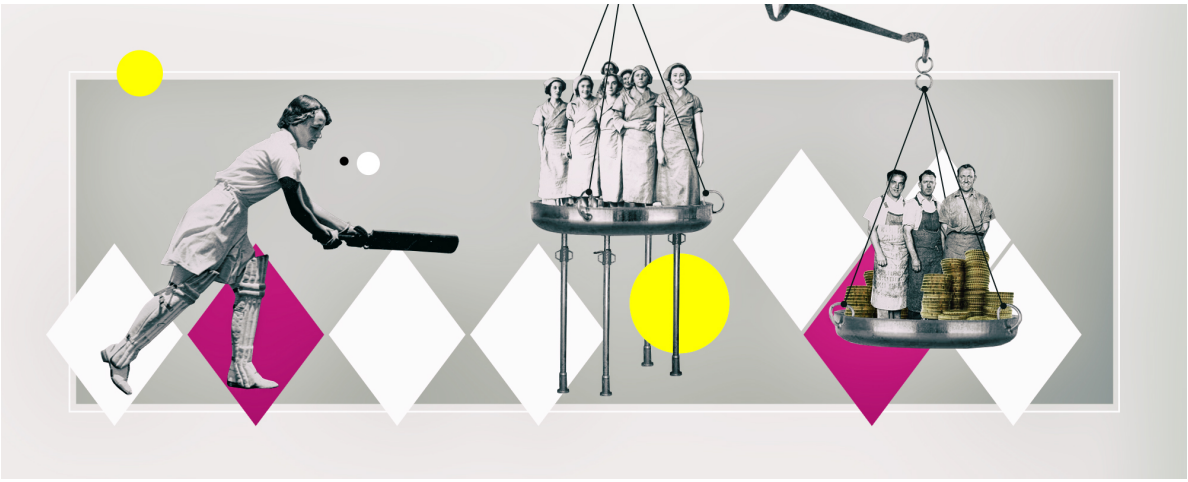
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The gender pay gap: causes and approaches

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According to the International Labour Organization (ILO) Global Wage Report 2018/19, the gender pay gap ranges from about 16 to 22%, depending on which measure is used. In the case of Catalonia, the latest figures published by the *Observatori del Treball i Model Productiu* (Employment and Production Model Observatory), relating to 2016, place the gap at 23.4%. More importantly, trends in this gap in recent years point to only a small reduction, leaving little room for optimism.

Leaving to one side the issue of the methodology employed to calculate this gender pay gap, in the following pages, I will be concentrating on an analysis of its causes and, above all, on how it is tackled. To do so, I shall begin by making it clear that, despite the size and tenacity of the problem we are dealing with, there have been relatively few legal lawsuits filed or complaints brought before Spain's Labour and Social Security Inspectorate regarding the differences in remuneration between men and women. This is all the more paradoxical bearing in mind the fact that not only is equal pay between men and women for work of equal value a priority on the worldwide political agenda (it is, after all, one of the Sustainable Development Goals of the UN's 2030 Agenda) but also that, for decades now, the principle of equal treatment for men and women, in general, and that of equal pay for jobs of equal value without gender bias, in particular, have been enshrined in legal texts at international, supranational and national levels, forming the basis for quite a few judicial, administrative and institutional oversight mechanisms in Spain.

Structural inequality

To understand the reasons behind the persistence of the gender pay gap, and bearing in mind the fact that, as the ILO notes in the aforementioned report, the differences between men and women in terms of education and training do relatively little to explain the size of the gap, the spotlight must necessarily fall on the structural inequalities faced by women in society. So, we cannot tackle the gender pay gap as simply an issue of pay discrimination—direct or indirect—and of lack of pay transparency in the workplace, but rather on the basis of the premise that it is the result of inequalities suffered by women in every sphere of social life. It is not, therefore, just about guaranteeing equality in remuneration—wage and non-wage—for work of equal value in the world of work, but rather about fostering real equality of opportunity for men and women in society.

Delving a little deeper into this idea, to gain an idea of the backdrop of the gender pay gap, mention must be made of horizontal and vertical segregation, the unequal distribution of caregiving tasks and the undervaluation of women's work.

More specifically, horizontal segregation refers to the concentration of women in certain activity sectors and jobs more poorly paid than those predominantly held by men. For its part, vertical segregation refers to the concentration of a large proportion of women's positions in the lower strata of the jobs hierarchy, as a result of the difficulties women have in securing positions of responsibility or management posts (the "glass ceiling"), as well as the issue of the "sticky floor": how women remain trapped at the lower level of said hierarchy, in poorly-regarded or underappreciated jobs with little or no chance of professional advancement, low salaries and, in general, insecure working conditions [1].

The gender pay gap is also linked to maternity and the lack of co-responsibility between men and women in caring for children and other dependent family members, leading to longer interruptions to the latter's professional careers, more frequent resorting to reductions in working hours and part-time work, and lesser availability for work, which is penalised on the labour market by exclusion from salary supplements and a lack of professional advancement.

Finally, one cross-cutting aspect that permeates all "typically women's" work spheres (paid or unpaid) is the lack of recognition and undervaluing of said work. Given this context, tackling the gender pay gap calls for the involvement of the public authorities, collective bargaining and businesses' human resources policies.

Improvement of labour relations

Firstly, with regard to the involvement of the public authorities, progress needs to be made within the existing legal framework, particularly in the fields of labour relations.

La recent aprovació del Reial Decret-llei 6/2019, d'1 de març, de mesures urgents per a la garantia de la igualtat de tracte i d'oportunitats entre dones i homes en el treball i

l'ocupació, ha suposat un avenç innegable en matèria d'igualtat retributiva de gènere, de transparència retributiva i de foment de la corresponsabilitat i conciliació familiar mitjançant:Spain's recent passing of Royal Decree Law 6/2019, of 1 March, on urgent measures to guarantee the equality of treatment and opportunities for men and women at work and in employment, represents an undeniable step forward in gender pay equality, pay transparency and the promotion of co-responsibility and the work-life balance by:

1. specifying the criteria for establishing the equal value of jobs within the framework of the principle of equal pay by reason of gender;
2. the express requirement that professional classification systems be based on a prior assessment of job positions free of gender bias, which permits the identification and valuation of the features most common to "typically women's" jobs;
3. the obligation for employers to keep a wages register with the average value of remunerations, broken down by gender and professional level, accessible to employees via their workers' representatives;
4. the obligation to carry out a pay audit between men and women as part of the preliminary diagnosis prior to designing equality plans;
5. the presumption of the existence of a gender pay gap in companies with 50 or more workers when the average pay for men is 25% or more higher than that of women, taking into account the total payroll or the average of the remuneration paid;
6. the enshrining of workers' right to receive pay equivalent to that of an equal job or one of equal value in the case of partial nullity of contract due to gender-based pay discrimination;
7. the matching of maternity and paternity leave allowances, and
8. the specification of the right to adapt working hours in order to achieve a work-life balance. Nevertheless, there is still room for improvement in the heteronomous legal framework, particularly with regard to co-responsibility and measures for achieving a work-life balance, positive actions in support of women workers, part-time jobs and powers over pay-related information held by workers' representatives.

Programmes to foster real equality

Secondly, the public authorities must effectively implement ambitious programmes that foster the real equality between men and women contemplated in relevant effective equality legislation at both Spanish and autonomous community levels, providing the economic, material and human resources required to do so. They must also do more work on the goals of highlighting the value of women's work, especially by promoting the professionalisation of "typically women's" jobs and improving working conditions in strongly feminised activity sectors. Said goals should also include fostering the work-life balance, chiefly through the universalisation of free infant early learning education for children aged three and under. Added to all of this is the need to effectively promote social clauses in public procurement as a powerful tool for improving working conditions in feminised sectors and jobs, and the quality of public services that have been outsourced.

Judging from a gender perspective

Thirdly, and based on regarding the judiciary as a public authority of the State, it is worth highlighting the need for its rulings to be based on a gender perspective, weighing up the impact that different interpretations of the legal framework may have on the particular situation of women. In this regard, noteworthy at a Spanish level is the fact that, at least until the entry into force of Royal Decree Law 6/2019, constitutional and ordinary law jurisprudence had fostered the individualisation of salaries by failing to apply the principle of equal treatment (but not that of non-discrimination) in the field of individual labour relations, making the individual and collective control of pay-related gender discrimination difficult.

At a European level, we would highlight how the jurisprudence of the Court of Justice of the European Union (CJEU) has been significantly limiting the scope of positive actions on access to work and professional advancement with its strict and formalist application of the principle of equal treatment of and non-discrimination between men and women, rejecting the argument that Community law aims to achieve equality of outcome through compensatory measures. Community jurisprudence has also displayed a fairly restrictive and formalist interpretation of the principle of equal treatment of men and women with regard to length of service, considering the use of this criteria to be suited, generally speaking, to achieving the goal of equal pay for jobs of equal value. Neither has Community jurisprudence proven particularly cooperative with the procedural situation of women workers in the case of lawsuits on discrimination in access to employment (recruitment processes), refusing, on a general basis, the right to provide access to information on the file of the successful applicant or on the grounds for rejecting the woman candidate. Despite everything, recent rulings by the CJEU on equal treatment and non-discrimination between women and men appear to be ushering in a period in which the goal of securing effective and real equality between men and women is being placed above the principle of formal equality.

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Lastly, we must emphasis the key role of collective bargaining and companies’ human resources policies in narrowing the gender pay gap, with a need to denounce the insufficiency of those collective bargaining agreement provisions that limit themselves to including a generic clause on equal pay between men and women, without applying a gender perspective in the regulation of the main areas of organising work that have an impact (direct or indirect) on their pay levels. Collective bargaining agreements must guarantee effective quality between men and women in recruitment processes, in

professional advancement and career path design, in access to continuing professional education, in the assessment of positions with regard to configuration of professional classifications and the determination of salary levels, in the design of salary systems and pay structures (salary complements), in access to social and fringe benefits, in the organization of working hours, especially shift and part-time work, and in employers' work-life balance policies.

A multidimensional reality

A recent study on gender pay gap sectoral dynamics, headed by Núria Sánchez Mira and Pilar Carrasquer [2], shows how the shortcomings and gaps in the collective bargaining agreement framework in Spain help explain the gender salary gap in the activity sectors analysed. The study also shows how the gap differs by sector, which means that, although in general terms the gap is related to the existence of horizontal and vertical segregation, the undervaluing of "typically women's" jobs and gender bias in recruitment, promotion and remuneration practices and the differences in availability for work due to the unequal division of caregiving work, the impact of these factors varies significantly depending upon the activity sector in question. Thus, pay inequalities between men and women vary according to different work organisation contexts, workforce management strategies and working conditions, and are governed differently in the collective bargaining agreements applicable. The study therefore concludes that the gender pay gap is multidimensional and finds different expressions depending upon the activity sector.

This conclusion provides the key to more effectively tackling the gender pay gap, indicating the need for solutions to the issue to be differentiated by sector. A conclusion that is particularly true of feminised activity sectors in which the problem of the gender pay gap is an intersectoral issue, associated with the undervaluing of women's work and the problem of the "sticky floor", shown by the high percentage of part-time jobs, by the lack of real on-the-ground implementation of work-life balance measures, given the rigidity in the organisation of working hours, and by the lack of prospects for professional advancement.

So, as a general conclusion, we can say that, to be effective, solutions for the gender pay gap must be differentiated by sector, with collective bargaining agreements playing a key role in this, as a flexible and expeditious tool for governing working conditions, given their dual—normative and contractual—nature.

NOTES

1 — CARRASQUER OTO, P.; DO AMARAL PINTO, M., "El terra enganxós de les dones a la ciutat de Barcelona". Barcelona Activa. Ajuntament de Barcelona, 2019

2 — SÁNCHEZ-MIRA, N.; SERRANO OLIVARES, R.; CARRASQUER OTO, P., "What slips through the cracks: the distance between regulations and practices shaping the gender pay gap" (en tràmit de publicació a la revista *Economic and Industrial Democracy*)



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