



## PHS-QUALITY Project

Job Quality and Industrial Relations in the Personal and Household Services Sector -  
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POLICY PAPER: SPAIN

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## 1.INTRODUCTION

Personal household services (PHS) is a sector of economic activity that in Spain comprises two main subdivisions. On the one hand, the formal care sector, and on the other hand, the private care and related activities procured by households (domestic work). This division has enormous effects on the work arrangements and ultimately the employment conditions of workers, who, as is the case in most countries, are mostly women and immigrants.

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 legal problems or 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.

Though care work in both subdivisions is characterized by precarious conditions, low pay, lack of professional career, poor training and social undervaluation, the domestic work carried out in the framework of a private and direct relationship between the worker and the natural person in the household has generally a far worse situation. Note that this assessment is of course a general one, which does not exclude that many domestic workers may prefer to work in the framework of a personal arrangement with the natural person receiving the services, rather than under an employment contract with a company, entity or third party provider.

The two main work arrangements for the provision of care and related services in a household are the “domestic employment contract” (DEC), which has a special regulation, and the common or general employment contract. The DEC is the contract that must be used where the natural person in the household is the “employer” of the domestic worker. By contrast, if the employer is the recipient of care services provided by a third party, then the domestic worker assigned is an employee of that third party, and the employment relationship between them is just a regular or common one.

The situation with workers working for a natural person who acts as his/her employer is generally worse at least for the following three reasons.

1. There are more chances that the relationship is informal, in the sense that there is no written agreement, no payslips, and, what is the worse part, no social security registration.
2. The natural person is not a professional employer, which has a great impact in many areas of the work relationship: health and safety, hours, leaves, etc. The administration or management of the relationship is usually poor.
3. There are virtually no collective relations, which entails that there is not a single collective agreement protecting these domestic workers.

In light of the research done in this project, we propose the following guidelines for policy action.

1. Review the employment protection gaps between domestic workers under DEC's and regular employees working in the same activity under employment contracts with third party providers. Government and Parliament must ensure that every gap is proportionally justified. For instance, the difference regarding termination of employment should be reevaluated. There is a need for specific regulation for live-in workers to guarantee their right to rest and privacy, among other aspects.
2. Ensure full social security coverage for every domestic worker, including unemployment protection.
3. Ensure that domestic employees are protected by the occupational health and safety laws and regulations. If needed, make resorting to third party providers compulsory.
4. Put in place mechanisms such that domestic workers may have a collective voice in their employment conditions.
5. If none of the above can be guaranteed under the current DEC arrangements, repeal the special regulation of DEC's and choose a system in which households must resort to third party providers for care and related services in the household.

## **2. EMPLOYMENT LEGISLATION GAP**

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.

## **3. SOCIAL SECURITY GAP**

The unemployment benefit has been a pending issue for domestic workers when they work for a household. They are not entitled to receive a social security benefit when the employment contract has been terminated. The exclusion of the unemployment benefit has meant a relevant gap for them because their vulnerability is higher than the rest of the employees. The lack of protection of these workers has been evident, in a dramatic way, during the Covid-19 crisis. This situation has been corrected through the Royal Decree 11/2020 of 31 March 2020, approved during the COVID-19 crisis. However, the mentioned measure is temporary.

The scope of the new regulation has covered two conditions: i) The domestic workers 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 ii) 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. And the amount of the extraordinary benefit 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.

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

#### **4. HEALTH AND SAFETY GAP**

The protection of domestic workers is practically non-existent in health and safety at workplace. The EU and Spanish regulation on this issue have excluded domestic workers due to the difficulties to apply the duty of prevention following all the obligations: risk assessment, providing personal protective equipment, professional training, medical test, etc. The mentioned difficulties arise when the employer is a family and not an enterprise.

The domestic workers are entitled to the social benefits (industrial accident or occupational diseases). However, the domestic workers do not received an economic compensation in order to compensate the damages. Following the legal framework, 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 several domestic workers.

It seems clear that there is an absence of balancing interests at stake: the health and safety of the household 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 is convenient to enhance that 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. For example, the Labour Inspectorate may monitor the working conditions of the domestic workers at household home if the domestic workers have been hired by an enterprise. The exclusion of the domestic workers may be considered disproportionate due to they do not received any protection.

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.).

There are some guides on health and safety of domestic workers which have been prepared by the Basque Occupational Health & Safety Institute (OSALAN). The mentioned guides includes the preventive measures to domestic workers and special measures for COVID-19. However, those documents are not mandatory.

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.