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CONSTITUTIONAL ACT 3/2007 OF 22 MARCH FOR EFFECTIVE EQUALITY BETWEEN WOMEN AND MEN.

(«BOE» no. 71, 23 march 2007)

PREAMBLE

I

Article 14 of the Spanish Constitution proclaims the right to equality and non-discrimination on the grounds of sex. Article 9.2, in turn, ratifies public authorities' obligation to further conditions that will ensure that individuals, and the groups of which they form a part, enjoy real and effective equality.

Equality between women and men is a universal legal principle acknowledged in a number of international texts on human rights, most prominently the Convention on the Elimination of all Forms of Discrimination against Women adopted by the United Nations General Assembly in December in 1979 and ratified by Spain in 1983. In this vein, significant advancements have been introduced by monographic world conferences, such as Nairobi 1985 and Beijing 1995.

Equality is likewise a fundamental principle in the European Union. Since the entry into force of the Treaty of Amsterdam on 1 May 1999, equality between women and men and the elimination of the inequalities between them constitute an objective that must be integrated into all the policies and actions undertaken by the Union and its members.

Under the provisions of former Article 111 of the Treaty of Rome, the Community has developed an *acquis* on equality between the sexes of great depth, whose rightful transposition is largely the aim of the present Act. In particular, this Act introduces into

the Spanish body of law two Directives on equal treatment, namely 2002/73/EC amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; and Directive 2004/113/EC implementing the principle of equality of treatment between men and women in the access to and supply of goods and services.

II

Full recognition of formal equality before the law, while indisputably constituting a decisive step, has proved to be insufficient. Gender violence, wage discrimination, discrimination in widow's pensions, higher female unemployment, the still scant presence of women in positions of political, social, cultural and economic responsibility, or the problems of reconciling personal, working and family life stand as evidence that the attainment of full, effective equality between women and men, that «perfect equality, admitting no power or privilege on the one side, nor disability on the other» to quote words written by John Stuart Mill nearly 140 years ago, is even today an unfinished task, whose completion calls for further legal instruments.

More specifically, a need is identified for legislative action geared to combating all subsisting direct or indirect expressions of discrimination on the grounds of sex and to furthering true equality between women and men by removing the obstacles and social stereotypes that hinder its attainment. Consequent to our body of constitutional law, this demand embodies a genuine right to which women are entitled, but at the same time it is an element that will enrich Spanish society itself by contributing to economic development and a rise in employment levels.

Moreover, special consideration is afforded in the Act to concerns around double discrimination and the specific difficulties encountered by women in particularly vulnerable situations: members of minorities or immigrant groups and women with disabilities.

III

The primary novelty of this Act lies, in any event, in the prevention of discriminatory behaviour and the provisions for active

policies to translate the principle of equality into effective practice. Such an option necessarily involves an extension of the principle of equality to the areas of the legal system regulating social, cultural and artistic reality, where inequality may be generated or perpetuated. Consequently, the cross-sectional dimension of equality, a conceit that distinguishes modern anti-discriminatory law, is the fundamental principle of the present text.

The Act refers to public policy in Spain in general, at the central, regional and local levels. And it does so under the constitutional principle that attributes to the central government competence to regulate the basic conditions that guarantee the equality of all Spaniards in the exercise of their constitutional rights, although it contains more detailed regulation in domains where the central government has basic or full legislative competence.

The structure of the Act, in turn, reflects the complexity deriving from the cross-sectional scope of the principle of equality. Its articles address the general extension of the principle to the various spheres of legislation and its additional provisions itemize the respective amendments of the many different laws that are impacted. From the outset, then, the Act aspires to be a code of law for equality between women and men.

The general charting of public policy from the vantage of the principle of equality and the gender perspective entails the establishment of criteria for action to be followed by all public authorities, in which that principle is actively and explicitly integrated; and in which specific or sectoral guidelines are included to favour equality in policies affecting education, health, the arts and culture, the information society, rural or housing development, sport, culture, land management and international development cooperation.

In this regard, the Central Government will deploy a series of basic instruments, namely a Strategic Plan for Equal Opportunities, an Inter-ministerial Equality Committee responsible for coordination, the extension of the requirement to formulate gender impact reports, presently in place for legal regulations, to also cover plans of special economic and social relevance, and periodic reports or assessments on the effectiveness of the principle of equality.

Attention should also be drawn to the fact that in order to attain such real and effective equality between women and men, the Act provides for a general framework for the adoption of so-called positive action. In this regard it mandates all public authorities to reverse verifiable *de facto* situations of inequality that cannot be remedied by the mere formulation of the principle of legal or formal equality. And where such action may involve the formulation of an unequal right in women's favour, precautionary and conditioning requisites are established to ensure its constitutional legitimacy.

The attainment of real and effective equality in our society calls not only for a commitment on the part of public officials, but also of the determined furtherance of the principle in the sphere of private relationships. The regulation of access to goods and services is another area addressed by the Act, wedding the principle of contractual freedom and autonomy to the advancement of equality between women and men. The establishment of certain measures to promote effective equality in private companies has likewise been deemed advisable, relating for instance to government contracting or subsidies or board of directors membership.

The Act lends special attention to the correction of inequalities in the specific domain of labour relations. Via a series of provisions it recognizes the right to reconcile personal, family and working life and fosters greater co-responsibility among women and men in the assumption of family obligations, criteria which inspire all the legislation on the subject and that find their most significant embodiment hereunder.

The Act aims to further the adoption of specific measures in favour of equality in private enterprise, which are placed in the framework of collective bargaining to enable the social partners to freely and responsibly establish the content of such arrangements.

Likewise within the domain of employment, but with singular characteristics, the Act lays down specific measures for personnel selection and the filling of positions within the Central Government itself. And these equality measures are extended to law enforcement agencies and the armed forces.

The concern over the scope of effective equality in our society could not overlook political participation at the central, regional

and local levels, or its extension to international development cooperation policy. What the Act calls the principle of balanced presence or membership, which attempts to ensure a sufficiently significant representation of the two sexes in positions and on bodies of responsibility, is therefore carried over to general electoral legislation. Here the formula adopted opts for the flexibility needed to reconcile the exigencies stemming from Articles 9.2 and 14 of the Constitution with the right to passive suffrage provided for in its Article 23. Recent international texts on the subject are thereby assimilated and progress is made to guarantee a balanced presence of women and men in political representation, seeking primarily to improve the quality of such representation and with it the quality of our democracy itself.

IV

The Act consists in one preliminary and eight subsequent Titles, twenty-seven additional provisions, nine transitional provisions, one derogatory provision and six final provisions.

The Preliminary Title establishes the purpose and scope of application of the Act.

The First Title, in keeping with the indications of the Directives that serve as a reference, defines the basic legal concepts and categories relating to equality, direct and indirect discrimination, sexual harassment, harassment on the grounds of sex and positive action. It also determines the legal consequences of discriminatory behaviour and includes procedural guarantees to reinforce the judicial protection of the right to equality.

In the Second Title, Chapter One establishes the general guidelines for public authority action in connection with equality and defines the cross-sectional principle and the instruments for integrating this approach in the formulation, implementation and enforcement of legislation. The principle of women's and men's balanced presence in lists of candidates to public office and public appointments is likewise ratified, and the concomitant amendments in the Additional Provisions to the Electoral Act are laid down. This chapter also regulates the gender impact reports and public planning of actions to enhance equality, which at the Central Government level will adopt the form of a Strategic Plan for Equal Opportunities.

Chapter II of this Title establishes public policy guidelines for education, culture and health. It also addresses the furtherance of women's participation in the information society and the inclusion of effective equality measures in both housing and rural development policies

Title III contains measures to further equality in the mass media with specific rules for State-owned media, as well as instruments to enforce these measures in the context of advertising with a discriminatory content.

Title IV is concerned with the right to equal work opportunities, with measures to guarantee equality between women and men in access to employment, vocational training and promotion, as well as working conditions. It also expands workers' rights to include protection against sexual harassment and harassment on the grounds of sex.

In addition to employers' general duty to honour the principle of equality at the workplace, this Title specifically addresses the duty to negotiate equality plans in companies with over two hundred fifty workers. In light of the relevance of such equality plans, provision has also been made for the furtherance of their voluntary implementation in small and medium-sized enterprises.

One of the objectives defined to favour women's employability is the improvement of their access to and ongoing presence on the labour market by fortifying their training and adaptability to labour market requirements via their possible recognition as a priority community for the intents and purposes of active employment policies. The Act likewise contains a series of specific social and labour measures that are regulated in its additional provisions.

The most innovative measure to favour the reconciliation of personal, family and working life is the establishment of a thirteen-day paternity leave, which may be extended in the event of multiple births for a further two days per additional child. This is an individual right exclusive to the father, recognized for biological, adoptive or foster paternity. Improvements are also introduced in the present maternity leave arrangements, with a two-week extension in the event of children with disabilities that may be taken indistinctly by either of the parents.

These same improvements are introduced for self-employed and other special Social Security regime workers.

With respect to the reduction in working hours for legal guardianship, on the one hand the maximum age of the minor involved is raised from six to eight, and on the other, the minimum amount of such reduction is lowered to one eighth of the working day. In addition, the minimum duration of the voluntary leave of absence to care for family members is shortened to four months, and the maximum duration is expanded from one to two years. The Act provides for the possibility of dividing leaves of absence into shorter intervals to care for children or other family members.

Furthermore, infringements, penalties and enforcement mechanisms are adapted for instances of non-compliance with provisions on non-discrimination and the role of the Labour and Social Security Inspection Service is reinforced. A wholly novel measure in this regard is the ability to commute accessory penalties for the establishment of Equality Plans.

The amendments to labour law include the introduction of certain new provisions in the area of Social Security, addressed in the Additional Provisions to the Act. Particularly prominent is the establishment of more flexible eligibility requirements for maternity benefits, the recognition of a new subsidy for workers not able to substantiate eligibility and the creation of a financial benefit for paternity.

Title V, Chapter I, regulates the principle of equality in government employment, establishing the general criteria for action in favour of equality for all levels of government. Chapter II in turn addresses the balanced presence of women and men in appointments to Central Government management bodies, which is equally applicable to personnel selection and evaluation bodies and appointment to professional bodies, committees and boards of directors of companies in which the State holds an interest. Chapter III of this Title is devoted to the equality measures in Central Government employment, which are analogous to the provisions laid down for private sector labour relations, and include a specific stipulation mandating the adoption of a protocol for action against sexual harassment and harassment on the grounds of sex.

Chapters IV and V specifically regulate the respect for the principle of equality in the Armed Forces and the national Law Enforcement Bodies.

Title VI of the Act is devoted to equal treatment in the access to goods and services, with special reference to insurance.

Title VII addresses voluntary corporate social responsibility actions in the area of equality, which may also be concerted with workers' representatives, consumer associations, organizations for the defence of equality and equality bodies. Specific regulations are also laid down on the use of such action in advertising.

In the framework of corporate social responsibility this Title includes the furtherance of the balanced presence of women and men in mercantile companies' boards of directors, with provision for a reasonable period of time to attain this goal. The purpose of this measure is to ensure that the prevailing criterion in the appointment of board members is talent and professional performance, for the process can only be impartial if sex is not an obstacle in such nominations.

Title VIII of the Act lays down a series of organizational provisions, creating an Inter-ministerial Committee for Equality between Women and Men as well as Equality Units in each ministry. In addition, the Act constitutes a Women's Participation Council as a professional body that will serve as a channel for institutional participation in such matters.

As noted above, the additional provisions address the various amendments needed to adapt the content of existing legislation to the requirements and provisions deriving from the present Act. In addition to these amendments to the body of law, they: include specific regulations to define the principle of balanced membership or presence; create an information society fund; lay down new cause for nullification of certain types of dismissals; and designate the Women's Institute for the intents and purposes set out in the Directives transposed.

The transitional provisions establish the arrangements temporarily applicable to certain aspects of the Act, relating for instance to appointments and procedures, measures for the prevention of harassment in Central Government employment, the corporate equality mark, mortality and survival tables, new maternity

and paternity rights, balance in lists of candidates to public office and the negotiation of new collective bargaining agreements.

The final provisions refer to the nature of the Act, the constitutional grounds on which it is based and its relationship to Community body of law; they define authorization for the development of the respective regulations, establish the dates of entry into effect and mandate the evaluation of the results of collective bargaining in respect of equality.

PRELIMINARY TITLE

Purpose and scope

Article 1. *Purpose of the Act.*

1. Women and men are equal in human dignity, equal in rights and duties. The purpose of this Act is to ensure equal treatment and opportunities for women and men, in particular via the elimination of discrimination against women of whatsoever circumstances or background and in all areas of life, specifically in the political, civil, occupational, economic, social and cultural domains, so as to build a more democratic, fair and solidary society, pursuant to Articles 9.2 and 14 of the Constitution.
2. To this end, the Act establishes the principles governing the action of public authorities, regulates natural and corporate persons' public and private rights and duties and lays down measures designed to eliminate and correct all forms of discrimination on the grounds of sex in the public and private sectors.

Art. 2. *Scope.*

1. All persons possess the rights deriving from the principle of equal treatment and the prohibition of discrimination on the grounds of sex.
2. The obligations laid down in this Act will be applied to all natural and corporate persons present or acting on Spanish soil, regardless of their nationality, registered address or residence.

TITLE I

The principle of equality and protection against discrimination

Art. 3 *The principle of equal treatment for women and men.*

The principle of equal treatment for women and men means the absence of all direct or indirect discrimination on the grounds of sex, in particular as regards maternity, the assumption of family obligations or marital status.

Art. 4. *Integration of the principle of equality in the interpretation and enforcement of laws.*

Equal treatment and opportunities for women and men is a principle that informs the body of law and, as such, will be integrated and observed in the interpretation and enforcement of legislation.

Art. 5. *Equal treatment and opportunities in the access to employment, vocational training and promotion, and working conditions.*

The principle of equal treatment and opportunities for women and men, applicable in the domain of private and public employment, will be guaranteed as provided in the applicable legislation in: access to employment, including self-employment, vocational training, and promotion; working conditions including remuneration and dismissal; and affiliation with and participation in trade union and employers' organizations or any association whose members practise a specific profession, including the benefits granted thereby.

Difference of treatment based on a sex-related characteristic will not constitute discrimination in access to employment, including the necessary training, where, in light of the nature of the particular tasks concerned or the context in which they are performed, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Art. 6. *Direct and indirect discrimination.*

1. Direct discrimination is regarded to be a situation where one person is treated less favourably on the grounds of sex

than another is, has been or would be treated in a comparable situation.

2. Indirect discrimination is regarded to be a situation where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.
3. In whatsoever event, instructions to directly or indirectly discriminate on the grounds of sex will be regarded to be discriminatory.

Art. 7. *Sexual harassment and harassment on the grounds of sex.*

1. Without prejudice to the provisions of the Penal Code, for the intents and purposes of this Act sexual harassment is any form of verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, degrading, or offensive environment.
2. Harassment on the grounds of sex is any behaviour prompted by a person's sex with the purpose or effect of violating his or her dignity, creating an intimidating, degrading or offensive environment.
3. Sexual harassment and harassment on the grounds of sex will be considered to constitute discrimination under any and all circumstances.
4. The conditioning of a right or expectation of a right to the acceptance of a situation constituting sexual harassment or harassment on the grounds of sex will likewise be regarded to be discrimination on the grounds of sex.

Art. 8. *Discrimination on the grounds of pregnancy or maternity.*

Any less favourable treatment of women relating to pregnancy or maternity constitutes direct discrimination on the grounds of sex.

Art. 9. *Indemnity to reprisal.*

Discrimination on the grounds of sex is also regarded to exist in the event of any adverse treatment of or negative effect suffered by persons owing to the lodging of a complaint, claim, accusation, suit or appeal of any nature intended to prevent their discrimination or demand effective compliance with the principle of equal treatment for women and men.

Art. 10. *Legal consequences of discriminatory conduct.*

Any act or clause in legal transactions constituting or causing discrimination on the grounds of sex will be considered to be null and void and will give rise to liability both through a system of redress or indemnity that will be real, effective and proportional to the injury suffered and, as appropriate, through an effective system of deterrents consisting in penalties to prevent discriminatory conduct.

Art. 11. *Positive action.*

1. In order to ensure the effectiveness of the constitutional right to equality, public authorities will adopt specific measures favouring women to correct situations of obvious *de facto* inequality with respect to men. Such measures, which will be applicable while the situation subsists, must be reasonable and proportional to the objective pursued in each case.
2. Private natural and corporate persons may also adopt such measures under the terms provided in the present Act.

Art. 12. *Effective judicial protection.*

1. Any person may call upon the court to protect the right to equality between women and men, pursuant to the terms of Article 53.2 of the Constitution, even after termination of the relationship in which discrimination allegedly took place.
2. The capacity and legitimacy to participate in civil, social and contentious-administrative proceedings relating to the defence of such right is incumbent upon natural and corporate persons having a legitimate interest therein as determined under the laws governing such proceedings.

3. Only the person subject to sexual harassment or harassment on the grounds of sex will be legally capacitated to institute the respective legal action.

Art. 13. *Burden of proof.*

1. Pursuant to procedural law, in proceedings in which the plaintiff alleges discriminatory conduct on the grounds of sex, it will be incumbent upon the defendant to prove the absence of discrimination in the measures adopted and their proportionality.

For the intents and purposes of the provisions of the preceding paragraph, where deemed useful or relevant, judicial bodies may request a report or opinion from the competent public bodies, *ex parte*.

2. The provisions of the preceding item will not be applicable to penal proceedings.

TITLE II

Public equality policies

CHAPTER I

GENERAL PRINCIPLES

Art. 14. *General criteria governing public authority action.*

For the intents and purposes of this Act, the general criteria governing public authority action will be:

1. Commitment to the effectiveness of constitutional law on equality between women and men.
2. Integration of the principle of equal treatment and opportunities in economic, labour, social, cultural and artistic policy as a whole to prevent occupational segregation and eliminate differences in remuneration, as well as to fuel female entrepreneurial growth in all the domains covered by such policies as a whole, and reevaluate women's work, including housework.
3. Partnering and cooperation among the central, regional and local governments and the application of the principle of equal treatment and opportunities.

4. Balanced participation of women and men in lists of candidates to public office and decision-making.
5. Adoption of the necessary measures to eradicate gender violence, family violence and all forms of sexual harassment and harassment on the grounds of sex.
6. Consideration of the specific difficulties encountered by women who are members of particularly vulnerable communities, such as women members of minorities or immigrant groups, girls, women with disabilities and elderly women, widows and victims of gender violence, for whom the public authorities may also adopt positive action measures.
7. Protection of maternity, focusing particularly on society's assumption of the effects of pregnancy, childbirth and breastfeeding.
8. Establishment of measures that ensure the reconciliation of women's and men's working and personal and family lives and furtherance of co-responsibility for housework and family care.
9. Furtherance of instruments for cooperation among the central, regional and local governments and the social partners, women's associations and other private institutions.
10. Furtherance of the effectiveness of the principle of equality between women and men in interpersonal relationships.
11. Implementation of non-sexist language in government and furtherance thereof in all social, cultural and artistic relationships.
12. All the points enumerated in this article will likewise be fostered and integrated in Spanish international development policy.

Art. 15. *The cross-sectional approach to the principle of equal treatment for women and men.*

The principle of equal treatment and opportunities for women and men will cross-sectionally inform the action taken by all public authorities. The central, regional and local governments will actively mainstream the principle in the adoption and implementation of their legislative provisions, definition and budgeting in

all areas of public policy and performance of all their activities as a whole.

Art. 16. *Appointments made by public authorities.*

Public authorities will attempt to abide by the principle of balanced presence of women and men in their appointments and designations for positions of responsibility.

Art. 17. *Strategic Plan for Equal Opportunities.*

From time to time, the Central Government will approve a Strategic Plan for Equal Opportunities covering all its areas of competence, which will include measures to attain the objective of equality between women and men and eliminate discrimination on the grounds of sex.

Art. 18. *Periodic reporting.*

Pursuant to the respective regulations, the Central Government will draft a periodic report on all the actions taken to further the effectiveness of the principle of equality between women and men. This report will be submitted to national Parliament.

Art. 19. *Gender impact reports.*

Bills of a general nature and plans with particular economic, social, cultural and artistic relevance submitted to the Council of Ministers for approval must include a report on their gender impact.

Art. 20. *Optimization of statistics and studies.*

When formulating their studies and statistics in their endeavour to ensure the effectiveness of the provisions of the present Act and of the integration of the gender perspective in their ordinary activities, public authorities will:

- a) Systematically include the sex variable in any statistics, surveys or data gathering in which they engage.
- b) Establish and include new statistical indicators that provide for a fuller understanding of the differences in values, roles, situations, conditions, aspirations and needs of women and men, and their expression and interaction in the reality analyzed.

- c) Design and introduce the indicators and mechanisms required to ascertain the effect of other variables whose concurrence generates multiple discrimination in the different domains where action is taken.
- d) Take sufficiently large samples for the variables studied to be exploited and analyzed in terms of the sex variable.
- e) Mine the data available to acquire an understanding of the different situations, conditions, aspirations and needs of women and men in the various areas where action is taken.
- f) Review and as necessary revise existing statistical definitions to contribute to the recognition and revaluation of women's work and avoid the adverse stereotyping of certain communities of women.

Failure to comply with any of the above obligations may be justified, only exceptionally, via a reasoned report to the competent body.

Art. 21. *Cooperation among the central, regional and local governments.*

1. The central and regional governments will cooperate to integrate the right to equality between women and men in the exercise of their respective areas of competence, with regard to planning in particular. Joint plans and programmes may be adopted to this end within the Women's Sectoral Conference.
2. Local governments will integrate the right to equality in their areas of competence and cooperate with other levels of government to this end.

Art. 22. *Actions relating to equitable planning of time.*

Local governments may establish Municipal Plans for organizing time in the city to advance toward an equitable distribution of time between women and men. Without prejudice to regional competence, the Central Government may lend technical assistance in the formulation of such plans.

CHAPTER II

GOVERNMENT ACTION FOR EQUALITY

Art. 23. *Education for equality between women and men.*

The education system will include among its aims the teaching of respect for fundamental rights and freedoms and equal rights and opportunities for women and men.

The principles defining education system quality will include the elimination of obstacles that thwart the effective equality between women and men and the furtherance of full equality between the two sexes.

Art. 24. *Integration of the principle of equality in education policy.*

1. The education authorities will guarantee equal rights to education for women and men through the active integration, in educational objectives and practice, of the principle of equal treatment, preventing the generation of inequalities between women and men due to sexist behaviour or its associated social stereotypes.
2. To this end and in the scope of their respective competence, education authorities will take measures to:
 - a) Lend special attention in syllabi and in all stages of education to the principle of equality between women and men.
 - b) Eliminate and reject behaviour with a sexist content and stereotypes that entail discrimination between women and men, particularly in text books and other teaching materials.
 - c) Include the study and application of the principle of equality in courses and programmes for initial and life-long teacher training.
 - d) Further the balanced presence of women and men in school management and supervisory bodies.
 - e) Cooperate with all other educational authorities to implement projects and programmes geared to fostering an understanding and the dissemination of the principles of

coeducation and effective equality between women and men throughout the education community.

- f) Establish educational measures designed to acknowledge and teach women's role in history.

Art. 25. *Equality in higher education.*

1. In the domain of higher education, the central, regional and local governments, in the exercise of their respective areas of competence, will further teaching and research on the significance and scope of equality between women and men.
2. To that end, the central, regional and local governments will foster, in particular:
 - a) Inclusion in the curricula where applicable of education on equality between women and men.
 - b) Creation of specific post-graduate studies.
 - c) Conducting of specialized surveys and research in the field.

Art. 26. *Equality in artistic and intellectual creation and production.*

1. The public authorities, in the scope of their areas of competence, will endeavour to secure the effectiveness of the principle of equal treatment and opportunities for women and men in everything that concerns artistic and intellectual creation and production and dissemination thereof.
2. The various public bodies, agencies, entities and other structures directly or indirectly involved in cultural management will:
 - a) Adopt initiatives designed to specifically promote women in cultural expression and combat any structural and/or subtle discrimination.
 - b) Implement active policies to aid female artistic and intellectual creation and production, in the form of financial incentives, to generate the conditions required to ensure effective equal opportunities.

- c) Further the balanced presence of women and men in government-sponsored artistic and cultural offerings.
- d) Secure respect for and guarantee balanced representation on the different advisory, scientific and decision-making bodies on the artistic and cultural organizational chart.
- e) Adopt positive action measures for women's artistic and intellectual creation and production, encouraging cultural, intellectual and artistic exchange both nationally and internationally, and concluding agreements with the competent bodies.
- f) And in general, pursuant to Article 11 of this Act, undertake all the necessary positive action to correct situations of inequality in women's intellectual, artistic and cultural production and creation.

Art. 27. *Integration of the principle of equality in health policy.*

1. In their formulation, development and assessment, health policies, strategies and programmes will integrate women's and men's differing needs and the measures required to suitably meet them.
2. The central, regional and local governments will guarantee equal rights to health for women and men through the active integration, in health policy objectives and practice, of the principle of equal treatment, preventing the generation of inequalities between women and men due to biological differences or the associated social stereotypes.
3. The central, regional and local governments, through their health services and respective competent bodies and in accordance with the principle of equal opportunities, will:
 - a) Systematically adopt initiatives designed to favour the specific promotion of women's health and prevent their discrimination within their health education programmes.
 - b) Further scientific research on the differences between women and men in connection with protection of their health, particularly as refers to accessibility and diagnos-

tic and therapeutic endeavour in terms of both clinical tests and care.

- c) Include sexual harassment and harassment on the grounds of sex in their schemes for the protection, furtherance and improvement of occupational health.
- d) Integrate the principle of equality in training for staff rendering their services in health institutions, especially to ensure their ability to detect and handle gender violence situations.
- e) Ensure the balanced presence of women and men in management and positions of professional responsibility in the National Health System as a whole.
- f) Gather and process data in records, surveys, statistics and other systems of medical and health information, disaggregated by sex wherever possible.

Art. 28. *Information society.*

1. The design and implementation of all public programmes for development of the information society will include the principle of effective equal opportunities for women and men.
2. The Government will further women's full mainstreaming in the information society with specific programmes, particularly regarding access to and training in information and communications technologies, taking account of the needs of women members of communities at risk of exclusion and women living in rural settings.
3. The Government will further information society content created by women.
4. Provision will be made to ensure the absence of any sexist language or content in information and communication technologies projects wholly or partially financed with public funds.

Art. 29. *Sport.*

1. The design and implementation of all public sports programmes will include the principle of the real and effective equality between women and men.

2. The Government will further female sport and favour the effective access by women to athletic disciplines by implementing specific programmes for all ages and levels, including responsibility and decision-making.

Art. 30. *Rural development.*

1. The Ministry of Agriculture, Fisheries and Food and the Ministry of Labour and Social Affairs will develop a legal device known as shared ownership to ensure effective equality between women and men in agriculture, affording women the full exercise of their rights in that sector, and concomitantly, Social Security coverage and recognition for their work.
2. Endeavours geared to developing rural areas will include measures designed to enhance women's educational level and training and in particular their employability and inclusion in companies' and associations' management bodies.
3. The central, regional and local governments will promote new occupational activities that facilitate rural women's employment.
4. The central, regional and local governments will further the development of a network of social services to care for minors, seniors and other dependents to enable men and women in rural areas to reconcile working, family and personal life.
5. The public authorities will foster equal opportunities in the access to information and communication technologies via policies and activities geared to rural women and the implementation of alternative technological solutions in areas where coverage by such technologies is not feasible.

Art. 31. *Urban policy, land management and housing.*

1. Central, regional and local governments' policies and plans respecting access to housing will include measures designed to ensure the effectiveness of the principle of equality between women and men.

Similarly, urban and land management policies will take account of the needs of the different social groups and varying family structures, favouring equal access to all urban services and infrastructure.

2. The Government, within its areas of competence, will further access to housing for women in need or at risk of exclusion, and victims of gender violence, particularly when in either case they have minor children under their exclusive care.
3. The central, regional and local governments will take account of the gender perspective in urban design and policy and in the definition and implementation of town planning, using mechanisms and instruments that further and favour civil participation and transparency.

Art. 32. *Spanish development cooperation policy*

1. All the sectoral and geographic policies, plans, documents on strategic planning and operational programming tools involved in Spanish development cooperation will include the principle of equality between women and men as a primary element in their agenda of priorities. And this principle will acquire cross-sectional and specific priority status in the content of such policies, plans and documents, which will include specific measures for the follow-up and evaluation of achievements in the area of effective equality in Spanish development cooperation.
2. In addition, a Sectoral Strategy for Equality between Women and Men will be formulated for Spanish cooperation, which will be updated from time to time on the grounds of achievements and lessons learnt in prior processes.
3. The Spanish Government will propose a gradual medium term process of effective integration of the gender equality in development (GED) principle at all levels of activity. The aim will be to make the application of the Sectoral Strategy for Equality between Women and Men possible and effective via specific action to vest Spanish cooperation with a cross-sectional approach and positive action measures to favour significant change in the implementation of the principle of equality, both within Government and in the mandate on Spanish cooperation itself.

Art. 33. *Government contracts*

Within their respective areas of competence and in connection with the contracts concluded, the central, regional and local governments may, through their contracting bodies, establish special conditions to further labour market equality between

women and men in accordance with the provisions of the legislation on government contracts.

Art. 34. *Central Government contracts.*

1. Every year, the Council of Ministers, on the grounds of the evolution and impact of equality policies on the labour market, will determine which of the contracts to be concluded by the Central Government and its public bodies will be required to include in their terms and conditions measures tending to further effective equality between women and men on the labour market, pursuant to the provisions of the legislation on government contracts.

The decision referred to in the preceding paragraph may, as appropriate, establish the characteristics of the conditions that must be included in the respective specifications, account taken of the nature of the contracts and the industry involved.

2. In the specific administrative clauses, the contracting bodies may provide for preference in the award of contracts for quotations submitted by companies that substantiate, along with their technical or professional solvency, that they follow the guidelines set out in the preceding item, provided that such quotations must match the most advantageous offers from the standpoint of the objectives on which award is based. Preference will likewise be subject in any event to respect for the order of priority laid down in additional provision eight, item one of the Consolidated Text of the Act on Government Contracts, enacted under Royal Legislative Decree 2/2000 of 16 June.

Art. 35. *Government subsidies.*

In the strategic subsidy plans adopted in the exercise of their areas of competence and on the grounds of the existence of a situation of unequal opportunities for women and men, the central, regional and local governments will determine the areas in which the regulations governing the respective subsidies may include provisions crediting applicants for actions tending to attain effective equality.

For these intents and purposes, the actions liable to be credited include measures for reconciling personal, working and family life, corporate social responsibility or the award of the corporate equality mark regulated in Title IV, Chapter IV of the present Act.

TITLE III

Equality and the media

Art. 36. *Equality in State-owned media.*

State-owned media will take care to portray an egalitarian, plural and non-stereotyped image of women and men in society, and will further the understanding of and propagate the principle of equality between women and men.

Art. 37. *Corporación RTVE.*

1. Corporación RTVE, in the exercise of its public service duties, will pursue the following objectives in its programme planning:
 - a) To suitably reflect women's presence in the various areas of social life.
 - b) To use non-sexist language.
 - c) To adopt self-regulated codes of conduct tending to convey the principle of equality.
 - d) To cooperate in institutional campaigns geared to fostering equality between women and men and eradicating gender violence.
2. Corporación RTVE will further women's promotion to positions of management and professional responsibility. Moreover, it will encourage relations with women's associations and groups to identify their communication needs and interests.

Art. 38. *Agencia EFE.*

1. In the exercise of its activities, Agencia EFE will take care to honour the principle of equality between women and men and in particular to employ non-sexist language and will pursue the following objectives:
 - a) To suitably reflect women's presence in the various areas of social life.
 - b) To use non-sexist language.
 - c) To adopt self-regulated codes of conduct tending to convey the principle of equality.

- d) To cooperate in institutional campaigns geared to fostering equality between women and men and eradicating gender violence.
2. Agencia EFE will further women's promotion to positions of management and professional responsibility. Moreover, it will encourage relations with women's associations and groups to identify their communication needs and interests.

Art. 39. *Equality in privately owned media.*

1. All communications media will respect equality between women and men and avoid any manner of discrimination.
2. The central, regional and local governments will further the adoption of self-regulated agreements by the media to contribute to compliance with the legislation on equality between women and men by the media themselves as well as by their advertisers.

Art. 40. *Audiovisual authority.*

The authorities entrusted with the enforcement of audiovisual media obligations will adopt whatever measures are in order, pursuant to their mandates, to ensure women are portrayed in accordance with constitutional principles and values.

Art. 41. *Equality and advertising.*

Advertising that involves discriminatory conduct pursuant to this Act will be regarded to be illegal, in accordance with the provisions of the general legislation on advertising and on institutional advertising and communication.

TITLE IV

The right to equal work opportunities

CHAPTER I

EQUAL TREATMENT AND OPPORTUNITIES ON THE LABOUR MARKET

Art. 42. *Programmes for enhancing women's employability.*

1. One of the priority objectives of employment policies will be to increase women's participation in the labour market and to progress toward effective equality between women and

men. To this end, women's employability and continued employment will be improved by enhancing their training and adaptability to labour market requirements.

2. Active employability programmes will cover the needs of women of all educational backgrounds and ages and include vocational training, workshop schools and trade apprenticeship centres. Geared to the unemployed, they may be designed primarily for specific communities or certain proportions of women.

Art. 43. *Furtherance of equality in collective bargaining.*

Pursuant to legal provisions, positive action measures may be established through collective bargaining to favour women's access to employment and the effective implementation of the principle of equal treatment for women and men and non-discriminatory working conditions.

CHAPTER II

EQUALITY AND RECONCILIATION

Art. 44. *Right to reconciliation of personal, family and working life.*

1. The right to reconcile personal, family and working life will be acknowledged to workers in ways that foster the balanced sharing of family responsibilities; the exercise of such right must not occasion any form of discrimination whatsoever.
2. Maternity leave and benefits will be granted under the terms provided in labour and Social Security legislation.
3. To contribute to a more balanced distribution of family responsibilities, fathers are entitled to paternity leave and benefits under the terms provided in labour and Social Security legislation.

CHAPTER III

CORPORATE EQUALITY PLANS AND OTHER MEASURES FOR FURTHERING EQUALITY

Art. 45. *Formulation and implementation of equality plans.*

1. Employers are obliged to honour equal treatment and opportunities principles and to this end must adopt measures geared to preventing any manner of occupational discrimination between women and men; such measures must be negotiated, and as appropriate agreed to, with workers' legal representatives in the manner provided in the applicable labour legislation.
2. In companies with over two hundred fifty employees, the equality measures referred to in the preceding item must lead to the formulation and implementation of an equality plan. The scope and content of such plans will be as established in this chapter and they must be negotiated as stipulated in the applicable labour legislation.
3. Without prejudice to the provisions of the preceding item, employers must draw up and implement an equality plan when mandated in the applicable collective bargaining agreement, under the terms provided therein.
4. Employers will likewise formulate and implement an equality plan, subject to prior negotiation or consultation with the workers' legal representatives, as appropriate, when the labour authorities agree to substitute the formulation and implementation of such a plan for accessory penalties resulting from penalty proceedings, under the terms laid down in the agreement in question.
5. The formulation and implementation of equality plans will be voluntary in all other companies, subject to consultation with the workers' legal representatives.

Art. 46. *Corporate equality plans, definition and content.*

1. Corporate equality plans comprise an orderly series of measures adopted after a diagnosis of the situation and designed to attain equal treatment and opportunities for women and men in the company and to eliminate discrimination on the grounds of sex.

Equality plans will stipulate the specific equality objectives to be reached, the strategies and practices to be adopted to attain them and the establishment of effective monitoring and assessment systems.

2. Equality plans may cover different issues to achieve the objectives set, including *inter alia* access to employment, occupational classification, promotion and training, remuneration, organization of working hours to favour reconciliation of working, personal and family life on equal terms for women and men, and the prevention of sexual harassment and harassment on the grounds of sex.
3. Equality plans will cover the entire company, without prejudice to the establishment of special action tailored to certain sites.

Art. 47. *Transparency in the implementation of the equality plan.*

Access by workers' legal representatives or, as appropriate, by the workers themselves, to the information on equality plan content and the achievement of its objectives is guaranteed.

The preceding provision will be understood to be without prejudice to the monitoring of equality plan evolution by the equity committees in which such competence is vested under the respective collective agreements.

Art. 48. *Specific measures to prevent sexual harassment and harassment on the grounds of sex at the workplace.*

1. Employers must foster working conditions that prevent sexual harassment and harassment on the grounds of sex and institute specific procedures to prevent such conduct and for handling accusations or claims formulated by the persons affected.

The measures that may be established for this purpose, which should be negotiated with workers' representatives, include the formulation and circulation of codes of good practice, information campaigns and specific training.

2. Workers' representatives must contribute to preventing sexual harassment and harassment on the grounds of sex at the workplace by sensitizing workers to this issue and report-

ing to company management any conduct or behaviour coming to their attention that might favour harassment.

Art. 49. *Support for the voluntary implementation of equality plans*

The Government will establish measures, geared particularly to small and medium-sized companies, to foster the voluntary adoption of equality plans, which will include the necessary technical support.

CHAPTER IV

CORPORATE EQUALITY MARK

Art. 50. *Corporate equality mark.*

1. The Ministry of Labour and Social Affairs will create a mark to distinguish employers for outstanding achievement in the implementation of equal treatment and opportunities policies for their workers, which may be used in the company's commercial dealings and for advertising purposes.
2. Any State-owned or private company may submit to the Ministry of Labour and Social Affairs a balance sheet of equality parameters in place in its labour relations and in the advertising of its goods and services to obtain this mark.
3. Mark denomination, the procedures and conditions for its award, the entitlements deriving from its acquisition and the conditions for the institutional dissemination of the companies to which it is awarded together with the equality policies implemented thereby will be established in the respective regulations.
4. The criteria to be taken into account for the award of this mark will include, among others, the balanced presence of women and men in the company's management bodies and occupational groups and categories, the adoption of equality plans or other innovative measures to further equality, and non-sexist advertising of company goods and services.
5. The Ministry of Labour and Social Affairs will monitor the companies awarded the mark to ensure they implement equal treatment and opportunities policies for their workers on an ongoing basis, withdrawing the mark from non-compliant organizations.

TITLE V

The principle of equality in public employment.

CHAPTER I

CRITERIA FOR ACTION DEPLOYED BY THE CENTRAL, REGIONAL AND LOCAL GOVERNMENTS

Art. 51. *Criteria for action deployed by the central, regional and local governments.*

The central, regional and local governments, within their respective areas of competence and in application of the principle of equality between women and men, must:

- a) Remove the obstacles that entail the subsistence of any manner of discrimination, to be able to offer effectively equal access by women and men to public employment and career development in civil service.
- b) Facilitate the reconciliation of personal, family and working life, without jeopardizing career promotion.
- c) Further training on an equal footing both for accessing public employment and throughout employees' careers.
- d) Foster the balanced presence of women and men in selection and evaluation bodies.
- e) Establish effective protection measures against sexual harassment and harassment on the grounds of sex.
- f) Establish effective measures to eliminate any manner of direct or indirect gender wage discrimination.
- g) Periodically evaluate the effectiveness of the principle of equality in their respective scopes of action.

CHAPTER II

THE PRINCIPLE OF BALANCED PRESENCE IN THE CENTRAL GOVERNMENT AND ITS ASSOCIATED OR SUBORDINATE PUBLIC BODIES

Art. 52. *Members of management bodies.*

Where appointment is incumbent upon the Government, it will honour the principle of the balanced presence of women and men in the overall membership of the management bodies of

the Central Government and its associated or subordinate public bodies.

Art. 53. *Selection bodies and evaluation committees.*

All staff selection juries and bodies in the Central Government and its associated or subordinate public bodies will abide by the principle of the balanced presence of women and men, barring duly reasoned, justified and objective arguments to the contrary.

Moreover, the delegation representing the Central Government and its associated or subordinate public bodies on the merit evaluation committees for post nominations will conform to the principle of the balanced presence of the two sexes.

Art. 54. *Designation of Central Government representatives.*

The Central Government and its associated or subordinate public bodies will designate their representatives on professional bodies and national or international expert or advisory boards in accordance with the principle of the balanced presence of women and men, barring duly reasoned, justified and objective arguments to the contrary.

Moreover, the Central Government and its associated or subordinate public bodies will observe the principle of balanced presence in their appointments to boards of directors of companies in which the State has a holding.

CHAPTER III

EQUALITY MEASURES IN CENTRAL GOVERNMENT AND ASSOCIATED OR SUBORDINATE PUBLIC BODY EMPLOYMENT

Art. 55. *Gender impact report in examinations for public employment.*

The approval of the announcement of selective tests for access to public employment will be subject to submission of a gender impact report, except where coverage of positions is urgent and in any event without prejudice to the prohibition of discrimination on the grounds of sex.

Art. 56. *Maternity leave and benefits and reconciliation of personal, family and working life.*

Without prejudice to improvements that may derive from agreements concluded between the Central Government or its associated or subordinate public bodies with government employees' representatives, the legislation applicable to public employees will establish a system of leaves of absence, shorter working hours, leaves or other benefits to protect maternity and facilitate reconciliation of personal, family and working life. Provision will be made for paternity leaves for this same purpose, under the terms laid down in said legislation.

Art. 57. *Reconciliation and post nomination.*

For the intents and purposes of evaluating work performance and respective merits, the competitive conditions established for post nominations will take account of the time candidates have spent in situations such as referred to in the preceding article.

Art. 58. *Leaves to prevent risks during pregnancy and breastfeeding.*

When a public official eligible for governmental mutual benefits is stationed at a workplace whose conditions may have an adverse effect on her or the baby's health, she may be granted leave to prevent risks during pregnancy under the terms and conditions as provided in the applicable legislation. In such cases, the official's financial rights will be guaranteed in full throughout her leave, pursuant to the provisions of specific legislation.

The provisions of the preceding paragraph will also be applicable while women are breastfeeding.

Art. 59. *Holidays.*

Without prejudice to improvements that may derive from agreements concluded between the Central Government or its associated or subordinate public bodies and government employees' representatives, when a person's holidays concur with the temporary disability deriving from pregnancy, childbirth or breastfeeding, or with maternity leave or extension thereof for breastfeeding, the public employee concerned will be entitled

to her holidays on a different date, even if the respective calendar year has lapsed.

Employees on paternity leave will be entitled to the same right.

Art. 60. *Positive action in training.*

1. For one year after returning to active service from maternity or paternity leave or from leave of absence for reasons of legal guardianship or care for dependent seniors or persons with disabilities, employees will be given preference in the award of places to participate in training courses designed to update public employees' skills.
2. At least 40% of the places for training courses will be reserved to women employees qualifying for such courses according to the respective announcement to facilitate female public employee promotion and access to management positions in the Central Government and its associated or subordinate public bodies.

Art. 61. *Equality training.*

1. All examinations for accessing public employment with the Central Government and its associated or subordinate bodies will include items on the study and implementation of the principle of equality between women and men in the various areas of civil service.
2. The Central Government and its associated or subordinate public bodies will deliver training courses on equal treatment and opportunities for women and men and on the prevention of gender violence for all their personnel.

Art. 62. *Protocol for handling cases of sexual harassment or harassment on the grounds of sex.*

The central, regional and local governments and workers' legal representatives will negotiate a protocol to prevent sexual harassment and harassment on the grounds of sex, which will include at least the following principles:

- a) Commitment on the part of the Central Government and its associated or subordinate public bodies to prevent and institute zero tolerance of sexual harassment and harassment on the grounds of sex.

- b) Conveyance to the entire staff of their duty to respect human dignity and the right to privacy, as well as equal treatment for women and men.
- c) Confidential treatment of reports of events that may be considered to constitute sexual harassment or harassment on the grounds of sex, without prejudice to disciplinary provisions.
- d) Identification of the persons with whom complaints or accusations in this regard are to be lodged.

Art. 63. *Assessment of equality in government employment.*

All ministries and public bodies will submit information to the Ministry of Labour and Social Affairs and the Ministry of Governmental Affairs at least yearly on their effective implementation of the principle of equality between women and men. Such information must specify staff distribution, occupational category, position bonuses and average remuneration, all disaggregated by sex.

Art. 64. *Equality plan in the Central Government and its associated or subordinate public bodies.*

At the beginning of each legislature, the Government will approve an equality plan for women and men in the Central Government and its associated or subordinate public bodies. The Plan will establish equal treatment and opportunities targets in public employment and the strategies or measures to be adopted to attain them. The Plan will be subject to negotiation and agreement as appropriate with public employees' legal representatives in the manner laid down in the legislation on collective bargaining with the Central Government and compliance will be assessed yearly by the Council of Ministers.

CHAPTER IV

ARMED FORCES

Art. 65. *Respect for the principle of equality.*

The rules on armed forces personnel will secure the effectiveness of the principle of equality between women and men, in particular with respect to access, training, promotion, stationing and administrative status.

Art. 66. *Application of the rules referring to Government personnel*

The rules on equality, prevention of gender violence and reconciliation of personal, family and working life applicable to government employees will be likewise applicable to the armed forces, adapted as necessary to conform with the terms of the legislation specifically related thereto.

CHAPTER V

NATIONAL LAW ENFORCEMENT AGENCIES

Art. 67. *Respect for the principle of equality.*

The rules governing the national law enforcement agencies will further effective equality between women and men and impede any manner of occupational discrimination, particularly with regard to access, training, promotion, stationing and administrative status.

Art. 68. *Application of the rules referring to Government personnel.*

The rules on equality, prevention of gender violence and reconciliation of personal, family and working life applicable to Government employees will be likewise applicable to the national law enforcement agencies, adapted, as appropriate, to the particular nature of the duties entrusted thereto under the terms of their specific legislation.

TITLE VI

Equal treatment in the access to and supply of goods and services

Art. 69. *Equal treatment in the access to goods and services.*

1. All natural or corporate persons in the public or private sector supplying goods or services to the public outside the scope of private and family life must honour the principle of equal treatment for women and men in their business transactions, avoiding any direct or indirect discrimination on the grounds of sex.
2. The provisions of the preceding item have no effect on freedom to contract, including the freedom to choose a contractual partner, providing such choice is not based on sex.

3. Notwithstanding the provisions of the preceding items, differences in treatment relating to the access to goods and services may be accepted if justified by a legitimate aim and the means to achieve that aim are appropriate and necessary.

Art. 70. *Protection of privacy for pregnant women.*

No contracting party providing goods or services may inquire whether a woman seeking such goods or services is pregnant, except for reasons of health.

Art. 71. *Actuarial factors.*

1. Contracts using sex as a factor in the calculation of insurance and related financial services premiums and benefits are prohibited where such calculations generate differences in individuals' premiums and benefits.

That notwithstanding, the regulations may define instances in which the determination of proportionate differences in individuals' premiums and benefits is accepted, providing the use of sex as a determining factor in the assessment of risk is based on relevant and accurate actuarial and statistical data.

2. Pregnancy- and maternity-related costs may not result in differences in individuals' premiums and benefits, nor may differences be authorized in this regard.

Art. 72. *Consequences of non-compliance with prohibitions.*

1. Without prejudice to other actions and rights provided for in civil and mercantile legislation, anyone who is the object of discriminatory conduct in the scope of Article 69 will be entitled to an indemnity for damages.
2. In the area of insurance and related financial services contracts and without prejudice to the provisions of Article 10 of this Act, infringement of the prohibition contained in Article 71 will entitle the party wronged to demand premiums and benefits identical to those offered the sex receiving more favourable treatment; in the event, neither the validity nor the effectiveness of any of the other terms of the contract will be affected.

TITLE VII

EQUALITY AND CORPORATE SOCIAL RESPONSIBILITY

Art. 73. *Corporate social responsibility action in connection with equality.*

Companies may voluntarily undertake corporate social responsibility action consisting in economic, commercial, labour, health care or other measures designed to further equality between women and men within the company or its social environment.

Implementation of such action may be concerted with workers' representatives, consumer and user organizations, associations whose primary aim is the defence of equal treatment between women and men and equality bodies.

Workers' representatives will be informed of any action not concerted therewith.

The existing labour legislation will be applicable to business decisions and collective bargaining agreements relating to labour measures.

Art. 74. *Publicity regarding corporate social responsibility action in connection with equality.*

Employers may use their equality action for advertising purposes in accordance with the conditions laid down in the general legislation on advertising.

The Women's Institute or equivalent regional bodies will be authorized to interrupt advertising in this respect if found to be misleading.

Art. 75. *Women's participation in mercantile companies' boards of directors.*

Companies obliged to present unabridged financial statements of income will endeavour to include a sufficient number of women on their boards of directors to reach a balanced presence of women and men within eight years of the entry into effect of this Act.

The provisions of the preceding paragraph will be taken into account when making appointments on the occasion of the finalization of the terms of directors designated prior to the entry into force of this Act.

TITLE VIII

ORGANIZATIONAL PROVISIONS

Art. 76. *Inter-ministerial Committee on Equality between Women and Men.*

The Inter-ministerial Committee on Equality between Women and Men is the professional body responsible for coordinating the policies and measures adopted by ministries to guarantee the right to and further the effectiveness of equality between women and men.

Its membership and operation will be established in the respective regulations.

Art. 77. *Equality units.*

All ministries, in the scope of their areas of competence, will entrust one of its management bodies with the duties relating to the principle of equality between women and men, and in particular with the following:

- a) Securing the statistical information formulated by the ministry bodies and advising them accordingly.
- b) Conducting surveys to further equality between women and men in the respective areas of activity.
- c) Advising the ministry's competent bodies on the formulation of the gender impact report.
- d) Furthering ministry personnel's understanding of the scope and significance of the principle of equality, putting forward training proposals.
- e) Overseeing compliance of this Act and the effective implementation of the principle of equality.

Art. 78. *Women's Participation Council.*

1. The Women's Participation Council is created as a professional counselling and advisory body, essentially to provide a channel for women's participation in the effective achievement of the principle of equal treatment and opportunities for women and men and in the struggle against discrimination on the grounds of sex.

2. The Council's *modus operandi*, competencies and membership will be established in the respective regulations, with the guaranteed participation of central, regional and local governments as a whole as well as nation-wide women's associations and organizations.

ADDITIONAL PROVISIONS

One. *Balanced presence or membership.*

For the intents and purposes of this Act, balanced membership will be understood to mean the presence of women and men in the context in question in a manner such that neither sex accounts for more than sixty nor less than forty per cent of the total.

Two. *Amendment of the Constitutional Act on the General Electoral System.*

Constitutional Act 5/1985 of 19 June on the General Electoral System is amended as follows:

One. A new Article, 44 *bis*, is added, with the following wording:

«Article 44 *bis*.

1. The lists of candidates for Congressional, municipal, island council and Canary Island Council elections under the provisions of this Act, as well as for European Parliament and regional legislative assembly elections, must have a balanced presence of women and men, with each of the sexes accounting for at least forty per cent of the total number of candidates on the list. When the number of positions to be filled is under five, the number of women and men will be as close as possible to numeric balance.

The regional laws governing the electoral systems for regional legislative assembly elections may establish measures favouring a greater presence of women in the lists of candidates submitted for such elections.

2. The minimum proportion of forty per cent will likewise be maintained in each group of five candidates. When the last group on the list has fewer than five candidates,

the said proportion of women and men in that group will be as close as possible to a numeric balance, although the statutory proportion must in any event be maintained for the list as a whole.

3. The rules laid down in the preceding items will be applicable to the lists of substitutes.
4. When candidates for seats in the Senate are grouped in lists, pursuant to the provisions of Article 171 of this Act, such lists must also maintain a balanced presence of women and men, so that the proportion of each is as close to numeric balance as possible.»

Two. A new paragraph is added to Article 187, item 2, with the following wording:

«The provisions of Article 44 *bis* of this Act will not apply to lists of candidates presented in towns with a population of 3,000 or less.»

Three. A new paragraph is added to Article 201, item 3, with the following wording:

«The provisions of Article 44 *bis* of this Act will not apply to lists of candidates presented in towns with a population of 5,000 or less.»

Four. Additional provision one, item 2 is amended to read as follows:

«2. By virtue of the competencies reserved to the Central Government in the Constitution, the following articles of Title One of this Constitutional Act are likewise applicable to the regional Legislative Assembly elections called by the Autonomous Communities:

1 to 42; 44; 44 *bis*; 45; 46.1, 2, 4, 5, 6 and 8; 47.4; 49; 51.2 and 3; 52; 53; 54; 58; 59; 60; 61; 62; 63; 65; 66; 68; 69; 70.1 and 3; 72; 73; 74; 75; 85; 86.1; 90; 91; 92; 93; 94; 95.3; 96; 103.2; 108.2 and 8; 109 to 119; 125 to 130; 131.2; 132; 135 to 152...»

Five. A new transitional provision, seven, is added with the following wording:

«In municipal elections called prior to 2011, the provisions of Article 44 *bis* will be requisite only in towns with a popula-

tion of over 5,000; after 1 January of that year the provisions on population of Article 187, item 2, paragraph two of the present Act will be applied.»

Three. *Amendments to the Constitutional Act on the Judiciary.*

Constitutional Act 6/1985 of 1 July on the Judiciary is amended as follows:

One. A final sentence is added to Article 109, item 1, which will read as follows:

«1. The General Council of the Judiciary will submit an annual report to Parliament on the status, operation and activities of the Council itself and the courts and tribunals of justice. Such report will also include the needs for staff, facilities and resources that, in its opinion are required in general for due fulfilment of the duties that the Constitution and laws attribute to the Judiciary. It will likewise contain a chapter on gender impact in the judiciary.»

Two. A new paragraph is added between the present first and second paragraphs of Article 110, item 3, with the following wording:

«In any event, a prior report on gender impact will be drawn up.»

Three. The words «Equality Committee» will be added to Article 122.1, after «Qualifications Committee».

Four. A new Article 136 *bis* will be added and will comprise a new Section 7 in Chapter IV, Title II, Book II, to be entitled «Equality Committee»; the new article will be worded as follows:

«Article 136 *bis*.

1. The General Council of the Judiciary meeting in Plenary Session, will, by three-fifths majority, elect the five members of its Equality Committee from among its own members, honouring the principle of the balanced presence of women and men.
2. Equality Committee action is subject to the attendance of all its members; the Committee will be presided by the member elected to its chair by majority vote. In the

event of temporary impossibility to attend or justified absence of any of the Committee members, she/he will be replaced by another member of the Council, preferably of the same sex, to be designated by the Standing Committee.

3. It will be incumbent upon the Equality Committee to counsel the Plenary about the measures needed for or expedient to the active integration of the principle of equality between women and men in the exercise of the attributions of the General Council of the Judiciary. In particular, it will be incumbent upon the Committee to draw up prior reports on the gender impact of regulations and improve the equality parameters in the judiciary in general.»

Five. Article 310 will be amended to read as follows:

«All examinations for enrolment and promotion in the judiciary and state prosecution will include the study of the principle of equality between women and men, including measures against gender violence, and the cross-sectional application thereof in the scope of the judicial function.»

Six. Article 356, item e), paragraph one is amended to read as follows:

«e) (Workers) will be entitled to a leave of no more than three years to care for dependent family members up to the second degree of kinship who for reasons of age, accident or illness are unable to manage on their own and have no paid employment.»

Seven. A new item e) is added to Article 348, in the following terms:

«e) Leave of absence for violence against women.»

Eight. Article 357 is amended to read as follows:

«Article 357.

When a Justice of the Supreme Court is granted voluntary leave of absence on request, she/he will forfeit their status, except in the instance envisaged in letters d) and e) of the preceding article and in Article 360 *bis*. In all other cases her/his status will be Justice on voluntary leave.»

Nine. Article 358.2 is amended as follows:

- «2. Voluntary leaves of absence to care for children or a family member as referred to in Article 356, items d) and e), are excepted from the provisions of the preceding item; in such cases the time spent on leave will be counted for the intents and purposes of computing three-year bonus pay and other passive benefits. Leave-takers' right to reserve a position in the town/city where they rendered their services and to the computation of seniority will be valid for the first two years. After that period, such reservation will be valid for a position of the same category in the same province, subject to request for return to active service no less than one month prior to the finalization of the leave; a justice failing to do so will be declared, *ex officio*, to be on voluntary leave for reasons of personal interest.»

Ten. A new Article, 360 *bis*, is added, with the following wording:

«Article 360 *bis*.

1. Female judges and justices who are victims of gender violence will be entitled to request a leave of absence for violence against women, subject to no minimum period of prior service. They may maintain such administrative status for a maximum of three years.
2. They will be entitled to reserve their position for the first six months, which period will be computed for the intents and purposes of promotion, three-year bonuses and other passive benefits.

That notwithstanding, when judicial protection proceedings show that the effectiveness of protection for the victim so requires, such periods may be extended for three-month intervals up to a maximum of eighteen months, period in which the right to reserve her position will remain in effect pursuant to and under the same conditions as specified in the preceding paragraph.

3. Female judges and justices on leave of absence for violence against women will receive their remuneration in full for the first two months, along with family benefits for each dependent child as appropriate.

4. Female judges and justices returning to active service after no longer than a six-month leave of absence for violence against women will be appointed to the same judicial body in which they reserved their position and where they served prior to their leave; when the duration of the leave of absence is longer than six months, return to active service will be subject to participation in all competitive proceedings announced to fill positions in their category until they are awarded a post. If they fail to participate they will be declared to be on voluntary leave of absence for reasons of personal interest.»

Eleven. Article 370 is repealed.

Twelve. A new item, 5, is added to Article 373, with the following wording:

- «5. In the event of death or serious accident or illness of spouse, partners in consensual unions or family members up to the first degree of kinship, judges and justices will be entitled to a three-business day leave, which may be extended to up to five business days when the situation requires travel to another town/city, in which case the leave will be for five business days.

Such leaves will be shortened to two and four business days, respectively, when death and the other circumstances specified affect family members up to the second degree of kinship.»

Thirteen. A new item, 6, is added to Article 373, with the following wording:

- «6. In the event of birth, fosterage or adoption of a child, judges or justices will be entitled to a fifteen-day paternity leave counting from the date of birth, the administrative or judicial decision on fosterage or the judicial resolution formalizing adoption.»

Fourteen. A new item, 7, is added to Article 373, with the following wording:

- «7. Judges and justices will be entitled to leaves to reconcile personal, family and working life and in the event of gender violence. The General Council of the Judiciary will issue regulations adapting the legislation in effect in this regard for the Central Government to the particular circumstances of the judiciary.»

Fifteen. A new item, 5, is added to Article 433 *bis*, with the following wording:

- «5. The Judiciary's Lifelong Training Programme will include judge and justice training on the principle of equality between women and men and the gender perspective.

The Judiciary School will deliver annual training courses on judicial protection of the principle of equality between women and men.»

Sixteen. A new item, 2, is added to Article 434, with the following wording:

- «The Centre for Judicial Studies will deliver annual courses on the principle of equality between women and men and cross-sectional implementation thereof by the members of the State Prosecution, the Corps of Court Secretaries and all other judiciary staff, as well as on the detection and handling of situations of gender violence.»

Four. *Amendment of the State Prosecution's Organic By-laws*
Act 50/1981 of 30 December, enacting the State Prosecution's Organic By-laws is amended as follows:

A new paragraph is added to Article 14, item 1, with the following wording:

- «An Equality Committee must be created within the State Prosecution Council to study the improvement of equality parameters in the Office of the State Prosecutor; Committee membership will be determined in the legislation governing the constitution and operation of the State Prosecution Council.»

Five. *Amendments to the Rules of Civil Law Procedure*

One. A new article, 11 *bis*, is added to Act 1/2000 of 7 January on the Rules of Civil Law Procedure, with the following wording:

- «Article 11 *bis*. *Legal capacity to defend the right to equal treatment for women and men.*

1. In addition to the parties affected and subject at all times to their authorization, trade unions and legally constituted associations whose primary aim is the defence of equal treatment for women and men will be lawfully

capacitated to defend their respective members' right to equal treatment for women and men.

2. When the parties affected constitute an indeterminate number of people or a number difficult to determine, lawful capacity to bring suit to defend these dispersed interests will be incumbent exclusively upon the public bodies with competence in the area, the most representative trade unions and nation-wide associations whose primary aim is equality between women and men, without prejudice to the legal capacity of the parties affected, if identified.
3. Only the person subject to sexual harassment or harassment on the grounds of sex will be legally capacitated to institute the respective legal action.»

Two. Article 188, item 1, instance 5 of Act 1/2000 of 7 January on the Rules of Civil Law Procedure is amended to read as follows:

- «5. In the event of what the court finds to be sufficiently substantiated death, illness or absolute impossibility, or maternity or paternity leave of the attorney of the party requesting suspension, providing such events are forthcoming when it was no longer possible to apply for re-scheduling in accordance with the provisions of Article 183 and providing also that the right to effective judicial protection is guaranteed and no defencelessness is incurred.

Similar situations envisaged in other social insurance systems will be comparable to the above circumstances and subject to the same requirements, and granted the same amount of leave time as stipulated in Social Security legislation.»

Three. A new item, 5, will be added to Article 217 of Act 1/2000 of 7 January on Rules of Civil Law Procedure, and present items 5 and 6 will be renumbered 6 and 7, respectively; the new item will be worded as follows:

- «5. Pursuant to procedural law, in proceedings in which the plaintiff alleges discriminatory conduct on the grounds of sex, it will be incumbent upon the defendant to

prove the absence of discrimination in the measures adopted and their proportionality.

For the intents and purposes of the provisions of the preceding paragraph, where deemed useful or relevant, the judicial body may request a report or opinion from the competent public bodies, *ex parte*.»

Six. *Amendments to the Act governing Contentious-Administrative Jurisdiction*

Act 29/1998 of 13 July governing Contentious-Administrative Jurisdiction is amended as follows:

One. A new letter, i), is added to Article 19, item 11, with the following wording:

- «i) In addition to the parties affected and subject at all times to their authorization, trade unions and legally constituted associations whose primary aim is the defence of equal treatment for women and men will be lawfully capacitated to defend their respective members' right to equal treatment for women and men.

When the parties affected constitute an indeterminate number of people or a number difficult to determine, lawful capacity to bring suit to defend these dispersed interests will be incumbent exclusively upon the public bodies with competence in the area, the most representative trade unions and nation-wide associations whose primary aim is equality between women and men, without prejudice to the legal capacity of the parties affected, if identified.

Only the person subject to sexual harassment or harassment on the grounds of sex will be legally capacitated to institute the respective legal action.»

Two. A new item, 7, is added to Article 60, with the following wording:

- «7. Pursuant to procedural law, in proceedings in which the plaintiff alleges discriminatory conduct on the grounds of sex, it will be incumbent upon the defendant to prove the absence of discrimination in the measures adopted and their proportionality.

For the intents and purposes of the provisions of the preceding paragraph, where deemed useful or relevant, the judicial body may request a report or opinion from the competent public bodies, *ex parte*.»

Seven. *Amendments to the Act transposing Directive 89/552/EEC to the Spanish body of law*

A new letter, e), is added to Article 16, item 1 of Act 25/1994 of 12 July, transposing to the Spanish body of law Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities; the new letter is worded as follows:

- «e) Television advertising or sales intended for minors must convey an egalitarian, plural and non-stereotyped portrayal of women and men.»

Eight. *Amendment of the General Health Act.*

One. A new item, 4, is added to Article 3 of Act 14/1986 of 25 April, General Health Act, with the following wording:

- «4. Health policies, strategies and programmes will actively include the principle of equality between women and men in their objectives and actions, preventing the appearance of discrimination between the sexes in health objectives and actions based on their physical differences or associated social stereotypes.»

Two. A new item, 2, is added to Article 6 of Act 14/1986 of 25 April, General Health Act, and the present content of the article is numbered as item 1; the wording of the new item is as follows:

- «2. The health authorities will ensure the integration of the principle of equality between women and men in the implementation of the provisions of the preceding item, guaranteeing the two sexes' equal right to health.»

Three. Items 1, 4, 9, 14 and 15 of Article 18 of Act 14/1986 of 25 April, General Health Act, are amended and a new item, 17, is added. The respective wording is as follows:

- «1. Systematic adoption of actions for health education as a primary element for the enhancement of individual

and community health, including differentiated education on women's and men's risks, characteristics and needs, and training to prevent discrimination against women.»

- «4. Provision of necessary therapeutic products, bearing in mind women's and men's different needs.»
- «9. Protection, furtherance and improvement of occupational health, with particular attention to sexual harassment and harassment on the grounds of sex.»
- «14. Improvement and upgrading of training to meet the needs of health service staff, including training geared to guaranteeing their capacity to detect and handle gender violence situations.»
- «15. Furtherance of scientific research in the specific field of health problems, bearing in mind the differences between women and men.»
- «17. Processing of the data in records, surveys, statistics and other medical and health information systems as a basis for gender analysis, disaggregated by sex wherever possible.»

Four. The first sentence in Article 21, item 1 of Act 14/1986 of 25 April, General Health Act, is reworded as follows:

- «1. Occupational health practice, which will necessarily assimilate the gender perspective, will cover the following.»

Nine. *Amendments to the Act on National Health System Cohesion and Quality.*

One. Article 2, letter a) of Act 16/2003 of 28 May on National Health System Cohesion and Quality is amended as follows:

- «a) Provision of services to National Health System users under conditions of effective equality and quality, in particular avoiding any discrimination between women and men in health practice.»

Two. Article 11, item 2, letter g) is amended to read as follows:

- «g) Furtherance and protection of occupational health, with particular attention to female workers' specific risks and needs.»

Three. Article 12, item 2, letter f) is amended to read as follows:

- «f) Specific care and services for: women, specifically including the detection and handling of situations involving gender violence; childhood, adolescence; adults; seniors; groups at risk and chronically ill patients.»

Four. A new item, e), is added to Article 34, with the following wording:

- «e) Inclusion of the gender perspective in training.»

Five. A new item, f), is added to Article 44, with the following wording:

- «f) Promote attention in health research to the specific needs of women and men.»

Six. Article 53, items 2 and 3 are amended to read as follows:

- «2. The health information system will contain information on benefits and the portfolio of public and private health services and will include as essential elements data on protected population, human and material resources, activity conducted, pharmaceutical and health products, financing and results obtained, as well as expectations and citizens' opinion, all from the standpoint of comprehensive health care, disaggregating the data by sex wherever feasible.»
- «3. The Ministry of Health and Consumer Affairs, in agreement with the National Health System's Inter-regional Council, will define and standardize data and data flows, select indicators and establish the technical requirements for integrating and analyzing information from the perspective of the principle of equality between women and men, with a view to optimizing the reliability thereof.»

Seven. The following sentence is added at the end of Article 63:
«This report will contain specific analyses on women's and men's health.»

Ten. *Information Society Fund*

For the intents and purposes stipulated in Article 28 of the present Act, a special fund will be established, with an allocation of three million euros each in budgetary years 2007, 2008 and 2009.

Eleven. *Amendments to the consolidated text of the Workers' By-laws*

The consolidated text of the Workers' By-laws, enacted by Royal Legislative Decree 1/1995 of 24 March, is amended as follows:

One. Article 4, item 2, letter e) is amended to read as follows:

- «e) To respect for their privacy and human dignity, including protection against harassment on the grounds of race or ethnic group, religion or convictions, disability, age or sexual orientation and against sexual harassment or harassment on the grounds of sex.»

Two. Item 1, paragraph two of Article 17 is amended and two new items, 4 and 5, are added; the respective wording is as follows:

«Employer orders to discriminate against and decisions that entail less favourable treatment for workers in the wake of claims lodged in the company or the institution of any governmental or judicial action geared to demanding compliance with the principle of equal treatment and non-discrimination will likewise be null and void.

- 4. Without prejudice to the provisions of the preceding items, positive action measures may be established via collective bargaining to favour women's access to such occupations. Reservations and preferences in hiring conditions may also be established so that, all other qualifications being equal, preference will be given to persons of the sex less represented in the occupational group or category in question.

Collective bargaining may likewise establish this type of measures in the respective conditions for occupational

classification, promotion and training so that, all other qualifications being equal, preference will be given to persons of the sex less represented to favour their access to the group, occupational category or position in question.

5. The establishment of corporate equality plans will conform to the provisions of this Act and the Constitutional Act for effective equality between women and men.»

Three. A new item, 8, is added to Article 34, with the following wording:

- «8. Workers will be entitled to adapt the duration and distribution of their working hours for the effective exercise of their right to reconciliation of personal, family and working life, in the terms laid down in the collective bargaining agreement or the agreement reached with the employer in keeping, as appropriate, with the provisions of the former.»

Four. Article 3,7 item 3, letter b) is amended to read as follows:

- «b) Two days for birth of a child and for the death, serious accident or illness, hospitalization or out-patient surgery requiring rest at home, of relatives up to the second degree of kinship. When such circumstances involve travel, four-day leave will be granted.»

Five. Article 37, item 4 and the first paragraph of item 5 are amended to read as follows:

- «4. Workers breastfeeding babies under nine months of age will be entitled to one hour of absence from work, which may be divided into two fractions. The duration of the absence will be increased proportionally in the event of multiple births.

Women may exchange this right for a thirty-minute shorter working day, for the same purpose, or take the accumulated time as full working days under the terms laid down in the collective bargaining agreement or the agreement reached with the employer, in keeping, as appropriate, with the provisions of the former.

This leave may be granted indistinctly to the mother or the father if both work.»

- «5. Workers who are legal guardians of a minor under the age of eight or of a person with a physical, mental or sensorial disability who has no paid employment will be entitled to shorten their working hours by at least one eighth and at most one half thereof, contingent upon a proportional decrease in their salary.»

Six. A new item, 3, is added to Article 38, with the following wording:

«When the holiday period established in the company's holiday timetable referred to in the preceding paragraph concurs with temporary disability deriving from pregnancy, childbirth or breastfeeding or the suspension period provided for in Article 48.4 of this Act, workers will be entitled to holidays at the end of the suspension period, on a date other than that of their temporary disability or that of the leave to which they are entitled by application of the above provision, even when the respective calendar year has lapsed.»

Seven. Article 45, item 1, letter d) is amended to read as follows:

- «d) Maternity, paternity, worker risk during pregnancy or while breastfeeding a baby under the age of nine months, and adoption or pre-adoption or permanent or simple fosterage, pursuant to the Civil Code or the laws of the Autonomous Communities governing such situations, of children under the age of six or minors over that age if they have disabilities or, due to their personal circumstances, experience or origin from another country, find it particularly difficult to mainstream in social and family life, subject to substantiation of the foregoing by the competent social services.»

Eight. Article 46, item 2 is amended to read as follows:

- «2. Workers with seniority of at least one year in the company are entitled to request voluntary leave of absence for no less than four months and no more than five years. This right may only be exercised again by the

same worker if four years have lapsed since the end of the previous leave of absence.»

Nine. Article 46, item 3, paragraphs one, two and three are amended to read as follows:

«Workers will be entitled to a leave of absence of no more than three years to attend to each child, whether their own or received in adoption or pre-adoptive or permanent fosterage, even if provisional, counting from the date of birth or, as appropriate, of the respective judicial or governmental resolution.

They will also be entitled to a leave of no more than two years, unless a longer duration is established in the respective collective bargaining agreement, to care for dependent family members up to the second degree of kinship who for reasons of age, accident or illness are unable to manage on their own and have no paid employment.

The leave of absence envisaged in the present item, which may be divided into shorter intervals, constitutes an individual right of men and women workers. Nonetheless, if two or more workers in the same company acquire the right for the same dependent, the employer may limit the simultaneous exercise thereof for justified reasons of operational efficiency.»

Ten. Article 48, items 4 and 5, are amended to read as follows:

«4. In the event of childbirth, suspension will be for sixteen uninterrupted weeks, which may be extended by two weeks for each additional child in the event of multiple births. The suspension period will be distributed at the worker's discretion, providing that at least six weeks are taken immediately after childbirth. In the event of death of the mother, whether or not she worked, the other parent may make use of the suspension in full or, as appropriate, of the remainder thereof, computed from the date of delivery, without discounting the part that the mother may have taken prior to childbirth. In the event of death of the child, the suspension period will not be shortened except where the mother asks to

return to work after the mandatory six-week rest period.

Notwithstanding the foregoing and without prejudice to the mother's six-week mandatory rest period, if both parents work, at the beginning of the maternity leave the mother may opt for the other parent to take a certain uninterrupted part of the rest period after childbirth, either concurrent with or subsequent to her own. The other parent may continue to take the maternity leave initially transferred, even if the mother incurs in temporary disability when the time comes for her to return to work.

In the event the mother is not eligible to suspend her occupational activity or to benefits pursuant to the rules governing such activity, the other parent will be entitled to suspend her/his employment contract for the period to which the mother would have been entitled, all of which will be compatible with the exercise of the right acknowledged in the following article.

In the event of premature delivery or where, for any other reason, the newborn must remain hospitalized after childbirth, the suspension period may be computed from the date of discharge, at the mother's request or, as appropriate, at the request of the other parent. The mother's mandatory six-week suspension subsequent to childbirth is excluded from the above calculation.

In the event of premature delivery and insufficient weight of the newborn or any other clinical condition requiring its hospitalization for over seven days after childbirth, the suspension period will be extended for the number of days that the newborn is hospitalized, up to a maximum of thirteen additional weeks, under the terms provided in the respective regulations.

In the event of adoption and fosterage, pursuant to Article 45.1.d) of this Act, suspension will be for sixteen uninterrupted weeks, which may be extended by two weeks for each additional child in the event of multiple adoptions or fosterage. Such suspension will be effective at the worker's discretion, either from the date of

the judicial resolution formalizing the adoption or the date of the governmental or judicial decision on provisional or permanent fosterage, although the same minor may under no circumstances entitle parents to several suspension periods.

Where both parents work, the suspension period will be distributed at their discretion, either concurrently or successively, but always uninterruptedly and within the limits specified.

In the event of concurrent rest periods, the sum thereof may not exceed the sixteen weeks stipulated in the preceding paragraphs with any extensions, as appropriate, for multiple births, adoption or fosterage.

If the child born, adopted or fostered has a disability, the suspension of employment referred to in this item will be extended for a further two weeks. Where both parents work, this additional suspension will be distributed at their discretion, either concurrently or successively, but always uninterruptedly.

The periods referred to in the present item may be taken as full or partial working days, subject to agreement between the employers and workers involved, under the terms laid down in the respective regulations.

In international adoptions, when the parents must travel to the adopted child's country of origin, the suspension period envisaged in the present item for the various instances may begin up to four weeks prior to the resolution formalizing the adoption.

Workers will benefit from any improvement in working conditions to which they would have been entitled and forthcoming during the suspension of employment referred to in this item, as well as to the suspensions provided for in the following item and in Article 48 *bis*.»

- «5. In the event of risk during pregnancy or breastfeeding as stipulated in Article 26 of Act 31/1995 of 8 November on Prevention of Occupational Risk, suspension of employment will come to an end on the day the sus-

pension of employment for biological childbirth begins or the breastfed baby reaches the age of nine months, respectively, or, in both cases, when the worker is no longer unable to return to her former position or to one compatible with her condition.»

Eleven. A new Article, 48 *bis*, is added, with the following wording:

«Article 48 *bis*. Suspension of employment for paternity

In the event of childbirth, adoption or fosterage pursuant to Article 45.1.d) of this Act, workers will be entitled to suspension for thirteen uninterrupted days, which may be extended by two days for each additional child in the event of multiple childbirth, adoption or fosterage. This suspension is independent of the shared maternity rest period regulated under Article 48.4.

In the event of childbirth, only the other parent is eligible for this suspension. In the event of adoption or fosterage, only one parent, at the discretion of the parties concerned, will be eligible; nonetheless, when the rest period regulated in Article 48.4 is taken in full by one of the parents, the right to paternity leave may be exercised only by the other.

Workers exercising this right may do so during the period running from the end of the leave for childbirth stipulated in the legislation or collective bargaining agreement, or from the judicial resolution formalizing adoption or the governmental or judicial decision on fosterage, to finalization of the suspension of employment regulated in Article 48.4 or immediately after finalization of such suspension.

The suspension of employment referred to in this article may be taken as full working days or part, i.e. – no less than 50 per cent – thereof, subject to agreement between the employer and worker and in accordance with regulatory provisions.

Workers must give their employers sufficient advance notice of the exercise of this right under the terms laid down, as appropriate, in the respective collective bargaining agreements.»

Twelve. Article 53, item 4, is amended to read as follows:

«4. When the employer fails to meet the requirements laid down in item 1 of this article or the employer's decision on dismissal is owing to one of the instances of discrimination prohibited by the Constitution or by law, or if dismissal entails the violation of the worker's fundamental rights or public freedoms, such decision will be null and void and declared by the judicial authority as such *ex officio*. Dismissal will not be nullified by failure to serve advance notice, although the employer, irrespective of any other consequences, will be liable for the salary due for the period in question. Subsequent observance by the employer of the requirements not met will not, under any circumstances, constitute reinstatement of the initial dismissal, but rather a new dismissal effective from the date thereof.

Dismissals will likewise be null and void when they affect:

- a) Workers during suspension of employment for maternity, risk during pregnancy, risk during breastfeeding, illness caused by pregnancy, childbirth or breastfeeding, adoption or fosterage, or paternity as referred to in Article 45, item 1, letter d), or dismissal notified on a date such that the advance notice served finalizes during such period.
- b) Pregnant workers, from the date of initiation of pregnancy until the beginning of the suspension period referred to in letter a), and workers who have requested one of the leaves referred to in Article 37, items 4, 4 *bis* or 5 or who are on such leaves or who have requested or are on the leave of absence provided for in Article 46, item 3; and workers who are victims of gender violence, for exercising their right to shorten or reorganize their working hours, or to geographic mobility, change of workplace or suspension of labour relations under the terms and conditions stipulated in this Act.
- c) Workers after returning to work on finalization of suspension of employment for maternity, adoption

or fosterage or paternity, providing more than nine months have not lapsed from the date of birth, adoption or fosterage.

The provisions of the preceding letters will be applicable except where, in such cases, dismissal is found to be in order for reasons unrelated to pregnancy or the exercise of the right to the leaves specified.»

Thirteen. Article 54, item 2, letter g) is amended to read as follows:

«g) Harassment on the grounds of racial or ethnic origin, religion or convictions, age or sexual orientation or on the grounds of the sex of the employer or the persons working in the company.»

Fourteen. Article 55, item 5 is amended to read as follows:

«Dismissals owing to any of the instances of discrimination prohibited by the Constitution or by law, or which involve a violation of a worker's fundamental rights or public freedoms, will be null and void.

Dismissals will likewise be null and void when they affect:

a) Workers during suspension of employment for maternity, risk during pregnancy, risk during breastfeeding, illness caused by pregnancy, childbirth or breastfeeding, adoption or fosterage, or paternity as referred to in Article 45, item 1, letter d), or dismissal notified on a date such that the advance notice served finalizes during such period.

b) Pregnant workers, from the date of initiation of pregnancy until the beginning of the suspension period referred to in letter a), and workers who have requested one of the leaves referred to in Article 37, items 4, 4 bis or 5 or who are on such leaves or who have requested or are on the leave of absence provided for in Article 46, item 3; and workers who are victims of gender violence, for exercising their right to shorten or reorganize their working hours, or to geographic mobility, change of workplace or suspension of labour relations under the terms and conditions stipulated in this Act.

c) Workers after returning to work on finalization of suspension of employment for maternity, adoption or fosterage

or paternity, providing more than nine months have not lapsed from the date of birth, adoption or fosterage.

The provisions of the preceding letters will be applicable except where, in such cases, dismissal is found to be in order for reasons unrelated to pregnancy or the exercise of the right to the leaves specified.»

Fifteen. A new item, 1, is added to Article 1, with the following wording:

«It will likewise be entitled to receive information, at least yearly, on company implementation of the right to equal treatment and opportunities for women and men, which will include data on the proportion of women and men in the various occupational categories; and, as appropriate, on the measures adopted to further equality between women and men in the company; and, if an equality plan has been established, on the implementation thereof.»

Sixteen. A new letter, c), is added to Article 64, item 1, number 9, along with a new number 13 likewise in item 1, with the following wording:

«c) Oversight of the respect for and implementation of the principle of equal treatment and opportunities for women and men.»

«13. To cooperate with company management to establish and implement reconciliation measures.»

Seventeen. A new item, 1, is added to Article 85, with the following wording:

«Without prejudice to the freedom of the parties concerned to determine the content of collective bargaining agreements, the negotiation thereof must in all cases address measures geared to furthering equal treatment and opportunities for women and men in the work environment or, as appropriate, equality plans with the scope and content laid down in Title IV, Chapter III of the Constitutional Act on effective equality between women and men.»

Eighteen. A new item, 2, is added to Article 85, with the following wording:

«Furthermore, without prejudice to the freedom to contract acknowledged to all the parties concerned, the duty to

negotiate equality plans in companies with over two hundred fifty workers will be established through collective bargaining, as follows:

- a) In company-wide collective bargaining agreements the duty to negotiate these plans will be formalized in the framework of such agreements.
- b) In collective bargaining agreements established at higher than company levels, under the terms and conditions of such agreements the duty to negotiate equality plans will be formalized through the collective bargaining conducted at company level, pursuant to the applicable rules on supplementary bargaining.»

Nineteen. A new item, t, is added to Article 90, with the following wording:

- «6. Without prejudice to the provisions of the preceding item, labour authorities will ensure respect for the principle of equality in any collective bargaining agreements containing provisions that may constitute direct or indirect discrimination on the grounds of sex.

For these intents and purposes, they may seek advice from the Women's Institute or regional equality bodies, depending on their territorial scope. When the labour authorities raise the question to the competent jurisdiction on the assumption that the collective bargaining agreement may contain discriminatory clauses, they will notify the Women's Institute or regional equality bodies – depending on their territorial scope – accordingly, without prejudice to the provisions of Article 95, item 3 of the Rules of Labour Law Procedure.»

Twenty. A new additional provision seventeen is added, with the following wording:

Seventeen. *Discrepancies about reconciliation*

«Any discrepancies arising between employers and workers in connection with the exercise of the right to reconcile personal, family and working life acknowledged by law or in the respective agreement, will be settled by the competent jurisdiction under the procedure laid down in Article 138 *bis* of the Rules of Labour Law Procedure.»

Twenty-one. A new additional provision eighteen is added, with the following wording:

Eighteen. Calculation of indemnities in certain instances of shortened work weeks

- «1. In the instances of shortened work weeks envisaged in Article 37, items 4 *bis*, 5 and 7, the salary to be used for the intents and purposes of calculating the indemnities provided for in this Act, will be the salary paid the worker for a full working week, providing the legally established maximum duration of such shorter hours has not lapsed.
2. The provisions of the preceding paragraph will likewise be applicable in the event of the exercise, under part-time arrangements, of the rights laid down in Article 48.4, paragraph six and Article 48 *bis*.»

Twelve. *Amendments to the Act on Prevention of Occupational hazards*

Act 31/1995 of 8 November on Prevention of Occupational hazards is amended as follows:

One. A new item, 4, is added to Article 5, with the following wording:

- «4. To further the effectiveness of the principle of equality between women and men, the central, regional and local governments will include sex-related variables in data collection and processing systems, as well as in general study and research on the prevention of occupational hazards, with a view to detecting and preventing possible situations in which work-related illness or injury may be associated with workers' sex.»

Two. Article 26, item 2, paragraph one and item 4 are amended to read as follows:

- «2. When working conditions or time cannot be adapted or where, despite such adaptation, the conditions of a given position may have an adverse effect on a pregnant worker's or the foetus's health; and where this is certified by the National Social Security Institute or the respective mutual insurance medical services (depending on the institution with which the employer has con-

tracted cover for occupational hazards) on the grounds of the report issued by the National Health Service physician assigned to the case, the worker must occupy a different position or perform different functions compatible with her condition. After consulting with the workers' representatives, the employer must establish a list of risk-free jobs for these intents and purposes.»

- «4. The provisions of numbers 1 and 2 of this article will likewise be applicable during breastfeeding if working conditions may have an adverse effect on the worker's or the child's health; and where this is certified by the National Social Security Institute or the respective mutual insurance medical services (depending on the institution with which the employer has contracted cover for occupational hazards) on the grounds of the report issued by the National Health Service physician assigned to the worker's or her child's case. In the presence of the circumstances described in number 3 of this article, the worker in question may also be granted suspension of employment for risk to breastfed children under the age of nine months as provided in Article 45.1.d) of the Workers' By-laws.»

Thirteen. *Amendments to the Rules of Labour Law Procedure*

The consolidated text of the Rules of Labour Law Procedure, enacted by Royal Legislative Decree 2/1995 of 7 April, is amended as follows:

One. A second paragraph is added to Article 27, item 2, with the following wording:

«The foregoing is understood to be without prejudice, in the above proceedings, to the ability to claim the indemnity due for discrimination or violation of fundamental rights in accordance with Articles 180 and 181 of the present Act.»

Two. Article 108, item 2 is amended to read as follows:

- «2. Dismissals whose motive is any of the instances of discrimination laid down in the Constitution or the law, or which involve a violation of a worker's fundamental rights or public freedoms will be null and void.

Dismissals will likewise be null and void when they affect:

- a) Workers during suspension of employment for maternity, risk during pregnancy, risk during breastfeeding, illness caused by pregnancy, childbirth or breastfeeding, adoption or fosterage, or paternity as referred to in Article 45, item 1, letter d), or dismissal notified on a date such that the advance notice served finalizes during such period.
- b) Pregnant workers, from the date of initiation of pregnancy until the beginning of the suspension period referred to in letter a), and workers who have requested one of the leaves referred to in Article 37, items 4, 4 bis or 5 or who are on such leaves or who have requested or are on the leave of absence provided for in Article 46, item 3 of the Workers' By-laws; and workers who are victims of gender violence, for exercising their right to shorten or reorganize their working hours, or to geographic mobility, change of workplace or suspension of labour relations under the terms and conditions stipulated in the Workers' By-laws.
- c) Workers after returning to work on finalization of suspension of employment for maternity, adoption or fosterage or paternity, providing more than nine months have not lapsed from the date of birth, adoption or fosterage.

The provisions of the preceding letters will be applicable except where, in such cases, dismissal is found to be in order for reasons unrelated to pregnancy or the exercise of the right to the leaves specified.»

Three. A new item, 2, is added to Article 122, with the following wording:

«2. Dismissal will be null and void when:

- a) The legal formalities relating to written notification, mentioning cause, are not met.

- b) The worker has not had avail to the respective indemnity, except where none is legally required.
- c) It is discriminatory or contrary to the worker's fundamental rights and public freedoms.
- d) It was effected incurring a fraud in law, eluding the established rules on collective dismissals, in the instances referred to in Article 51.1 of the consolidated text of the Workers' By-laws.»

«Dismissals will likewise be null and void when they affect:

- a) Workers during suspension of employment for maternity, risk during pregnancy, risk during breastfeeding, illness caused by pregnancy, childbirth or breastfeeding, adoption or fosterage, or paternity as referred to in Article 45, item 1, letter d), or dismissal notified on a date such that the advance notice served finalizes during such period.
- b) Pregnant workers, from the date of initiation of pregnancy until the beginning of the suspension period referred to in letter a), and workers who have requested one of the leaves referred to in Article 37, items 4, 4 *bis* or 5 or who are on such leaves or who have requested or are on the leave of absence provided for in Article 46, item 3 of the Workers' By-laws; and workers who are victims of gender violence, for exercising their right to shorten or reorganize their working hours, or to geographic mobility, change of workplace or suspension of labour relations under the terms and conditions stipulated in the Workers' By-laws.
- c) Workers after returning to work on finalization of suspension of employment for maternity, adoption or fosterage or paternity, providing more than nine months have not lapsed from the date of birth, adoption or fosterage.

The provisions of the preceding letters will be applicable except where, in such cases, dismissal is found to be in order for reasons unrelated to pregnancy or the exercise of the right to the leaves specified.»

Four. A new letter, d), is added to Article 146, in the following terms:

- «d) Of Labour and Social Security inspection notifications regarding the verification of the existence of discrimination on the grounds of sex, which contain an estimate of the wrong suffered by the worker for the intents and purposes of determining the respective indemnity.

In this case, the respective Inspection Office must report such circumstances to the competent labour authority for its information and subsequent referral to the competent jurisdictional body for the intents and purposes of consolidation of action in the event of subsequent institution of the *ex officio* proceedings referred to in Article 149, item 2 of the present Act.»

Five. Section 2 of Article 149 is amended to read as follows:

- «2. Similarly, where the infringement papers address any of the matters laid down in Art. 7, items 2, 6 and 10 and Article 8, items 2, 11 and 12 of the Consolidated Text of the Act on Labour Law Infringements and Penalties, enacted under Royal Legislative Decree 5/2000 of 4 August, and where the individual responsible has appealed against them on the basis of allegations and proof from which it can be deduced that the jurisdiction over the heart of the matter is attributed to the labour courts in accordance with Article 9.5 of the Constitutional Act on the Judiciary.»

Six. Section 1 of Article 180 is amended to read as follows:

- «1. The sentence will declare the existence or otherwise of the reported violation. If affirmative and after the declaration of complete nullity of the behaviour of the employer, business association, government or whatsoever other individual, public or private corporation or entity, it will order the immediate cessation of the anti-union behaviour and the return to the situation immediately prior to its occurrence, as well as the repair of the consequences resulting from the act, including the corresponding indemnification, which will be compatible, where applicable, with that which may correspond to the worker as a result of the modification or exten-

sion of the employment contract in accordance with the provisions laid down in the Workers' By-laws.»

Seven. Article 181 is amended to read as follows:

«Action for judicial protection in connection with all other fundamental rights and public freedoms, including the prohibition of discrimination and harassment, which arise in the area of legal relations attributed to the jurisdiction of the labour courts, will be processed in accordance with the provisions laid down in this chapter. All such action will indicate the fundamental right or rights that are considered as violated.

When the sentence declares the existence of violation, the Judge will deliver judgement on the amount of the indemnification which, where applicable, corresponds to the worker due to having suffered discrimination, if there were differences between the parties. This indemnification will be compatible, where applicable, with that which may correspond to the worker due to the modification or extension of the employment contract in accordance with the provisions laid down in the Workers' By-laws.»

Fourteen. *Amendments to the Act on Labour Law Infringements and Sanctions Act*

The Consolidated Text of the Act on Labour Law Infringements and Sanctions, adopted by Royal Legislative Decree 5/2000 of 4 August, is amended as follows:

One. A new section, section 13, is added to Article 7, with the following wording:

«13. Failure to comply with the obligations laid down in the Workers' By-laws or the applicable collective bargaining agreement in the area of equality plans.»

Two. Article 8, items 12 and 13 *bis* are amended and a new item 17 is added, as follows:

«12. The unilateral decisions taken by employers involving unfavourable direct or indirect discrimination on the grounds of age or disability, or favourable or adverse treatment with regard to salaries, working hours, training, promotion or other working conditions on the grounds of sex, origin, including racial or ethnic origin,

marital status, social condition, religion or beliefs, political ideas, sexual orientation, adherence or otherwise to trade unions and to their agreements, family relations with other workers in the company or vernacular language spoken within Spain, as well as the decisions taken by the employer which involve the unfavourable treatment of workers as a reaction to a claim made against the company or to an administrative or judicial action aimed at requiring the fulfilment of the principle of equality and non-discrimination.»

«13 *bis*. Harassment on the grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation and harassment on the grounds of sex, when occurring within the scope of the powers vested in company management, regardless of the identity of the actor, provided the employer fails to adopt the measures required to prevent such behaviour when it comes to her/his attention.»

«17. Failing to prepare or apply the equality plan or doing so in manifest breach of the corresponding terms, when the implementation of such plan is mandatory under the provisions laid down in section 2 of Article 46 *bis* of this Act.»

Three. Article 46, paragraph one is amended to read as follows:

«Without prejudice to the penalties referred to in Article 40.1 and except for the provisions laid down in Article 46 *bis*) of this Act, employers committing very serious infringements as per Article 16 and 23 of this Act regarding employment and unemployment benefits.»

Four. A new Subsection 3 *bis* is added to Chapter VI, Section 2, comprising a new Article 46 *bis* under the following terms:

«Subsection three *bis*. Responsibilities in the area of equality.»

Article 46 *bis*. Employers' specific responsibilities

«1. Employers who have committed the very serious infringements defined in sections 12, 13 and 13 *bis*) of Article 8 and Article 16, item 2 of this Act will be penal-

ized, without prejudice to the provisions laid down in Article 40, item 1 with the following supplementary penalties:

- a) Automatic loss of the subsidies, tax relief and, in general, the benefits resulting from the application of employment programmes, effective as from the date on which the infringement was committed, and
 - b) Automatic exclusion from access to the said benefits for the term of six months.»
- «2. Notwithstanding the foregoing, in the case of the very serious infringements defined in Article 8, item 12 and Article 16, item 2 of this Act with reference to the cases of direct or indirect discrimination on the grounds of sex, the supplementary penalties to which the above section refers may be replaced by the preparation and application of an equality plan in the company, if so determined by the competent labour authority at the request of the company and after an official report issued by the Social Security and Employment Inspection Service, under the terms laid down in the regulations, in which case the term for the extinguishment of the said supplementary penalties will be suspended.

Should the equality plan not be prepared or applied or should it be carried out in manifest breach of the terms laid down in the ruling of the labour authority, at the proposal of the Social Security and Employment Inspection Service the said authority, without prejudice to the imposition of the corresponding penalty for the commission of the infringement defined in Article 8, item 17, will remove the effect of the substitution of the supplementary penalties, which will be applied as follows:

- a) The automatic loss of the subsidies, tax relief and benefits referred to in letter a) of the above section will be applied with effects as from the date on which the infringement was committed;
- b) The exclusion of access to the said benefits will be for six months as from the date of the decision

issued by the labour authority whereby it is agreed to render the suspension null and void and apply the supplementary penalties.»

Fifteen. *Amendment of the Royal Decree Law regulating Social Security tax relief for temporary contracts concluded with unemployed individuals to replace workers during rest periods corresponding to maternity, adoption or fosterage*

Article. 1 of Royal Decree Law 11/1998 of 4 September, regulating Social Security tax relief for temporary contracts concluded with unemployed individuals to replace workers during rest periods for maternity, adoption or fosterage, is amended to read as follows:

«They will entitle to tax relief of 100 per cent of the employer's Social Security tax, including occupational injury and disease insurance, and of the employer's contributions to the pooled items (unemployment, training, workers' guarantee fund):

- a) The temporary contracts concluded with unemployed individuals to replace workers whose employment contract has been suspended due to risk during pregnancy or risk during breastfeeding and until the respective suspension of employment for biological childbirth begins or until the baby being breastfed reaches the age of nine months, respectively, or, in both cases, when the worker is no longer unable to return to her former position or to one compatible with her condition.
- b) The temporary contracts signed with unemployed individuals to replace workers whose employment contract has been suspended during the periods of rest due to maternity, adoption and pre-adoptive or permanent fosterage or whose contract has been suspended due to paternity under the terms laid down in Articles 48.4 and 48 *bis* of the Workers' By-laws.

The maximum duration of the tax relief stipulated in this item b) will concur with the terms of the respective suspensions of the contracts referred to in the articles mentioned in the preceding paragraph.

Should the worker not take the entire rest period or leave to which she/he is entitled, the benefits will extinguish on her/his return to work.

- c) Temporary contracts concluded with unemployed individuals to replace self-employed workers, working partners and working partners in cooperative societies, in the cases of risk during pregnancy or risk during breastfeeding, periods of rest due to maternity, adoption or fosterage or suspension due to paternity under the terms laid down in the above paragraphs.»

Sixteen. *Amendments to the Act on Urgent Measures for the Reform of the Labour Market to increase and improve the quality of employment*

Additional provision two of Act 12/2001 of 9 July on Urgent Measures for the Reform of the Labour Market to increase and improve the quality of employment is amended to read as follows:

«Additional provision two. Social Security tax relief for workers taking a rest period for maternity, adoption, fosterage, risk during pregnancy, risk during breastfeeding or suspension for paternity.

The following will apply to the workers or working partners or working partners of cooperative societies or self-employed workers replaced during rest periods for maternity, adoption, fosterage, paternity, risk during pregnancy or risk during breastfeeding by unemployed individuals hired under temporary contracts as per Royal Decree Act 11/1998, of 4 September:

- a) Relief of 100 per cent of the employer's Social Security tax, including occupational accident and disease insurance and the employer's contributions to pooled items (unemployment, training, workers' guarantee fund), for workers with employee Social Security cover.
- b) Relief of 100 per cent of the Social Security tax computed by applying the mandatory tax rate to the minimum or fixed base established for self-employed workers.

This relief will apply only for as long as the suspension of activity resulting from the above causes and the tempo-

rary employment contract of the substitute worker concur and will not exceed the suspension period in any case whatsoever.»

Seventeen. *Amendments to the Employment Act.*

A new Article 22 *bis* is added to Employment Act 56/2003 of 16 December, under the following terms:

«Article 22 *bis*. Discrimination in employability

1. The public employment services, their partnering institutions and non-profit placement agencies will specifically endeavour to avoid discrimination in employability when conducting employment intermediation.

When discrimination is observed in employment offers, the employment intermediation managers will notify the party making the offer.

2. In particular, offers referring to one of the sexes will be considered discriminatory unless it is an essential and determining occupational requirement for the tasks to be performed.

In any event, offers referring to only one of the sexes based on requirements relating to physical exertion will be considered discriminatory.»

Eighteen. *Amendments to the General Act on Social Security.*

The consolidated text of the General Act on Social Security, enacted under Royal Legislative Decree 1/1994 of 20 June, is amended as follows:

One. Article 38, item 1, letter c), paragraph one is amended to read as follows:

- «c) Cash benefits in situations of temporary incapacity; maternity; paternity; risk during pregnancy; risk during breastfeeding; contributory and non-contributory disability and retirement pensions and unemployment benefits; death and survival; as well as those awarded in the special situations and contingencies that are determined by Royal Decree, further to a proposal by the Minister of Labour and Social Affairs.»

Two. Item 4 of Article 106 is amended to read as follows:

- «4. Contributions will be obligatory for workers with temporary incapacity for whatever cause, as well as for those on leave for maternity, paternity, risk during pregnancy, risk during breastfeeding or any of the other circumstances laid down in Article 125.»

Three. Item 3 of Article 124 is amended to read as follows:

- «3. Social Security tax paid during temporary incapacity or leave for maternity, paternity, risk during pregnancy or risk during breastfeeding will be counted for the intents and purposes of eligibility periods for benefits.»

Four. A new item 6 is added to Article 124, as follows:

- «6. Maternity or paternity leaves subsisting on the date on which an employment contract ends or beginning during while unemployment benefits are being drawn will be considered to be effective payment periods for the intents and purposes of Social Security retirement, permanent incapacity, death and survival and maternity and paternity benefits.»

Five. Item 1 of Article 125 is amended to read as follows:

- «1. The legal status of workers on total unemployment benefits will be likened to active employment status. Any paid annual holidays not taken by the worker prior to termination of the employment contract period will also be likened to active employment status, except as regards subsidies for risk during pregnancy and risk during breastfeeding.»

Six. Chapter IV *bis* of Title II is amended to read as follows:

«CHAPTER IV *BIS*

MATERNITY

Section one. General circumstances

Article 133 *bis*. *Protected status.*

For the intents and purposes of the maternity benefit laid down in this Section, conditions meriting protected status will include maternity, adoption and pre-adoptive or perma-

ment fosterage or simple fosterage, subject in the last of the cases mentioned to duration being not shorter than one year, even though such fosterage is provisional, in accordance with the Civil Code or the civil laws of the Autonomous Communities governing such situations; and such status will be effective during the rest periods taken as a result of such conditions, in accordance with the provisions laid down in Article 48.4 of the Consolidated Text of the Workers' By-laws, enacted under Royal Legislative Decree 1/1995 of 24 March and Article 30.3 of Act 30/1984 of 2 August, on measures for civil service reform.

Article 133 *ter*. *Beneficiaries*.

1. Employees, regardless of their sex, taking the rest periods stipulated in the preceding article will be regarded to be beneficiaries of maternity benefits, providing they meet the general requirement laid down in Article 124.1 and any other provisions that may be statutorily established, and substantiate payment of Social Security tax as follows:
 - a) If the worker is under the age of 21 years on the date of the birth, the administrative or judicial decision on fosterage or the judicial resolution formalizing adoption, no minimum eligibility period will be required.
 - b) If the worker is between 21 and 26 years of age on the date of the birth or on the administrative or judicial decision on fosterage or the judicial resolution formalizing adoption, Social Security tax must have been paid for at least 90 days during the seven years immediately prior to the moment at which the rest period begins. The aforementioned requirement will be considered to have been met if, alternatively, the worker substantiates having contributed to Social Security for 180 days throughout her/his working life prior to such date.
 - c) If the worker is over 26 years of age on the date of the birth or on the administrative or judicial decision on fosterage or the judicial resolution formalizing adoption, Social Security tax must have been paid for at least 180 days during the seven years immediately prior to the moment at which the rest period begins. The aforementioned requirements will be

considered to have been met if, alternatively, the worker substantiates having contributed to Social Security for 360 days throughout her/his working life prior to the said date.

2. In the case of birth, applicable exclusively to the biological mother, the age indicated in the above section will be the worker's age at the start of the rest period, taking the moment of the birth as a reference point for the intents and purposes of verifying substantiation of eligibility on the basis of time of contribution to Social Security.
3. In the instances described in the penultimate paragraph of Article 48.4 of the Consolidated Text of the Act on Workers' By-laws, enacted under Royal Legislative Decree 1/1995, of 24 March, and in Article 30.3, paragraph eight of Act 30/1984 of 2 August on measures for the reform of the civil service, the age specified in item 1 above will be the workers' age when the rest period begins, and the reference for verifying substantiation of eligibility, where applicable, will be the date of the ruling.

Article 133 *quater*. *Cash benefits.*

Cash benefits for maternity will consist of a subsidy equivalent to 100 per cent of the respective base salary. For the said intents and purposes, the base salary will be equivalent to the salary established for benefits paid to workers with temporary incapacity for causes covered by the common contingencies.

Article 133 *quinquies*. *Loss or suspension of the right to subsidy for maternity.*

The right to subsidy for maternity may be denied, cancelled or suspended when the beneficiary has acted fraudulently to obtain or keep the said benefits, or if she works as a self-employed worker or employee during the corresponding rest periods.

Section two. Special circumstance

Article 133 *sexies*. *Beneficiaries.*

Employees who, in the case of birth, meet all the requirements laid down for access to the maternity benefits in

accordance with the previous Section, except for the minimum eligibility period laid down in Article 133 *ter*, will be eligible for the maternity subsidy.

Article 133 *septies*. *Cash benefits*.

The amount of the benefit will be equal to 100 per cent of the nationwide base income for computing welfare benefits (in Spanish, IPREM) in effect at any given time, except where the base salary calculated in accordance with Article 133 *quater* or additional provision seven is of a lower amount, in which case, the said lower amount will apply.

The duration of the benefit, which will be considered to be non-contributory for the intents and purposes of Article 86, will be 42 calendar days from childbirth, and may be denied, cancelled or suspended under the circumstances stipulated in Article 133 *quinquies*.»

Seven. The current Chapter IV *ter* of Title II, becomes Chapter IV *quater*, and a new Chapter IV *ter* is inserted in the said Title with the following text:

«CHAPTER IV *TER*

PATERNITY

Article 133 *octies*. *Protected status*.

For the intents and purposes of paternity benefit, protected status will be granted in the event of childbirth, adoption or pre-adoptive, permanent or simple fosterage, subject in the last of the cases mentioned to duration being not shorter than one year, even though such fosterage is provisional, in accordance with the Civil Code or the civil laws of the Autonomous Communities governing such situations; such status will be in effect for the period of suspension applicable to the above circumstances in accordance with the provisions of Article 48 *bis* of the Consolidated Text of the Workers' By-laws, enacted under Royal Legislative Decree 1/1995 of 24 March, or for the leave applicable under the same circumstances pursuant to the provisions laid down in Article 30.1, letter a) of Act 30/1984 of 2 August on measures for the reform of the civil service.

Article 133 *nonies*. Beneficiaries

The beneficiaries of the paternity subsidy will be employees benefiting from the suspension referred to in the above article, provided, further to the general requirements laid down in Article 124.1, they substantiate eligibility on the grounds of Social Security tax payments for a period of 180 days over the seven years immediately prior to the date on which the said suspension begins, or, alternatively, 360 days throughout their working life prior to the aforementioned date, and meet the other statutory requirements.

Article 133 *decies*. Cash benefits.

The financial benefit for paternity will consist of a subsidy to be determined in accordance with the provisions of Article 133 *quater* for the maternity benefit and may be denied, cancelled or suspended under the circumstances stipulated for the latter.»

Eight. Article 134 of the Consolidated Text of the General Act on Social Security, enacted under Royal Legislative Decree 1/1994, of 20 June, is amended as follows:

«Article 134. *Protected status*.

For the intents and purposes of the cash benefits for risk during pregnancy, protected status is applied during the suspension of the employment contract where the worker has to change her job for another that is compatible with her condition, under the terms laid down in Article 26, item 3 of Act 31/1995 of 8 November on the Prevention of Occupational Hazards and such change is not technically or objectively possible or cannot be reasonably demanded for justified cause.

The risk during pregnancy benefit will be regarded to be a benefit deriving from occupational contingencies.»

Nine. Article 135 of the Consolidated Text of the General Act on Social Security, enacted under Royal Legislative Decree 1/1994, of 20 June, is amended as follows:

«Article 135. *Cash benefits*.

1. The financial benefit for risk during pregnancy will be awarded to workers under the terms and conditions laid

down in this Act for cash benefits for temporary incapacity resulting from professional contingencies, subject to the particulars established in the following items.

2. The financial benefit will take effect on the date on which the suspension of the employment contract begins and will end on the day prior to the day on which the suspension of the employment contract for maternity begins or on which the worker returns to her previous position or one that is compatible with her condition.
3. The cash benefits will consist of a subsidy equivalent to 100 per cent of the respective base salary. For the said intents and purposes, the base salary will be equivalent to the salary established for benefits paid to workers with temporary incapacity for causes covered by the common contingencies.
4. Handling and payment of the cash benefits for risks during pregnancy will be incumbent upon the Social Security processing agency or Industrial Injury and Occupational Disease Mutual Insurer, depending on the institution with which the employer has contracted cover for occupational hazards.»

Ten. A new Chapter IV *quinquies* is added to Title II as follows:

«CHAPTER IV *QUINQUIES*

RISK DURING BREASTFEEDING

Article 135 *bis*. *Protected status.*

For the intents and purposes of the cash benefits for risk during pregnancy, protected status is applied during suspension of the employment contract where the worker has to change her job for another that is compatible with her condition, under the terms laid down in Article 26.4, item 3 of Act 31/1995 of 8 November on the Prevention of Occupational Hazards and such change is not technically or objectively possible or cannot be reasonably demanded for justified cause.

Article 135 *ter*. *Cash benefits.*

Cash benefits for risk during breastfeeding will be awarded to workers under the terms and conditions laid down in this

Act for the cash benefits for risk during pregnancy and will terminate when the child reaches the age of nine months, unless the beneficiary has previously returned to her former position or to one that is compatible with her situation.»

Eleven. Article 172, item 1, letter b) is amended to read as follows:

- «b) Those receiving the subsidies for temporary incapacity, risk during pregnancy, maternity, paternity or risk during breastfeeding, meeting the eligibility requirement in respect of length of time contributing to Social Security, where applicable.»

Twelve. Article 180 is amended to read as follows:

«Article 180. Benefits

1. The first two years of leave of absence taken by workers pursuant to Article 46.3 of the Workers' By-laws to look after each child or fostered minor in the event of permanent fosterage or pre-adoption, even where provisional, will count towards eligibility for the respective Social Security retirement, permanent incapacity, death and survival, maternity and paternity benefits.

The period referred to in the above paragraph in respect of eligibility for benefits will be extended to 30 months if the family unit of which the minor forms a part and for whose care the leave is requested, has attained general large family status, or to 36 months if it has special category large family status.

2. Similarly, the first year of the leave of absence taken by workers pursuant to Article 46.3 of the Workers' By-laws to care for other family members up to the second degree of kinship, who, for reasons of age, accident, illness or disability are unable to manage on their own and have no paid employment, will count towards eligibility for the benefits indicated in the preceding item.
3. Social Security contributions made during the first two years during which the working day is shortened to care for minors as per Article 37.5 of the Workers' By-laws will be computed as 100 per cent of the amount that would have been paid if the working hours had not been short-

ened, for the intents and purposes of eligibility for the benefits listed in item 1 above. Such increase will be applied to the first year only in the other instances of shortened working hours stipulated in the aforementioned article.

4. For the intents and purposes of eligibility for benefits, when the leaves of absence specified in items 1 and 2 are preceded by a period of shortened working hours under the terms of Article 37.5 of the Workers' By-laws, the Social Security contributions made during the said period will be computed as 100 per cent of the amount that would have been paid if the working hours had not been shortened.»

Thirteen. A new item 5 is added to Article 211 as follows:

- «5. In the instances of shortened working hours provided for in Article 37, items 4 *bis*, 5 and 7 of the Workers' By-laws, to calculate the base salary, the Social Security tax base will be computed as 100 per cent of the amount that would have been paid if the full-time or part-time working hours had not been shortened.

If workers acquire legal unemployment status while working shorter hours under the above circumstances, the maximum and minimum amounts referred to in the above items will be determined on the basis of the nationwide base income for computing welfare benefits, taking into account the hours worked prior to the shortening of the working day.»

Fourteen. Section 1 of Article 217 is amended to read as follows:

- «1. The subsidy will amount to 80 per cent of the nationwide base income for computing welfare benefits in effect at any given time.

The aforementioned amount will also be received in the event of unemployment upon loss of part-time work.»

Fifteen. Article 222, item 2 is amended to read as follows:

- «2. When the contract governing the employment of workers with maternity or paternity status expires in the interim for any of the reasons specified in Article 208,

item 1, they will continue to receive the respective benefits until the underlying circumstances draw to an end. At that time they will enter acquire unemployed status and receive the respective benefits if they meet the regulatory requirements. In the event, the time workers retain maternity or paternity status will not be discounted from the period during which contributory unemployment benefits may be drawn.»

Sixteen. Article 222, item 3, paragraphs three and four are amended to read as follows:

«Workers receiving full unemployment benefits who acquire maternity or paternity status will receive their benefit for the latter contingency for the amount due.

The period during which unemployment benefits can be drawn will not be extended as a result of temporary incapacity. During the said situation, the Social Security processing agency handling unemployment benefits will continue to pay the Social Security contributions in accordance with the provisions laid down in Article 206, item 1, paragraph b).»

Seventeen. A new paragraph five is added to Article 222, item 3 as follows:

«If workers acquire maternity or paternity status, the unemployment benefit and aforementioned Social Security contributions will be suspended and they will receive maternity or paternity benefits, handled directly by the respective processing agency. Once the maternity or paternity benefit has expired, unemployment benefits will be renewed under the terms laid down in Article 212.3.b) for the remainder of the benefit period and for the amount due at the time of suspension.»

Eighteen. Additional provision six is amended to read as follows:

«Additional provision six. Protection for trainee workers

Social Security protection for trainee workers will cover the following contingencies, circumstances meriting protection and benefits: industrial injury and occupational diseases, health care in the cases of common illness, non-industrial injury and maternity, the cash benefits for temporary incapac-

ity resulting from common risks, maternity and paternity, risk during pregnancy and during breastfeeding, and pensions.»

Nineteen. Additional provision seven is amended as follows:

1. Additional provision seven, item 1, rule two, letter a) is amended to read as follows:

«a) To substantiate the number of periods of Social Security contributions required to be eligible for retirement, permanent incapacity, death and survival, temporary incapacity, maternity and paternity benefits, contributions will be computed solely on the grounds of the ordinary and overtime hours worked, converted into theoretical days for which contributions were made. For these intents and purposes, the number of hours actually worked will be divided by five, the daily equivalent of one thousand eight hundred twenty six hours per year.»

2. Additional provision seven, item 1, rule three, letter a) is amended to read as follows:

«a) The base salary for retirement and permanent incapacity benefits will be computed pursuant to the general rule. For the maternity and paternity benefits, the daily base wage will be the result of dividing the sum of the Social Security tax bases substantiated in the company during the year prior to the date of the event in question by 365.»

Twenty. Additional provision eight, item 4 is amended to read as follows:

«4. The provisions laid down in Articles 134, 135, 135 *bis*, 135 *ter* and 166 will apply, as appropriate, to employees covered by special Social Security schemes. The provisions laid down in Articles 112 *bis* and 162.6 will also apply to employees covered by special schemes with the exception of workers covered by the special agricultural and domestic employee schemes. In addition, the provisions laid down in Articles 134, 135, 135 *bis*, 135 *ter* and 166 will apply to self-employed workers covered by the special schemes for maritime and agricultural workers and self-employed workers under the terms and conditions laid down in the respective regulations.»

Twenty-one. Additional provision eleven *bis* is amended to read as follows:

«Additional provision eleven *bis*. Maternity and paternity benefits under Special Schemes

1. Employees and self-employed workers covered by the various Special Schemes will be entitled to the benefits laid down in Title II, Chapters IV *bis* and IV *ter* of this Act to the same extent and under the same terms and conditions as those laid down therein for workers under the General Scheme.
2. In the case of self-employed workers, the periods during which they will have the right to receive the maternity and paternity subsidies will coincide regarding both their duration and their distribution with the periods of rest from work established for employees, where the payment of the paternity subsidy may begin from the moment at which the child is born. Self-employed workers may also receive the maternity and paternity subsidy under the part-time work system under the terms and conditions laid down in the regulations.
3. Both self-employed workers covered by the various Special Schemes and workers covered by the Special Scheme for Domestic Employees and responsible for making their own contributions must be up to date in their Social Security payments for the benefit to be acknowledged and paid.»

Twenty-two. Additional provision eleven *ter* is amended to read as follows:

«Additional provision eleven *ter*. Handling of cash benefits for maternity and paternity

The handling of the maternity and paternity cash benefits regulated in this act will be incumbent directly and exclusively upon the respective processing agency.»

Twenty-three. A new additional provision forty-four is included as follows:

«Additional provision forty-four. Contribution equivalence in the event of childbirth

For the intents and purposes of contributory retirement and permanent incapacity pensions under whatsoever Social Security scheme, a total contribution for 112 full days will be attributed to the pension applicant for each single birth and 14 additional days for each additional child in the event of multiple births, except for workers or civil servants in active service at the time of the birth for whom contributions were made during the entire sixteen-week leave period or in the event of multiple births, during whatever time was due.»

Nineteen. *Amendments to the Act on Measures for the Reform of the Civil Service*

The following provisions of Act 30/1984 of 2 August on Measures for the Reform of Civil Service are amended as stipulated below:

One. Article 29.4, paragraph two is amended to read as follows:

«Civil servants will also be entitled to a leave of no more than three years to care for dependent family members up to the second degree of kinship, inclusive, who for reasons of age, accident, illness or disability are unable to manage on their own and have no paid employment.»

Two. Article 29.4 , paragraph five is amended to read as follows:

«The time spent on such leave will be counted for the intents and purposes of computing three-year bonus pay, consolidation of personal employment status and other passive benefits.

Civil servants may take part in the training courses announced by the Government. During the first two years, they will be entitled to reserve their position. Once that period lapses, the reservation will be for a position in the same city/town with the same level and salary.»

Three. Present paragraph six of Article 29.4 is deleted.

Four. The title of Article 29.8 is amended to read as follows:

«Leave of absence for gender violence victims.»

Five. A new paragraph is added after paragraph one of Article 29.8 as follows:

«Similarly, during the first two months of this leave, the civil servant be entitled to receive her full salary and, where applicable, family benefits for dependent children.»

Six. Article 30.1, letter a) is amended to read as follows:

«1. Leaves will be granted for the following substantiated reasons:

- a) For childbirth, fosterage or adoption, fifteen days for the father as from the date of birth, the administrative or judicial decision on fosterage or the judicial resolution formalizing adoption..»

Seven. A new letter a *bis* is added to Article 30.1 as follows:

«a *bis*) For the death, serious illness or accident of a family member up to the first degree of kinship, three business days when the event occurs in the same town/city and five business days otherwise.

For death, serious illness or accident of a family member up to the second degree of kinship, the leave will be for two business days when the event occurs in the same town/city and four business days otherwise.»

Eight. Article 30.1, letter f) is amended and two paragraphs are added thereto, to read as follows:

«Civil servants breastfeeding a child under the age of twelve months, will be entitled to one hour's leave from work a day, which she may divide into two fractions. This right may be exchanged for shortening the normal working day by half an hour at the beginning and end of the day or by one hour at the beginning or at the end of the day, for the same purpose. This right may be exercised by either of the parents if they both work.

Similarly, civil servants may ask to exchange the breastfeeding time for paid leave, accumulating the time due as full days.

This leave will be increased proportionally in the event of multiple births.»

Nine. Article 30.1, letter f *bis*), paragraph one is amended to read as follows:

«f *bis*) In the event of premature delivery or where, for any other reason, the newborn must remain hospitalized after childbirth, civil servants will be entitled to absence from work for a maximum of two hours with full pay. In addition, they will be entitled to shorten their working day by up to two hours subject to the proportional reduction of their remuneration.»

Ten. Article 30.1, letter g), paragraph one is amended to read as follows:

«g) Civil servants who are legal guardians and directly responsible for the care of a minor under the age of 12, dependent seniors or disabled persons with no paid employment will be entitled to shorten their working day.»

Eleven Letter g *bis*) is added to Article 30.1 as follows:

«g *bis*) Civil servants caring for a family member within the first degree of kinship with a very serious illness will be entitled to request a paid reduction of up to 50 per cent in their working day for the maximum term of one month. If a single event generates this right for more than one person, the shortened hours may be shared proportionally, subject at all times to the maximum term of one month in all.»

Twelve. The following is added at the end of Article 30.2:

«... and for duties resulting from the reconciliation of family and working life.»

Thirteen. Article 30.3 is amended to read as follows:

«In the case of birth, the duration of the leave will be sixteen uninterrupted weeks, which may be extended in the case of multiple births by two further weeks for each additional child. The leave will be distributed at the worker's discretion provided six weeks are taken immediately after delivery. In the event of death of the mother, the other parent may use all or, where applicable, the remaining part of the leave.»

Notwithstanding the foregoing and without prejudice to the mother's six-week mandatory rest period, if both parents work, at the beginning of the maternity leave the mother may opt for the other parent to take a certain uninterrupted part of the rest period after childbirth, either concurrent with or subsequent to her own. The other parent may continue to take the maternity leave initially transferred, even if the mother incurs in temporary disability when the time comes for her to return to work.

In the event of premature delivery or where, for any other reason, the newborn must remain hospitalized after childbirth, the suspension period will be extended for the number of days that the newborn is hospitalized, up to a maximum of thirteen additional weeks.

In the event of adoption or pre-adoptive or permanent or simple fosterage, pursuant to the Civil Code or the civil laws of the Autonomous Communities regulating such instances, provided simple fosterage is for no less than one year, and regardless of the minor's age, suspension will be for sixteen uninterrupted weeks, which may be extended by two weeks for each additional child in the event of multiple adoptions or fosterage. Such suspension will be effective at the civil servant's discretion, either from the date of the judicial resolution formalizing the adoption or the date of the governmental or judicial decision on provisional or permanent fosterage, although the same minor may under no circumstances entitle parents to several suspension periods. Where both parents work, the leave may be distributed at their discretion, either concurrently or successively but always uninterruptedly.

If the child born, adopted or fostered has a disability, the suspension of employment referred to in this item will be extended for a further two weeks. Where both parents work, this additional suspension will be distributed at their discretion, either concurrently or successively, but always uninterruptedly.

In the event of concurrent rest periods, the sum thereof may not exceed the sixteen weeks stipulated in the pre-

ceding items with any extensions, as appropriate, for multiple births, adoption or fosterage or children born, adopted or fostered with disabilities.

The leaves referred to in the present item may be taken as full or partial working days as requested by the civil servants concerned, service needs permitting, under the terms laid down in the respective regulations.

In international adoptions, when the parents must travel to the adopted child's country of origin, civil servants be entitled to leaves of up to two months, during which time they will receive only their base salary.

Irrespective of the leave stipulated in the preceding paragraph and in the circumstances provided for thereunder, pursuant to the Civil Code or the civil laws of the Autonomous Communities governing such situations, leave for adoption or pre-adoptive or permanent or simple fosterage, in the event of simple fosterage subject to duration of no less than one year, may begin up to four weeks prior to the resolution formalizing the adoption.

During the leaves provided for in this item, civil servants may take part in the training courses announced by the Government.

In the circumstances provided for in this item, the time spent on maternity leave will count as effective service for all intents and purposes, and the civil servant's full financial rights and those of the other parent and likewise civil servant, as appropriate, will be guaranteed throughout their respective leaves, as well, where applicable, as during the periods subsequent thereto if, pursuant to the applicable legislation, the right to receive whatsoever item of remuneration is contingent upon the length of the leave.

Civil servants having taken maternity leave will be entitled, at the end thereof, to return to their position under terms and conditions that are no less favourable than when leave was taken, and to benefit from whatsoever improvements in the working conditions to which they may have been entitled during their absence.»

Twenty. *Amendments to the Act on Armed Forces Personnel.*

Act 17/1999 of 18 May on Armed Forces Personnel is amended as follows:

One. Article 108.2 is reworded as follows:

- «2. Personnel assessment body membership, conflicts of interest and operating rules will be determined by the respective regulations, and adapted as far as possible to the principle of balanced membership under the terms laid down in the Constitutional Act for effective equality between women and men. In whatsoever case, they will be constituted by military personnel in higher positions than those assessed.»

Two. A new item four is included in Article 112, as follows:

- «4. Women will be afforded special protection during pregnancy, delivery and postnatal periods to enable them to comply with the requirements for promotion to all professional military staff positions.»

Three. Article 132 is reworded as follows:

«During pregnancy and subject to the respective medical report, professional military staff may be assigned to a position or task other than their present occupation, better suited to their condition.

Birth or adoption will generate the right to the respective maternity and paternity leave in accordance with the existing legislation governing central, regional and local government personnel.

Application of the foregoing will not entail loss of station.»

Four. Article 141.1.e) is reworded to read as follows:

- «e) They apply for it, pursuant to the Civil Code or the civil laws of the Autonomous Communities governing such situations, to care for children or in the event of either pre-adoptive or permanent or simple fosterage, even where provisional, subject, in the last of these cases, to duration of no less than one year, for minors under the age of six or over that age if they have disabilities or, due to their personal circumstances, experience or ori-

gin from another country, find it particularly difficult to mainstream in social and family life, subject to substantiation of the foregoing by the competent social services.

They will also be entitled to a leave of no more than one year to care for dependent family members up to the second degree of kinship who for reasons of age, accident or illness are unable to manage on their own and have no paid employment.

Voluntary leave status may not be granted for such reason when the service man or woman's spouse or partner in a consensual union or other relative has been granted identical rights in connection with the same event.

Voluntary leave status may also be granted for reasons of family unity when the spouse resides in a different municipal district for having taken permanent employment with the central or any regional or local government or any of the positions laid down in Article 126.»

Five. A new item 6 is added to Article 148, as follows:

- «6. Temporary servicemen and women on contract and professional military staff in the army and navy who, upon termination of their service in the Armed Forces, are temporarily incapacitated as a result of a service-related accident or illness, or pregnancy, delivery or postnatal maternity, will not be discharged from the Armed Forces, but rather their commitment will be extended until such circumstances reach termination.»

Twenty-one. *Amendments to the Act on Civil Service in the Central Government.*

Article. 69, item 3 of the Act on Civil Service in the Central Government, enacted under Decree 315/1964, of 7 February, now reads as follows:

- «3. When a civil servant eligible for governmental mutual benefits is affected by circumstances such as referred to in Article 26, numbers 3 and 4 of Act 31/1995 of 8 November on the Prevention of Occupational Hazards, she may be granted leave for risk during pregnancy or

for risk during breastfeeding under the terms and conditions laid down in the above items.»

Twenty-two. *Amendment of Act 55/2003 on the By-laws of Health Service Statutory Staff.*

One. Article 59, item 3 of Act 55/2003 on the By-laws of Health Service Statutory Staff is amended as follows:

- «3. The special measures laid down in this article will not affect personnel on maternity leave or leave for risk during or breastfeeding.»

Two. Article 61, item 2 of Act 55/2003 on Health Service Statutory Staff By-laws is amended as follows:

- «2. Statutory personnel be entitled to the leaves and furloughs, including the leave for risk during pregnancy, established for civil servants under Act 39/1999 of 5 November on the reconciliation of workers' family and working life and by the Constitutional Act for the effective equality between women and men.»

Twenty-three

Articles 22 and 12, b) of the Act on Social Security for Central Government Civil Servants, enacted under Royal Legislative Decree 4/2000 of 23 June, are amended to read as follows:

«Article 22. Risk during pregnancy or risk during breastfeeding

For all intents and purposes, the status of civil servants on leave for risk during pregnancy or breastfeeding of children under the age of nine months will be the same as the status of public officials with temporary capacity in accordance with the terms laid down in Article 69 of the Act on Civil Service in the Central Government.»

«Article 12. Benefits

- «b) Subsidies for temporary incapacity, risk during pregnancy or risk during breastfeeding.»

Twenty-four. *Amendments to the Act on Civil Guard Corps Staff.*

Act 42/1999 of 25 May on Civil Guard Corps Staff is amended as follows:

One. Article 56.2 is reworded as follows:

- «2. Personnel assessment body membership, conflicts of interest and operating rules will be determined by the respective regulations, and adapted as far as possible to the principle of balanced membership under the terms laid down in the Constitutional Act for effective equality between women and men. In whatsoever case, they will be constituted by Civil Guard Corps personnel in higher positions or greater seniority than those assessed.»

Two. A new item six is added to Article 60, as follows:

- «6. Women will be afforded special protection during pregnancy, delivery and postnatal periods to enable them to comply with the requirements for promotion to all Civil Guard Corps positions.»

Three. Article 75 is reworded as follows:

«During pregnancy and subject to the respective medical report, Civil Guards may be assigned to a position or task other than their present occupation, better suited to their condition. Birth or adoption will generate the right to the respective maternity and paternity leave in accordance with the existing legislation governing central, regional and local government personnel. Application of the foregoing will not entail loss of station.»

Four. Article 83.1.e) is reworded to read as follows:

- «e) They apply for it, pursuant to the Civil Code or the civil laws of the Autonomous Communities governing such situations, to care for children or in the event of either pre-adoptive or permanent or simple fosterage, even where provisional, subject, in the last of these cases, to duration of no less than one year, for minors under the age of six or over that age if they have disabilities or, due to their personal circumstances, experience or origin from another country, find it particularly difficult to

mainstream in social and family life, subject to substantiation of the foregoing by the competent social services.

They will also be entitled to a leave of no more than one year to care for dependent family members up to the second degree of kinship who for reasons of age, accident or illness are unable to manage on their own and have no paid employment.

The foregoing rights may not be exercised by two or more civil guards to care for the same relative.»

Twenty-five. *Amendment to the General Act on the Protection of Users and Consumers.*

Article 34, item 10 of General Act 26/1984 of 19 July on User and Consumer Protection is reworded and the present text is renumbered to constitute a new item 11:

«10. Discriminatory behaviour with regard to access to goods and the provision of services, in particular any defined as such in the Constitutional Act for the effective equality between women and men.»

Twenty-six. *Amendment to the Companies Act.*

Art. 200, insert nine of the Consolidated Text of the Companies Act, enacted under Royal Legislative Decree 1564/1989 of 22 December is amended as follows:

«The average headcount for the year, by category, as well as personnel expenses for the year, distributed as stipulated in Article 189, item A.3, when not shown as such on the income statement.

The distribution of the company's personnel by sex at the end of the year, broken down into a sufficient number of categories and levels, including senior management and members of the board.»

Twenty-seven. *Amendments to the Act creating the Women's Institute*

A new Article 2 *bis* is added to Act 16/1983 of 24 December creating the Women's Institute, under the following terms:

«Article 2 *bis*. In addition to the functions attributed to it in the above article and other legislation in effect, the Women's Institute will engage in the independent fulfilment of the following duties:

- a) provide assistance to victims of discrimination in lodging their claims on discriminatory treatment;
- b) conduct studies on discrimination;
- c) publish reports and draft recommendations on discrimination-related issues.»

Twenty-eight. *Designation of the Women's Institute.*

The Women's Institute will be the competent body in the Kingdom of Spain for the intents and purposes laid down in Article 8 *bis* of Directive 76/207 of 9 February 1976, amended by Directive 2002/73 of European Parliament and the Council of 23 September 2002, on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and Article 12 of Council Directive 2004/113 of 13 December 2004 implementing the principle of equality of treatment between men and women in the access to and supply of goods and services.

Twenty-nine

A new additional provision three is added to Act 5/1984 of 26 March on the right to asylum and refugee status under the following terms:

«Additional provision three

The provisions laid down in Article 3, item 1 will apply to foreign women who are fleeing from their countries of origin due to justified fear of suffering persecution on the grounds of gender.»

Thirty. *Amendments to the Act on Special Penitentiary Corps and the Creation of the Corps of Penitentiary Institution Assistants.*

Act 36/1977 of 23 May on Special Penitentiary Corps and the Creation of the Corps of Penitentiary Institution Assistants is amended as follows:

One. Article 1 is reworded as follows:

«The Corps of Penitentiary Institution Assistants will be staffed by civil servants, and access thereto will be guaranteed under the terms laid down in the Constitutional Act for the effective equality between women and men.»

Two. Transitional provision one is reworded as follows:

«The present Corps of Penitentiary Institution Assistants' male and female schedules are cancelled, whereby all the members as a whole constitute the Corps of Penitentiary Institution Assistants.»

Thirty-one. *Extension to other citizens.*

Legal provision will be made as necessary to ensure the application of additional provision eleven, ten in respect of premature delivery, to communities of citizens not included in the scope of the Workers' By-laws.

TRANSITIONALES PROVISIONS

One. *Appointments.*

The regulations governing balanced membership and representation laid down in this Act will apply to appointments made after its entry into effect, but will not affect appointments already made.

Two. *Corporate equality mark.*

For the intents and purposes of obtaining the corporate equality mark provided for in Title IV, Chapter IV of this Act, the terms for validating the merits attributed to employers pursuant to previous legislation will be determined in the respective regulations.

Three. *Procedures.*

Administrative and judicial proceedings instituted prior to the entry into effect of this Act will not be subject hereto, but will be governed by the previous legislation.

Four. *Duty to negotiate equality issues.*

The provisions relating to equality laid down in Article 85 of the Workers' By-laws as reworded under the present Act will apply to bargaining subsequent to the first challenge to the respective

collective bargaining agreement lodged after the entry into effect of these presents.

Five. *Mortality and survival tables.*

Until such time as the regulatory provisions referred to in paragraph two of Article 71.1 of this Act are adopted, insurers may continue to apply the present mortality and survival tables and other technical specifications in which sex constitutes a determining factor for the assessment of the risk according to pertinent and exact statistical and actuarial data.

Six. *Retroactive effect of reconciliation measures.*

The provisions laid down in Act 30/1984 of 2 August, on the Measures for Reform of the Civil Service, amended hereunder, will be retroactive for events arising and in place at 1 January 2006 within the scope of the Central Government.

Seven. *New rights relating to maternity, paternity, risk during pregnancy and contributory status of certain periods for the intents and purposes of Social Security.*

1. The regulation introduced by this Act regarding suspension due to maternity and paternity will apply to the births, adoptions and fosterage taking place or formalized from its entry into effect.
2. The amendments introduced by this Act in connection with risk during pregnancy will apply to any suspensions granted as a result thereof from its entry into effect.
3. Contributory status for the periods referred to in Article 124, item 6 and additional provision 44 of the Consolidated Text of the General Act on Social Security enacted under Royal Legislative Decree 1/1994 of 20 June will apply in respect of benefits arising from the entry into effect of this Act. The same criterion will apply to the extension of the period granted contributory status under Article 180, item 1 of such legal text and to the 100 per cent paid status granted to the periods referred to in items 3 and 4 of the aforementioned article.

Eight. *Unemployment benefits.*

The amount of the unemployment benefit laid down in Article 217, item 1, paragraph two of the General Act on Social Security

as reworded hereunder will apply to the rights to unemployment benefit arising from the entry into effect of this Act.

Nine. *Extension of suspension of the employment contract.*

The Government will gradually and progressively increase the duration of the suspension of the employment contract for paternity as laid down in additional provision eleven, item eleven, and additional provision nineteen, item six of this Act until the four-week paternity leave target is reached six years after the entry into effect of this Act.

Ten. *Gender impact.*

In 2007, the Government will formulate the regulations for the Gender Impact Act, specifying the indicators to be taken into account when preparing the respective reports.

Eleven

In 2007, the Government will regulate the Guarantee Fund laid down in the Sole additional provision of Act 8/2005 of eight July amending the Civil Code and the Rules of Civil Law Procedure with respect to separation and divorce, initially created and funded pursuant to additional provision fifty-three of Act 42/2006 of 28 December on the National Budget for 2007.»

DEROGATORY PROVISION

Sole

Regulations of equal or lower rank that conflict with or contradict the provisions laid down in this Act are hereby repealed.

FINAL PROVISIONS

One. *Constitutional grounds.*

1. The provisions laid down in the Preliminary Title; Title I; Title II, Chapter I, Articles 28 to 31; and additional provision one of this Act legislate the essential conditions that guarantee the equality of all Spanish citizens in the exercise of the rights and fulfilment of constitutional duties in accordance with Article 140 9.1.1 of the Constitution.
2. Articles 23 to 25 of this Act are fundamental in nature pursuant to the definitions set out in Article 149.1.30.a of the

Constitution. Article 27 and additional provisions eight and nine of this Act are fundamental in nature pursuant to the definitions set out in Article 149.1.16.a of the Constitution. Articles 36, 39 and 40 of this Act are fundamental in nature pursuant to the definitions set out in Article 149.1.27.a of the Constitution. Articles 33, 35 and 51, additional provision 19, item six and paragraphs four, seven, eight and nine of the text included in item thirteen of the said additional provision nineteen of this Act are fundamental in nature pursuant to the definitions set out in Article 140 9.1.18.a of the Constitution. Additional provisions fifteen, sixteen and eighteen constitute fundamental legislation governing Social Security in accordance with Article 140 9.1.17.a of the Constitution.

3. The provisions laid down in Title IV and additional provisions eleven, twelve, fourteen, sixteen and seventeen constitute labour legislation applicable nation-wide pursuant to Article 149.1.7 of the Constitution.

Article 41, the provisions of Titles VI and VII and additional provisions twenty-five and twenty-six of this Act constitute legislation that is directly applicable nation-wide pursuant to Article 149.1.6.a and 8.a of the Constitution.

Additional provisions three to seven and thirteen are established in the exercise of the competencies in procedural legislation pursuant to Article 149.1.6.a of the Constitution.

4. All other provisions of this Act are applicable to the Central Government.

Two. *Nature of the Act*

The content of additional provisions one, two and three of this Act are constitutional in nature. None of the other precepts hereunder have such status.

Three. *Regulatory authorisations*

1. The Government is authorized to establish whatsoever provisions that may be necessary for the implementation of and enlargement on this Act in matters that are within the competence of the Central Government.
2. Within six months of the entry into effect of this Act, regulations will be established to:

Regulate the corporate equality mark provided for in Title IV, Chapter IV of this Act.

Transpose the content of the Annexes to Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Within six months of the publication of the respective Royal Decree, the Ministry of Labour and Social Affairs will formulate guidelines on risk assessment.

3. Before 21 December 2007 the Government may issue a Royal Decree establishing the instances referred to in Article 71.1, paragraph two of this Act.

Four. *Transposition of directives.*

Directive 2002/73/EC of the European Parliament and the Council of 23 September 2002 amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equality of treatment between men and women in the access to and supply of goods and services are incorporated in the body of law under these presents.

Similarly, Council Directive 97/80 of 15 December 1997 on the burden of proof in cases of discrimination based on sex is hereby incorporated into Act 1/2000 of 7 January on Civil Law Proceedings and Act 29/1998 of 13 July on Contentious-Administrative Jurisdiction.

Five. *Equality plans and collective bargaining.*

Four years after the entry into effect of the present Act, the Government, in conjunction with the most representative trade unions organisations and employers' organizations, will proceed to evaluate the advances made in collective bargaining in respect of equality and, in accordance therewith, study any relevant measures.

Six. *Implementation of measures to prevent sexual harassment and harassment on the grounds of sex in the Central Government.*

The protocol on the implementation of measures relating to sexual harassment or harassment on the grounds of sex regulated in Article 62 of this Act will be applied within six months of the entry into effect of the Royal Decree adopting such protocol.

Seven. *Measures to enable elected officials to take maternity or paternity leave.*

From the date of entry into effect of this Act, the Government will further the agreement needed to institute a process for the amendment of current legislation enabling elected officials to take maternity and paternity leaves.

Eight. *Entry into effect.*

The present Act will enter into effect on the day after it is published in the Official State Journal, except for the provisions of Article 71.2, which will enter into force on 31 December 2008.