

# The care labour sector in Spain: realities and regulatory advances to cover them\*

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**Riassunto.** Questo articolo ha ad oggetto le condizioni di lavoro e le discriminazioni che si verificano a danno di coloro che, in cambio di una retribuzione, si occupano della cura di un'altra persona. Il lavoro è strutturato in due sezioni: da un lato, si delineano le condizioni di lavoro e le possibili discriminazioni cui sono soggetti in Spagna i lavoratori del settore della cura alla persona; dall'altro, si esaminano i progressi che si stanno verificando in Spagna a livello normativo per far fronte alle situazioni di mancata protezione del lavoro, situazioni che si sono storicamente verificate con particolare riferimento ad alcune particolari dimensioni del lavoro di cura, come quello domiciliare.

*Parole chiave:* Settore della cura; Condizioni di lavoro; Discriminazioni; Spagna.

**Abstract.** This article deals with working conditions and non-discrimination of the staff who work in exchange for remuneration for caring for another person. This work is structured in two main sections: the realities faced by workers in the care sector in their working conditions, or in the suffering of discrimination, on the one hand; and the regulatory advances that are taking place in Spain to cover situations of lack of labour protection, that in some areas of work such as the family home sector were historically occurring, on the other hand.

*Keywords:* Care sector; Working conditions; Discriminations; Spain.

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1. Introduction. 2. Care work in Spain: main findings about working conditions and discriminations. 3. New models of social protection for workers in the care sector: moving toward a dignified care model. 3.1 Guarantee access to unemployment benefit and ensure an environment of occupation safety and health as starting point. 3.2 A step towards the future: the protection of people who care outside an employment relationship and the option of accessing early retirement. 4. Brief conclusions.

1. In Spain, care work is mainly carried out by women in the family environment. However, this study does not focus on that reality, but rather on the working conditions and non-discrimination of paid care workers, those who provide care in exchange for remuneration.

The focus of our study on workers in the care sector, whether they provide care in private homes or, for instance, in residential facilities for the elderly or disabled. This work forms part of the Horizon Europe research project *CARE4CARE – We care for those who care*, coordinated by the University of Florence, and in which the authors of this article have the honour of participating.

To carry out this study, we have structured this work in two main sections: firstly, an analysis of the realities faced by workers in the care sector in their working conditions, or in the suffering of discrimination; and secondly, a review of recent the regulatory advances in Spain aimed at addressing gaps in labour protection, particularly in sectors such as domestic work, where such gaps have historically been most pronounced.

The care sector is expected to attract increasing attention in research and public policy debates, given its essential role in society, particularly in the context of demographic ageing. Securing the sustainability of this sector requires a firm commitment to improving the working conditions of care workers.

2. It is widely acknowledged that Europe is undergoing a significant demographic shift driven by population ageing; by 2050, one in four Europeans will be aged 65 or older. This trend, coupled with declining fertility rates («The total fertility rate in 2023 was 1.38 live births per woman in the EU, down from 1.46 in 2022»<sup>1</sup>), has intensified the demand for care services and the care workforce across all countries.

Efforts to improve care services have revealed systematic inequalities affecting the care workforce, particularly for migrant women, usually from third countries. The Horizon Europe project *CARE4CARE*, coordinated by the University of Florence and supported by the University of Girona, aims to address these inequalities.

Above all, the aim of the paper is twofold: first, to investigate working conditions in the care sector in Spain, and second, to analyse discrimination based on gender and migrant status. Both studies highlight the precariousness and marginalisation faced by care workers, most of whom are migrant women, due to fragmented regulations, informal employment, and insufficient legal protections.

<sup>1</sup> Eurostat, 2024.

One issue of particular importance concerns care work performed in private homes, which in Spain is regulated by two distinct legal frameworks. On the one hand, the general employment regime, that applies to workers in formal settings (e.g., hospitals, public care institutions, and also domestic workers provided that they are employed by a company, not by the owner of the home where they work), and provides more robust protections under the Workers' Statute; on the other hand, the special domestic employment regime governs those employed directly by private household owners (employed by the owner of the family household where they provide their services). The special domestic employment regime is governed by Royal Decree-Law 16/2022, of 6 September 2022, on the improvement of working conditions and social security for domestic workers. Royal Decree-Law 16/2022 offers more limited protections and disproportionately concentrates power in the hands of the employer.

This duality represented a significant turning point in Spain when, in 2022, the European Court of Justice issued a ruling condemning Spain for excluding domestic workers, 95% of whom are women, from unemployment benefits, labelling it indirect gender discrimination. The subsequent reform (RD-Law 16/2022) began to address this issue by extending rights such as unemployment protection to domestic workers.

The main key findings on working conditions and on discrimination on grounds of gender and migrant status are as follows:

- Low wages and economic precarity: live-in care workers often earn near or below minimum wage. Irregular employment is widespread, with unpaid overtime and under-declared work undermining economic stability.
- Excessive working hours: live-in care workers commonly work between 12-16 hours daily, often without proper rest or compensation. The blurring of boundaries between home and work severely affects their physical and emotional well-being.
- Limited social protection: despite performing complex health-related tasks, many care workers lack formal training or recognition. This endangers both workers and care recipients.
- Scale of informality/undeclared work: official statistics cite 373,000 registered domestic and care workers in 2022, of whom 95% are women, many from Latin America. However, an estimated 172,000 may be working without contracts, leaving them completely unprotected<sup>2</sup>.

In conclusion, Spain's dual legal framework for care work in the family home sector can institutionalise inequalities. In fact, it can be argued that the feminisation of care work contributes to the precariousness of the care sector in family homes, as well as in other settings such as nursing homes for the elderly or persons with disabilities. Examples include low wages, excessive working hours, and harassment in its various forms. Female (and or migrant) workers, particularly those residing in their employer's home, have suffered sexual violence, often with no legal recourse due to fear of deportation or job loss.

<sup>2</sup> Camas Roda *et al.*, 2024a.

Therefore, structural reform is necessary to close the protection gap between domestic and general care work, unify rights, and implement stronger labour inspections.

With regard to discrimination on the grounds of gender and migration status, a brief distinction should be made. First, regarding gender discrimination in the care sector, one example of which could be the lower level of social protection for certain types of female care workers compared to other sectors, it could be argued that this is yet another manifestation of the feminisation of the care sector. This feminisation would not only lead to more precarious working conditions for female workers, but would also explain certain forms of discrimination (and at the same time, this feminisation would serve as a basis for eliminating such discrimination, for example, in cases of indirect discrimination). Secondly, with regard to discrimination on the grounds of being a migrant, it should be noted that European legislation does not directly recognise being a migrant as a factor of discrimination, but rather, for example, belonging to a particular ethnic group, professing a particular religion, or having a particular nationality. It is worth considering whether discrimination on the grounds of being a migrant should be introduced, because being a migrant means that the person usually belongs to a vulnerable group, for example in employment (this is even recognised by Spanish employment legislation). In any case, discrimination on racial or ethnic grounds would be structural in nature in the care sector, based on stereotypes assigned to female workers by virtue of these identities.

On the one hand, Spain has robust anti-discrimination legislation, implementation remains challenging, partly due to the low number of complaints from workers who experience discrimination, especially migrant women, many of whom are in vulnerable situations<sup>3</sup>. While Spanish law prohibits discrimination, undocumented migrants face significant obstacles in accessing courts or labour inspection services. Many are unaware of their rights or avoid legal channels due to fear of deportation or of being fined. Additionally, a major challenge in enforcing labour standards in family homes is that labour inspectors require a court order to enter private residences, which limits effective enforcement in many cases<sup>4</sup>.

To sum up, discrimination remains a major problem in the care sector. Gender and migrant status intersect to multiply vulnerability. Migrant women (especially undocumented ones) are disproportionately affected by unequal pay, abuse, limited access to rights, and a near absence of legal protection in the domestic care environment. The current legal and institutional framework, while improved in some respects, still fails to guarantee effective equality. Resolving some of the situations involving discriminatory working conditions that occur in the private sector would mean greater capacity for institutions, trade unions, or associations to penetrate the domestic sector through greater dissemination of workers' rights, encouraging those affected to file complaints, and creating the impression that if they do so, their complaints will have an effect. Finally, the Labor Inspectorate should strengthen its information efforts in the domestic sphere, especially since its access to private

<sup>3</sup> Camas Roda *et al.*, 2024b.

<sup>4</sup> Camas Roda *et al.*, 2024c.

homes is limited unless it detects a crime has been committed. Real access to justice regardless of migration status and enforcement of anti-discrimination protections through practical, not just legal, mechanisms.

3. The social security system in Spain aims to offer greater protection to workers in the care sector, seeking to correct the historical inequalities that have affected this group, mostly made up of migrant women. Through these efforts, Sapin intends to move toward a model that is more closely aligned with European standards, combating discrimination, and promoting the dignity of care work.

3.1. A landmark ruling by the Court of Justice of the European Union (CJEU) on 24 February 2022 (case C-389/20) significantly advanced social security protections for domestic workers. This judgment led directly to the enactment of Royal Decree-Law 16/2022, effective 9 September 2022, which granted domestic workers the right to unemployment benefits on equal terms with other employees. To implement this, article 267.1.a) of the General Social Security Law (LGSS) was amended. It now includes as a cause for termination of the contract the case provided for in article 11.2 of Royal Decree 1620/2011, thus incorporating domestic work among the groups entitled to this benefit.

The case challenged Article 251 (d) of the consolidated text of the LGSS on the basis of its violation of the principles of equality and non-discrimination, in particular the prohibition of indirect discrimination on grounds of sex, which would make it incompatible with Article 4.1 of Council Directive 79/7/EEC of 19 December 1978, which guarantees equal treatment between men and women in matters of social security.

In its ruling, the Court affirmed that Directive 79/7/EEC is applicable to unemployment benefits and analysed whether the exclusion provided for in Article 251(d) of the LGSS had a discriminatory effect, even if it was drafted in apparently neutral terms. The Court explained that indirect discrimination exists when a rule that appears to be impartial significantly affects people of a certain sex, as is the case in this case with women, who represent more than 95% of domestic employment, unless the measure is objectively justified.

The Spain argued that the exclusion responded to legitimate social policy reasons, such as promoting employment and preventing fraud. However, the Court considered that these arguments did not justify the inconsistency of the rule, given that other groups in the field of care with similar conditions do have access to unemployment protection. Moreover, it was not established that the measure was necessary or proportionate to achieve the aims pursued. Therefore, the CJEU concluded that this exclusion violated European Union law, as it placed domestic workers at a disadvantage compared to men without an objective justification free of discrimination on grounds of sex.

On the other hand, modifications are being introduced in the regulatory framework relating to the protection of carers regarding safety and health in the work environment. Directive 89/391/EC on the prevention of occupational risks has begun to be applied in Spain and the protection of safety and health in the field of

family home service has begun to be regulated following the enactment of Royal Decree 893/2024, dated 10 September. This change has also been influenced by Convention 189 of the International Labour Organization.

Regarding the specific content of Royal Decree 893/2024 and its relationship with the social security system, its objective and scope of application are aimed at regulating the protection of the health and occupational safety of workers employed in the service of the family home. This regulation deepens the equalisation process initiated by Royal Decree-Law 16/2022, completing the inclusion of this group in the occupational risk prevention regulations and in the coverage system for professional contingencies and disabilities.

Among the most outstanding aspects is the creation of a specific and adapted occupational risk prevention regime, which includes the general principles, duties, and rights of the common regime, but adapts them to the particularities of work in the domestic sphere. This includes the provision of services in private homes, close relationships between employers and employees, as well as the plurality of contexts and employers. Rights such as access to information, training and participation in preventive matters, health surveillance, the use of personal protective equipment and the power to interrupt activity in the event of serious and imminent risk are recognised.

It also regulates the obligation to carry out risk assessments, periodic health surveillance and medical examinations, which will be assumed free of charge by the National Health System once this benefit is enabled. In the same way, specific protection against situations of violence and harassment in domestic work is incorporated, recognising the right of the worker to leave the home without this implying a voluntary resignation or constituting grounds for dismissal.

In the field of health and safety at work, it is relevant to highlight a recent Judgment of the Court of Justice of the European Union (CJEU), dated December 19, 2024, which has had a notable impact on Spanish jurisprudence and labour doctrine. This decision addresses the right of domestic workers to have their working hours recorded on a daily basis, based on Directive 2003/88/EC and Article 31.2 of the Charter of Fundamental Rights of the European Union. The CJEU establishes that Articles 3, 5 and 6 of Directive 2003/88/EC, interpreted in accordance with Article 31.2 of the Charter, preclude any national provision or practice (including its interpretation by the courts) that exempts domestic employers from keeping daily control of working time. According to the Court, this omission prevents an objective verification of the time worked, which entails a violation of fundamental rights such as daily and weekly rest, as well as the limitation of the maximum duration of the working day (CCOO Judgment, C-55/18).

Similarly, efforts are being made to classify as occupational diseases all those arising from the practice of caring, trying to apply in some way article 4 of Organic Law 3/2007, of 22 March, for effective equality between women and men. This precept has been interpreted by the courts on several occasions<sup>5</sup>, such as by the Constitutional Court, in its judgment 44/2023, of 9 May. Although it is worth paying attention to Supreme Court Judgment 747/2022, of September 20, 2022, which

<sup>5</sup> For further information on this case law see Martínez Morendo *et al.*, 2023.

resolves an appeal for the unification of doctrine filed by a worker in the cleaning sector, who had been diagnosed with a tear of the rotator cuff in her left shoulder, derived from stress tendinitis. The disputed issue consisted of determining whether this pathology should be considered an occupational disease, despite the fact that the profession of cleaner does not expressly appear in the table of diseases of Royal Decree 1299/2006. The High Court concludes that the list of said tables is illustrative, not exhaustive, and recognises the legal presumption of occupational disease when the required material elements are present, that is, exposure to agents or working conditions that may cause the disease.

Consequently, the Court upheld the appeal and declared that the ailment suffered was in the nature of an occupational disease, establishing doctrine in favour of an extensive and finalist interpretation of Royal Decree 1299/2006. In addition, it incorporates a gender perspective by considering that the cleaning sector is highly feminised, and that ignoring this reality can generate indirect discrimination based on sex. The ruling thus reinforces the social protection of vulnerable groups and establishes that those ailments derived from activities similar to those included in the legal framework must be recognised as occupational diseases, provided that there is an accredited causal relationship.

3.2. In addition to the inclusion of domestic work among the cases that generate the right to unemployment benefit and the recent advancements in occupational health and safety, Law 3/2024, of 30 October, represents a further step in the recognition of care work. This law, aimed at improving the quality of life of people affected by Amyotrophic Lateral Sclerosis (ALS) and other complex, irreversible, and rapidly progressing conditions, recognises the special vulnerability of those who suffer from these pathologies and, among its many measures, places special emphasis on caregivers, valuing their fundamental role in the daily care of people with a high degree of dependency.

The Second Additional Provision introduces specific protection for those caring for individuals with Grade III dependency<sup>6</sup>. In cases where these people have had to cease their work activity, either as a self-employed person or as an employee, to dedicate themselves to the care of someone in that situation, they may keep the contribution base corresponding to their last period of work. The additional cost associated with maintaining this contribution base will be shared equally: 50% will be borne by the caregiver, and 50% covered by the Institute for the Elderly and Social Services (IMSERSO).

The Third Additional Provision recognises carers who have left the labour market as a priority group for active labour market policies. This provision aligns with Article 50 of Law 3/2023, of 28 February, concerning employment, and it seeks to facilitate these individuals' reintegration into the labour market.

The Fourth Additional Provision entrusts the Government with designing and implementing, within one year from the law's entry into force, a set of measures to strengthen support for caregivers. These measures include the adaptation of home help and personal assistance services to the particularities of the beneficiaries of this

<sup>6</sup> Camas Roda, 2024.

law, the inclusion of specialised training for professional carers who care for patients with diseases such as ALS, and the development of an integrated social and health care model that ensures public supervision and specialised assistance 24 hours a day, especially in the more advanced stages of these ailments.

Moreover, Law 3/2024 introduces significant changes to Article 193 of the General Social Security Law. Among the most important modifications is the possibility of granting contributory permanent disability status even without prior treatment, provided that the condition's severity and irreversibility justify such recognition. Additionally, it removes the requirement that disability must derive from a previous temporary incapacity in certain cases, updates the legal terminology to use the term «workers» instead of «worker», and enhances protections for individuals whose disability worsens after entering the system.

Finally, attention should be given to the potential implications of recent Spanish pension reforms for caregivers. Specifically, Royal Decree 402/2025, of 27 May, establishes a specific regulatory procedure for applying reduction coefficients in the retirement age for professional activities considered «exceptionally painful, toxic, dangerous or unhealthy» where morbidity or mortality rates are high and cannot be mitigated through workplace improvements. Under this new framework, eligibility must be supported by objective indicators (e.g. rates of sick leave, permanent disability, or death) confirming that the activity meets these criteria. It also sets a minimum early retirement age of 52 and introduces an additional contribution to fund the resulting pension benefits.

Although caregivers are not explicitly mentioned, those who carry out professional care work in homes or care centres could potentially fall under this category, provided their work is found to involve significant physical or mental strain, health risks, or high morbidity or mortality rates, and such conditions are duly documented. In such a case, these people could benefit from a reduction in the retirement age, although not below 52 years of age, provided that they meet the technical and procedural requirements (registration with Social Security, minimum contribution time, ecc.). «It should be clear that it is not a question of establishing activities or professions that give rise to the application of coefficients, but of regulating the procedure for determining them»<sup>7</sup>. However, access to these coefficients will require joint processing by trade unions, business organisations or representative associations, and the approval of the care group as a «particularly arduous activity» through the regulated procedure.

If the group of caregivers manages to prove that their work meets the objective criteria of hardship and impact on health, Royal Decree 402/2025 opens the door to early retirement with the corresponding contributory reinforcement, reinforcing their social protection.

4. This paper shows that, in the field of care, there exists a diversity of labour realities, accompanied by a corresponding diversity in the regulatory frameworks that govern them. On the one hand, fall into different categories, depending on

<sup>7</sup> Sánchez Trigueros, 2025.

whether they are employed in residential care facilities for the elderly or in private households: context, which leads to different legal regimes. Moreover, within the domestic service sector, there are variations in labour regulations and degrees of protection, depending on whether the general or special regime applies (i.e., the general application of the Workers' Statute *versus* a specific regulatory framework). This fragmentation can be detrimental to workers, especially when they perform essentially the same tasks. One could argue in favour of the unification of the legal status of care workers, but the current trend in Spain is to introduce sector-specific regulations to improve working conditions in certain groups, particularly in domestic service. In any case, the adoption of regulations promoting early retirement in certain demanding professions (among which care work should be included), is a positive step, since it would imply the application of specific regulations (early retirement) for all care work carried out.

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