outside it and not as a consequence of a risk derived from the employment contract, but as a consequence of injury caused by the housing facilities owned by the employer in which she spent the night, for which the provisions of Article 1908 of the Civil Code apply. It was the employer who had an insufficiently ventilated boiler room in his home, which entailed the risk that gave rise to the production of carbon monoxide in the worker's room, communicated with said room and without ventilation, having proved that the monoxide was caused by the deficiency of the boiler's chimney duct, so that the homeowner must answer for the injury caused by the faulty facilities[12].

In the second case, the physical injury occurred when a worker had to evacuate the home, jumping out of the window due to a fire. The injured worker was not working when the fire took place, but sleeping in the employer's home, which is considered by Article 8.2 of the aforementioned regulation governing the employment relationship, as a benefit in kind. The worker was resting in her room outside the working day, so that the claim occurred outside those hours and not as a consequence of a risk derived from the employment contract, but as a consequence of injury caused by the facilities of the dwelling owned by the employer in which she stayed overnight[13].

VI. The new social security benefits for domestic workers during the COVID-19 crisis

Perhaps without intending to do so, it is true that within the hastened process for the drafting of regulations, there was an absence of measures with regards to certain groups that, due to legal and/or socio-economic circumstances, are in a situation of extreme vulnerability. This is particularly true in the case of female domestic workers. Seemingly, this tendency is corrected through Royal Decree 11/2020 of 31 March 2020, approved

[12] STSJ Madrid 17.4.2018, AS\2018\2006.
[13] STSJ País Vasco 28.5.2019 JUR\2019\226306.

during the COVID-19 crisis. In line with the series of emergency regulations implemented, the purpose of this regulation is to respond to the persistent and extensive nature of the exceptional economic and social circumstances deriving from the COVID-19 crisis.

Chapter I of the 88-page regulation includes social measures aimed at supporting workers, consumers, families and vulnerable groups. Out of all these measures, the purpose here is to explain the contents of article 30: *the extraordinary benefit due to lack of activity for individuals included in the Special System for Domestic Workers within the General Social Security Scheme.*

Based on a preliminary assessment, the following can be stated with regards to this measure. Firstly, it highlights the possibilities available in terms of unemployment protection for traditionally excluded groups, such as female domestic workers, thus providing insight into the reiterated demands to ratify Convention 189, ILO and to extend unemployment protection to those who fall into the special system arising from the former special scheme.

It must not be forgotten that this is a temporary and entirely provisional regulation, which is limited to the current context of economic and employment downfall. It should also be noted that it may serve as the draft for the creation of a protective scheme in the medium term, to comply with the mandate of the legislator of the 1966 Framework Law (20th century), which called for the unity of schemes and which, for the main part, remains to be implemented, despite significant advances, such as protection for the cessation of activities offered within the Special Scheme for Self-Employed Workers.

Secondly, it highlights an intense political sensitivity towards gender-based legislative action, given that it is a measure that eminently concerns women in a particularly vulnerable situation. Such women are working in an unskilled sector, with sociodemographic characteristics that exacerbate the effects of the state of alarm (foreign nationality, existence of family responsibilities, household income, to mention but a few).

Thirdly, it demonstrates, as an indirect side effect, just how deficient current regulations in terms of domestic work are, as will be superficially examined below. In other words, the effectiveness of the measure, and the legal rigour of the benefits that it provides, are

weakened when confronted by the *de facto* situation, by the social reality to which it applies.

Protected individuals (article 30 of the regulation), recipients of the new benefit, will be those registered under the Special System for Domestic Workers within the General Social Security Scheme before the entry into force of Royal Decree 463/2020, of 14 March, who:

- have either been subject to the suspension of their employment relationship or, in the case of a multiple employment scheme, have reduced their activity in one, several or all of the different homes in which they provided their services,

- or those who have been subject to the termination of their employment relationship, as a result of the COVID-19 health crisis, for any of the reasons established in the applicable regulations (article 11 of Royal Decree 1620/2011, of 14 November, regulating the special employment relationship of domestic workers).

Thus far, there is no doubt as to the concept of the protected situation, corresponding to the similar cases of Temporary Labour Force Adjustment Plans (ERTE) or even Labour Force Adjustment Plans (ERE). Likewise, the triggering event giving rise to the benefit is clear, being the loss or reduction of employment.

In this respect, the triggering event must be accredited by means of a statement of compliance, signed by the employer or employers, in the case of the suspension of the provision of services, or by a letter of dismissal, communication of termination by the employer or documents evidencing the termination in the case of the termination of the employment contract. However, accreditation of the triggering event, which is essential to formalise the protected situation, goes beyond a mere formal requirement, and may actually hinder the granting of the protection. It may be difficult for the head of the household to document the suspension or termination, taking into account that the written formalisation of legal and labour-related issues is uncommon in this sector. Furthermore, there may also be cases of force majeure *stricto sensu*, when the subject is affected or even hospitalised, in varying degrees of severity. That is to say, the general health situation in itself may make it difficult to obtain or access documentation.

Furthermore, given the high degree of informality within this productive sector (which is not considered as such), it is highly likely that an undetermined percentage of workers who provide domestic services (who take care of people or things) do not have a formal contract, let alone being registered under the special system. This gives rise to exclusion from the extraordinary protective mechanism of the regulation. Obviously, this cannot be attributed to the legislator, but rather it is a systematic constraint. Paradoxically, the fact that there are individuals who will be excluded from the protection could give rise, after the health crisis, to workers seeking the formalisation of contracts, and to employers being required to provide such formalisation. This is because there is now a precedent in which entitlement to rights is dependent on affiliation to the system and in which it is necessary to accredit the existence of the legal employment relationship and insurance.

According to the technical and regulatory framework, the amount of the extraordinary benefit (article 31 of Royal Decree-law 11/2020) due to lack of activity will be calculated by applying the percentage of 70% to the regulatory base corresponding to the activity that can no longer be performed. Generally, the daily regulatory base of the benefit will be constituted by the domestic employee's social security contribution base in the month prior to the triggering event, divided by 30.

Exceptionally, if the individual provides several services for different employers, the regulatory base and final amount will be calculated proportionately according to the percentages of reduction applied to the overall working hours.

Thus, when jobs are performed for different employers, the total amount of the benefit will be calculated by applying the percentage of 70% to the amounts obtained, which will be applied to the different regulatory bases for each of the different legal employment relationships. In any event, regardless of the regulatory (sub-)bases to which the percentage is applied, a unitary limit has been established for the benefit, based on the minimum inter-professional salary, excluding the proportional part of the extraordinary payments.

The benefit is paid monthly, as long as the protected situation persists (loss or reduction of activity as a result of COVID-19), from the moment in which entitlement to the right emerged. For these purposes, the effective date on which entitlement to the right emerged will be understood as the date identified in the statement of compliance indicated in the

previous section when the triggering event consists in the reduction of the activity, or the date of deregistration in the Social Security system, in the event of the termination of the employment relationship. This seemingly corrects difficulties surrounding the accreditation of protected situations, given that it is possible to trace economic effects back to a time prior to application for the benefit and accreditation of the situation. What is relevant is the date of suspension indicated on the statement of compliance and the date of deregistration in the system.

However, the extraordinary benefit is subject to (in)compatibility rules that are similar to those that apply to unemployment benefits. It is compatible with self-employed or employed activities performed at the time of accrual of the benefit, provided that such activities do not refer to those giving rise thereto, obviously (employment activities that have not been suspended or terminated), as long as the sum of the benefit and income is not higher than the minimum inter-professional salary.

In a fully coherent manner, losses of employment that do not entail a situation of special economic need (based on the minimum inter-professional salary) will not be included in the protection system. Implicitly, this means that essential elements related to the contributory unemployment benefit (loss of employment and the conclusive presumption of a situation of need) have been removed from this benefit, which has instead been infused with elements of assistance, embodied in the real existence of a situation of need in which COVID-19 is generating a significant situation of lack of resources.

As a result, in the same vein, the extraordinary benefit due to lack of activity will not be compatible with the temporary incapacity benefit and with the accruable paid leave regulated in Royal Decree-law 10/2020, of 29 March, which regulates leave for employed workers who do not provide essential services, in order to reduce the mobility of the population within the context of the fight against COVID-19 (article 32.2 of Royal-Decree-law 11/2020). The aforementioned leave is not an obstacle to the legal, although not de facto, application of the regulation to the employment relationship regulated by Royal Decree 1620/2011.

In short, this benefit is in line with the current definition of the special employment relationship of domestic employees, and it highlights the need to thoroughly address either the effective protection of employees within a family home (taking into account

that such individuals will never be business owners, but rather employers, with all of the associated consequences), or the fundamental reform, or even suppression, of the special relationship in itself.

Conclusions

The size of domestic work in Spain is disproportionately high. Only Italy and Cyprus in the whole of the European Union have a similar volume of employment, at around 4% of the total working population. Apart from the protection gaps that generate precarity, it is a sector in which the underground economy presents a significant volume, although the regulatory changes of 2011 seem to have had a positive effect. The gap between the Labour Force Survey and Social Security records has almost halved since 2010. Even so, in 2019 one third of domestic workers were not registered.

The care system operates as a common activity in the economy. Although care work has relatively low wages, like other highly feminized professions, the legal regime is the same as that of other workers. Economic activity through companies is combined with non-professional care, which since 2019 has been recovering social protection. In the case of professionalized activity, the sector has its own collective bargaining at the state level.

The greatest particularities are found in the area of domestic work. Direct employment by households is considered a special employment relationship. Under the premise of the non-professional character and the intimate nature of the family home, very low protection thresholds are established. Alongside very permissive regulations (e.g. employment termination) there is little control over compliance with others, such as working time. Social protection is also insufficient; although the rate of social security affiliation has improved, domestic workers are still excluded from unemployment protection. This has required exceptional government intervention to address the crisis generated by COVID-19.

Since the pursuit of social dialogue, problems have been detected in articulating collective worker representation. First, there is no trade union representation in workplaces (which are usually single-employee). Instead of traditional trade unions, there are women's associations focused on defending their rights, both with individual support and with collective vindications. In any case, none of them are generally established in the whole territory of the state. Similarly, there are no business organizations (since employers are not companies), which makes it difficult to have both an institutionalized dialogue and collective bargaining.

Live-in workers are a particularly vulnerable group. The legislation merely indicates the need to make the agreement explicit in the employment contract (overnight pact) but does not provide for any further particularities. Apart from the social isolation that this form of working and professional life entails, aspects such as privacy and the right to use one's own home are perceived as very important by the social agents consulted. From a strictly legal perspective, it is necessary to delimit the remuneration of the time of availability, as well as the obligations that the worker has during that time. On a positive note, the new regulation introduced by the 2011 Royal Decree imposed the need to pay the minimum wage in cash. In this way, the value given to the salary in kind (accommodation, food) cannot be deducted from its amount. Some elements described in other points are particularly relevant. The absence of specific health and safety obligations is in this case a direct attack on the dignity of the worker.

It is clear that there is an absence of balancing interests at stake: the health and safety of the employee and the onus on the employer. In addition, the judicial cases point out that there is an empty and programmatic duty of safety. It means an undervaluation of the most important fundamental rights of workers: the right to the life. At the end, it seems that there is an unequal treatment with respect to workers who perform the same tasks but have been hired by companies.

The difficulties of the households may be resolved if the Public Administration create some tools in order to provide professional training for domestic workers and families. On the one hand, the Public Administration may be to create a training and qualification card for domestic workers. The training on health and safety may be provided by the Public Administration (National y/or Autonomous Institutes of Occupational Safety and Health). The training shall be mandatory for all domestic workers and shall include information and training on the main risks and preventive measures. In addition, some obligations of prevention may be adapted taking into account the characteristic of the workplace (the family home) and the trust relationship. On the other hand, the Spanish Government may impose that the third parties (an enterprise) were mandatory in any cases. The professionalism of domestic workers may improve their working conditions including the health and safety at workplace.

It would be very welcome that the Spanish government extend the social security protection to those domestic workers in the case of the unemployment beyond the special

circumstances of COVID-19. The mentioned recommendation may contribute to apply the principle of equal treatment between all workers including the domestic workers.

Figure Index