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# Social Protection of Different Groups of Workers in the Care Sector. Achieving Progress under the Influence of the EU

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## 1. Introduction

The Horizon Europe Project, Care4Care (2023-2025), *We care for those who care* (nº101094603), funded by the European Commission, is an interdisciplinary research study, which tries to detect and address the current challenges in the care sector. To this end, a study has been carried out on the working conditions of workers in the care sector at national level (CAMAS RODA et al, 2024), in addition to a comparison between the six countries involved in the project: Spain, Italy, France, Germany, Poland, and Sweden (RÖNNMAR, 2024).

The University of Girona team, led by Prof. Ferran Camas Roda, has led the third work package, focusing on the factors of gender and migrant status as possible causes of discrimination in the care sector (CAMAS RODA et al, 2024). This research has focused on different groups of people employed in the care sector, without losing sight of the existence of undeclared work that abounds in this sector. Specifically, the investigation has its focus on working conditions of domestic workers, residential nursing staff, and nurses or nursing assistants in medical centres.

This article focuses on the deficit that employees in the care sector suffer under the current Spanish Social Security system, especially domestic workers. It should be noted that thanks to the influence of the European Union and the International Labour Organisation, as well as the rulings of the Court of Justice of the European Union, Spain has made several improvements in recent years in the field of social protection.

So, within the term "caregiver", a disparity of groups that embrace this figure in the care sector can be observed; however, I will focus on those groups of employed carers (object of study of the Horizon Project, Care4Care). On the one hand, residential nursing staff and nursing or nursing auxiliary staff share an important point and that is that, for the most part, the employer is a private sector company (relationship regulated by the *Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute Law*) or it is public (the State), and their relationship would be governed by the *Royal Legislative Decree 5/2015, of 30 October, approving the revised text of the Law on the Basic Statute of the Public Employee*. This differentiates them from domestic workers since their relationship is exclusively part of the private sector. Domestic staff are usually hired mainly by the families themselves, that is, by the natural persons of the household, which in turn becomes the workplace. This employment relationship is regulated by *Royal Decree 1620/2011, of 14 November, which regulates the special employment relationship of the family home service*. Although it should not be forgotten that these domestic workers can be hired by a third party, that is, by an external company which sends them to work in a home. In these cases, the workers would also be subject to the Workers' Statute Law and, therefore, would no longer be in a special employment relationship. This situation is more favourable to them, as Royal Decree 1620/2011 has some gaps in comparison with the general regime for workers (Royal Legislative Decree

2/2015), which could mean that in the special employment relationship the employer may have more power than in the case of workers subject to the general regime.

It is also worth mentioning the *Law 39/2006, of 14 December, on the Promotion of Personal Autonomy and Care for Dependent Persons*, which is currently in the process of being reformed by the Spanish Government. This law grants services to beneficiaries, such as Home Help, where a person goes to work in a home to take care of a dependent person. This service may be subject to the general labour regime (Workers' Statute) since the person is hired by a company to go to a home, or perhaps under the self-employed regime.

Therefore, by way of summary, we can see that a caregiver can be employed directly for domestic work by the family itself, in which case the worker will be subject to Royal Decree 1620/2011 (special labour regime) or can be sent to work in a family home by a company (Workers' Statute or self-employed regime). On the other hand, nursing or nursing assistant staff and residential nursing attendants seem to be in a situation of greater protection since their relationships are governed by the general regime of Royal Legislative Decree 2/2015, or even better by the Basic Statute of Public Employees. To all this, we must not forget the impact of the informal economy on the care sector, as well as those people, in most cases, women, who must leave their jobs to dedicate themselves to the care of a family member outside of any employment relationship.

## 2. Equality between women and men in the care sector in Spain. Advances driven by European influence

The International Labour Organization, in its publication on " Resolution concerning decent work and the care economy", suggests that governments and social partners seek a balance between men and women in the allocation of paid and unpaid work in order to break with the stereotypes that surround the current care model, in addition to fighting against any form of discrimination suffered by care workers, especially women (ILO, 2024, pp. 6-7). The care sector is a highly feminized sector, 76.2% of domestic work is carried out by women and in total, worldwide, domestic work represents 4.5% of female employment (ILO, 2024, p.3).

### 2.1. Protection of domestic workers in case of unemployment

This disparity of groups, situations, and rules applicable to caregivers means that, in many cases, situations of inequality between men and women are generated. According to data from the European Centre for the Development of Vocational Training, in 2021 only 12% of caregivers employed in the European Union were men and the total number of caregivers in 2022 was around 6.2 million people, i.e. 3% of employment in the EU (CEDEFOP, 2023). Therefore, almost 5.5 million employed caregivers, representing 2.66% of employment in the EU, are women. At the Spanish level, according to the monthly report of the Institute for the Elderly and Social Services (IMSERSO, May 2025), 72.5% of caregivers are women, compared to 27.5% for men. Another interesting fact to highlight is the age factor. 47.5% of caregivers are between 50 and 66 years old. And if we focus on the figures of non-professional caregivers, we see that 87.6% are women. Taking into account these figures and the traditional context surrounding care tasks,

the Horizon Project, Care4Care, in its "Mapping of discrimination" (CAMAS RODA et al, 2024), highlights the urgent need, in the face of this gender gap, to establish gender equality policies that address the existing imbalance in current care employment between men and women, improving labour rights in this highly feminised sector and offering greater social protection to women workers.

Focusing on the subject matter of this section, the "right to access unemployment benefit", the Judgment of the Court of Justice of the European Union of 24 February 2022 (C-389/20) interpreted Article 4, first paragraph, of *Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security*. The case brought before the Court questioned whether Article 251 d) of the revised text of the *Royal Legislative Decree 8/2015, of 30 October, approving the revised text of the General Social Security Law*, which expressly excluded access to unemployment by workers subject to the Special System for Domestic Employees, violated the principles of equality and non-discrimination, in particular the prohibition of indirect discrimination on grounds of sex, which would make it incompatible with the aforementioned Article 4.1 of Directive 79/7/EEC.

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

*It should be noted that the statistics presented in the oral submissions of the TGSS indicate, first, that on 31 May 2021, the number of employed persons subject to that general scheme was 15 872 720, of which 7 770 798 were women (48.96% of employees) and 8 101 899 were men (51.04% of employees). Secondly, on the same date, the cohort of employees covered by the Special Scheme for Domestic Workers consisted of 384 175 workers, of which 366 991 were women (95.53% of the persons enrolled in the special scheme, that is to say, 4.72% of the female employees) and 17 171 were men (4.47% of the persons enrolled in the special scheme, that is to say, 0.21% of the male employees)* (CJEU, 2022, § 45, case C-389/20).

The Spanish State argued that the exclusion responded to legitimate social policy reasons, such as promoting employment and preventing fraud. However, the Court considered that these arguments did not justify the inconsistency of the rule, given that other groups in the field of care with similar conditions do have access to unemployment protection. Moreover, it was not established that the measure was necessary or proportionate to achieve the aims pursued. Therefore, the CJEU concluded that the legal exclusion of domestic workers from unemployment protection could not be justified in any way and was contrary to European law, as it placed female workers at a clear and discriminatory disadvantage compared to men. This resolution was a turning point in Social Security for domestic workers. As a direct consequence of this resolution, was born the *Royal Decree Law 16/2022 of 6 September on the improvement of working conditions and social security for domestic workers*, which recognised domestic workers' right to unemployment protection, on equal terms with other employees. To this end, letter d) of Article 251 of the GSSL was deleted and Article 267.1.a) of the same regulation, on legal situations of unemployment, was modified, which now includes, in paragraph 8, as a cause for termination of the contract, the disciplinary dismissal of Article 11.2 of Royal Decree 1620/2011. In this way,

domestic work has been equated to a salaried employment relationship, which entitles them to unemployment benefits.

### 2.2. Other improvements in social protection from Royal Decree Law 16/2022

This Royal Decree Law 16/2022, as a result of the Judgment of the Court of Justice of the European Union, of 24 February 2022, also amends Article 33.2 of the Workers' Statute, to provide coverage to domestic employees in the event of business insolvency, as of their inclusion in the coverage of the Wage Guarantee Fund (FOGASA). Article 1 of *Royal Decree 505/1985 of 6 March 1985 on the organisation and operation of the Wage Guarantee Fund*, on the organisation and operation of FOGASA, and the first paragraph of Article 33 of the Workers' Statute define it as an autonomous body that guarantees the collection of unpaid wages, as well as specific compensation for the termination of the employment relationship, by paying workers such amounts pending payment due to the insolvency or bankruptcy of the employer.

The new regulation provides domestic workers for requesting the payment of unpaid wages and compensation due to business insolvency, up to a maximum of 6 monthly payments (for termination for justified reasons – Article 11 of Royal Decree 1620/2011). This inclusion in FOGASA coverage represents a major change in the social protection of employees subject to the special regime, since until now they had historically been excluded from this right.

On the other hand, Royal Decree Law 16/2022 establishes a series of bonuses and reductions in the Social Security contribution system, financed with public funds, avoiding an impact on protective action and encouraging formality in hiring and thus reducing situations of irregular employment. Specifically, we would be facing a general reduction of 20% in the company contribution for common contingencies, and an 80% bonus in the contribution for unemployment and FOGASA. In addition, the possibility of a higher bonus (up to 45% or 30%, under income/wealth requirements of the employer's family unit) is foreseen.

Another important change to highlight is the express obligation for the employer to communicate and assume the management of registrations, cancellations, and variations in Social Security, even in contracts of less than 60 hours per month (corrects the previous system where it was the worker who had to do so in such cases). This is regulated in the Second Additional Provision.

Royal Decree Law 16/2022 is a historic reform, correcting significant indirect discrimination based on sex in access to unemployment protection and FOGASA and improving and subsidizing contributions and guaranteeing rights comparable to those of other employees. However, despite these advances, some limitations persist that could have discriminatory effects. In particular, access to the subsidy for those over 52 years of age remains conditional on having paid unemployment contributions for at least six years throughout their working life (according to Article 280.1 of the General Social Security Law). That could exclude many domestic workers who only began to contribute for unemployment from 1 October 2022 (Second transitional provision of Royal Decree Law 16/2022), the moment when the new legislation came into force, without retroactive effect. Thus, until 1 October 2028 these workers may not have access to the subsidy for the over-52s, at which time they could materially begin to meet the requirement of the previous six minimum years of contributions.

Despite this restriction, recent case law has begun to question the compatibility of this requirement with the right to equality. In this regard, Judgment 79/2025, of 20 February, issued by the Labour Chamber of the High Court of Justice of Navarra, recognises the right to unemployment benefit for people over 52 years of age to a domestic worker, despite not having reached the minimum contribution period required. The court considers that the literal application of Article 280.1 of the GSSL, without taking into account the historical context of structural exclusion of domestic workers from the unemployment protection system, entails indirect discrimination on the basis of sex. Specifically, the Chamber invokes the aforementioned Article 4.1 of Directive 79/7/EEC, pointing out that the exclusion from the subsidy predominantly affects women, who constitute the overwhelming majority of the group of domestic workers. Let us remember that the CJEU of 24 February 2022, placed the presence of women in domestic employment at 95%.

In its reasoning, the Navarrese court highlights that the delay in accessing this subsidy does not respond to the free choice of the workers, but to a legal design that, until 2022, did not allow them to contribute for unemployment. To demand now a requirement that structurally they could not meet for decades, when these regulatory barriers have already been partially corrected, would be contrary to the principle of material equality and European anti-discrimination law. In accordance with Directive 79/7/EEC, the court concludes that it is appropriate to recognize unemployment benefits to domestic workers, even without strictly complying with the requirement of a minimum contribution of six years, to avoid indirect discrimination and promote real and effective equality.

### 2.3. Application of the occupational health and safety regulations in the family household

In terms of occupational safety and health, modifications are also being introduced in the care sector, starting with the application in Spain of *Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work*. Next, the protection of health and safety in the field of the family home service has been regulated by *Royal Decree 893/2024 of 10 September regulating health and safety protection in the area of family home services*. This change has also been influenced by *Convention 189, Domestic Workers Convention (2011),* of the International Labour Organization (Spain ratified it on February 28, 2023, and entered into force a year later, on February 29, 2024). Article 5 provides that "measures shall be taken to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment, and violence". In addition, if the employee resides in the home in which he or she works, his or her right to privacy must also be ensured, in accordance with the sixth article, which also mentions decent work in terms of equitable conditions with other workers. For its part, Article 13 specifically deals with safety and health in domestic employment, encouraging the adoption of effective measures that respond to the casuistry of the workplace (home).

Royal Decree 893/2024 deepens the process of equating domestic employment with other jobs, initiated by Royal Decree Law 16/2022, completing the inclusion of this group in the regulations on the prevention of occupational risks and in the system of coverage for professional contingencies and disabilities. Among the most outstanding aspects is the creation of a specific and adapted occupational risk prevention regime, which includes the general principles, duties, and rights established in *Law 31/1995, of 8 November 1995, on the Prevention of Occupational Risks*, but adapts them to the particularities of work in the domestic sphere. Thus, the first article of

Royal Decree 893/2024 expressly states the application of this law to labour relations in the service of the family home, respecting the particular conditions of the domestic environment. This occupational risk prevention taken to the home of families, which in turn is the caregiver's workplace, takes into account the particularities of the employment relationship, the proximity between employers and employees, and the diversity of employers. By virtue of Article 5 of the same Royal Decree, fundamental rights are recognised such as access to information on preventive matters, training in risk prevention, participation and consultation, the provision of appropriate personal protective equipment, and the right to interrupt activity in the event of serious and imminent risk, in accordance with Article 21 of Law 31/1995. In addition, according to Article 8, the worker will have the right to periodic monitoring of his or her health and to the relevant medical examinations, which will be the responsibility of the employer.

Likewise, the Royal Decree establishes in its First Final Provision, an amendment to *Royal Decree 39/1997, of 17 January, approving the Prevention Services Regulations* (Thirteenth Additional Provision. Home help services. Second paragraph), adding the face-to-face visit, accredited, and carried out at the homes where the company's caregiver works. In other words, there is an obligation on the part of companies that have hired home caregivers to carry out evaluations in the homes of the users to whom the company's workers attend, since the regulations now consider them part of the work environment. Therefore, it is worth emphasizing that it is not an obligation of households (users), but of the companies that offer their services to them. This risk assessment and the adoption of preventive measures are also regulated in the third article of Royal Decree 893/2024.

Regarding preventive measures, this First Final Provision provides that they must be real and effective and that all necessary and appropriate measures must be taken to protect domestic workers. Among others, we would find the use of mechanical means necessary for the handling of loads, the use of personal protective equipment (PPE), or the guarantee of upper rest between services. The owners of the household (users of the care service) must give their consent to the application of these modifications and, if the service is granted through a public entity, it must also be informed. The company's obligation does not cease with the application of these preventive measures, but must carry out a periodic control to check their effectiveness, especially to avoid ergonomic and lumbar damage in domestic workers. In addition, effective communication must be maintained between the company and the employee so that the latter can report any change in the home that varies the working conditions evaluated and that, therefore, may pose a risk to his or her safety and health. Prevention delegates will also be informed of this process of adopting preventive measures and must participate in it.

Finally, in line with the guidelines of ILO *Convention 190, Violence and Harassment Convention (2019),* (entry into force in Spain on 25 May 2023), and the Second Additional Provision of the Royal Decree itself, specific protection against situations of violence and harassment in the domestic work environment is incorporated. The right of the worker to leave the home in the event of a risk to his or her physical or moral integrity is expressly recognized, without this being considered resignation or constituting a justified cause for dismissal, leaving the option for the worker to terminate his or her contract by means of Article 50 of the Workers' Statute.

### 2.4. Controlling working time in households

Another recent judgment that has caused a significant stir in Spanish jurisprudence and doctrine has been the one-handed down by the Court of Justice of the European Union on December 19, 2024, in case C-531/23. In it, the Court ruled categorically on the right of domestic workers to have their working hours recorded on a daily basis, based on *Directive 2003/88/EC, of 4 November 2003 concerning certain aspects of the organization of working time*, and Article 31.2 of the *Charter of Fundamental Rights of the European Union (2012/C 326/02)*, which recognises the right to the limitation of the maximum duration of working time and to the enjoyment of adequate rest periods.

The dispute arose because of the dismissal of a domestic worker who claimed that it was unfair, as well as the payment of overtime worked, and vacation days not taken. The hours of work performed by the plaintiff could not be proven because there was no time record. Article 9.3 of Royal Decree 1620/2011 expressly excludes domestic workers from the general regime of time control provided for in Article 34.9 of the Workers' Statute and, in this sense, in the dispute raised there was no register that could demonstrate whether there had been an excess of working hours. The case reaches the High Court of Justice of the Basque Country, which referred a prejudicial question to the CJEU (CAMAS RODA, 2024, 12 December).

The CJEU concludes that Articles 3, 5 and 6 of Directive 2003/88, interpreted in the light of Article 31.2 of the Charter of Fundamental Rights of the European Union, preclude any national legal provision or practice, including its jurisprudential interpretation, that exempts domestic employers from the obligation to record the daily working hours of home caregivers. This decision reaffirms and expands on the criterion already established in the well-known CCOO judgment, case C-55/18, in which the Court had required Member States to establish systems for recording working hours to guarantee the effectiveness of labour rights derived from working time. The novelty of the 2024 judgment lies in the fact that it extends this obligation to the family home, rejecting the idea that this space can be left out of general labour guarantees because it is a special relationship or a private environment.

Consequently, the regulations in force, in particular Royal Decree 1620/2011, must be amended or reinterpreted in accordance with this jurisprudential doctrine, to guarantee the effective recording of working hours also in the domestic work sector. This mandate poses important regulatory and practical challenges, especially with regard to the reconciliation between time control and the protection of privacy in the private home. Likewise, the ruling opens the way for domestic workers to judicially demand compliance with their rights related to working time, with possible implications in terms of remuneration for overtime, calculation of undue breaks, and regularity of the working times provided.

## 3. Social security coverage for those who abandon their profession to dedicate themselves to care

*Law 3/2024 of 30 October to improve the quality of life of people with Amyotrophic Lateral Sclerosis and other highly complex and irreversible diseases or processes*, recognises the special vulnerability of those who suffer from ALS pathologies and, within its many provisions, gives outstanding attention to carers, recognising their essential role in the daily care of people with high dependency.

The second additional provision establishes specific protection for those who care for people with Grade III dependency (CAMAS RODA, 2024, 31 October). If these people have interrupted their work activity, whether self-employed or employed, to dedicate themselves to the care of a person in that situation, they may maintain the contribution base of the last working year in Social Security. The increase in cost involved in maintaining this base will be assumed by 50% by the caregiver, while the other 50% will be covered directly by IMSERSO. For its part, the third additional provision gives visibility to carers who have had to give up their professional activity to care for someone dependent, granting them the treatment of priority attention group within active employment policies. This is framed in the terms established in Article 50 of *Law 3/2023 of 28 February on Employment* and aims to facilitate their return to work. In this way, the aim is to ensure that the effect of leaving their job is as little harmful as possible. These measures could be a path to this recognition of care in the home, historically carried out by women outside of any employment relationship, motivated by family ties.

These changes are very relevant, because if we consider the figures of the National Institute of Statistics (INE, 2016-2020), we can see what percentage of people who are unemployed decided to leave their jobs for care reasons, diverging by age groups. For example, in 2020, 26.60% of women between 35 and 44 years of age, who were unemployed, had decided to leave their jobs to care for dependents in their environment.

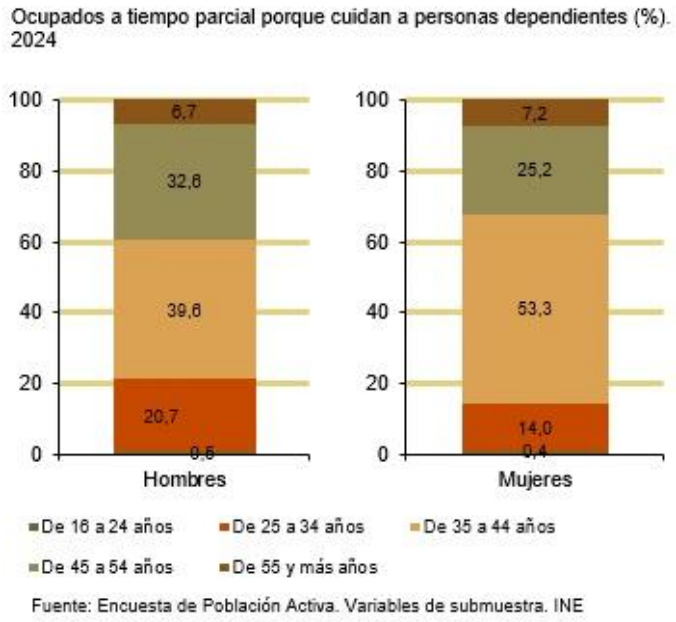
**Parados que han dejado el trabajo para cuidar a personas dependientes por grupos de edad** (%)

| | 2020 | 2019 | 2018 | 2017 | 2016 |
|---|---|---|---|---|---|
| **Hombres** | | | | | |
| De 16 a 24 años | 13,6 | 10,8 | 12,0 | 10,6 | 9,4 |
| De 25 a 34 años | 25,0 | 23,8 | 22,4 | 23,5 | 24,1 |
| De 35 a 44 años | 22,6 | 22,9 | 23,9 | 24,2 | 26,1 |
| De 45 a 54 años | 22,6 | 24,4 | 24,8 | 25,0 | 24,6 |
| De 55 y más años | 16,3 | 18,0 | 17,0 | 16,8 | 15,8 |
| **Mujeres** | | | | | |
| De 16 a 24 años | 9,2 | 9,0 | 7,2 | 7,7 | 8,2 |
| De 25 a 34 años | 24,4 | 22,1 | 23,7 | 22,8 | 24,1 |
| De 35 a 44 años | 26,6 | 26,7 | 27,7 | 29,1 | 29,0 |
| De 45 a 54 años | 24,9 | 26,8 | 26,5 | 26,7 | 25,9 |
| De 55 y más años | 14,9 | 15,5 | 14,8 | 13,7 | 12,7 |

Fuente: Encuesta de Población Activa. Variables de submuestra. INE

http://www.ine.es/dynt3/inebase/es/index.htm?padre=834&dh=1

It is also worth highlighting the following data on "*part-time employees because they care for dependents*" (INE, 2024):




If we look again at the age range of 35 to 44 years, we can see a large gender gap. While 39.60% of men employed part-time do so because they need to care for someone dependent, in the case of women the percentage rises to 53.30%.

The fourth additional provision of ALS Law instructs the Government, within a period of one year from the entry into force of the regulation, to develop a series of measures aimed at improving care and support for carers. These measures include the adaptation of home help and personal assistance services to the specific needs of the people included in the scope of this law, the incorporation of specific training for professional caregivers who work with patients with diseases such as ALS, and the creation of an integrated social and health care framework that guarantees specialised care and public supervision 24 hours a day, especially in the most advanced stages of these diseases. Relevant modifications are also introduced in Article 193 of the GSSL, such as the possibility of recognising a contributory permanent disability without the need for prior treatment when, due to the seriousness and irreversible nature of the disease, it is adequately justified.

## 4. Recognition of occupational diseases in the care sector

In the same vein, efforts are being made to classify all those illnesses arising from the practice of care as occupational contingencies, trying to apply in some way Article 4 of *Organic Law 3/2007, of 22 March, for the effective equality of women and men*. This provision regulates the integration and

application of the principle of equality in the interpretation and implementation of legal norms. The law defines it as an informing principle of the legal system.

This precept has been interpreted by the courts on several occasions, including the Constitutional Court, in its judgment 44/2023, of 9 May. Although it is worth focusing on Supreme Court Judgment 747/2022, of September 20, 2022, which resolves an appeal for the unification of doctrine filed by a worker in the cleaning sector, who had been diagnosed with a tear of the rotator cuff in her left shoulder, derived from stress tendinitis. Although the profession of cleaner does not expressly appear in the table of diseases of *Royal Decree 1299/2006, of 10 November, approving the list of occupational diseases in the Social Security system and establishing criteria for their notification and registration*, the court had to determine whether the pathology should be considered an occupational disease. The dispute was resolved in favour of the worker, as the ruling concludes that the list of the table was illustrative and the legal presumption of occupational disease should be recognised when the required material elements are present, that is, exposure to agents or working conditions that may cause the ailment. In other words, the court declares the worker's ailment to be an occupational contingency, establishing doctrine in favour of an extensive and finalist interpretation of Royal Decree 1299/2006.

In addition, in light of the principle of equality in the interpretation and application of the rules (Article 4 of LO 3/2007), it incorporates a "gender perspective" by considering that domestic work is highly feminised, and that ignoring this reality may generate indirect discrimination on grounds of sex, contrary to Article 4.1 of Directive 79/7/EEC, interpreted, among others, by the Judgment of the Court of Justice of the European Union, of 24 February 2022 (C-389/20), developed above. The judgment thus reinforces the social protection of vulnerable groups and establishes that those ailments derived from activities similar to those included in the legal framework must be recognized as occupational diseases, provided that there is an accredited causal relationship, since the adverb "as" is an indication that the list is *numerus apertus*, not exhaustive. Moreover, in its eighth legal basis, the Court establishes that "The non-inclusion in the aforementioned RD of the profession of cleaner in the list of professions that may be affected by an occupational disease is indirect discrimination", since most of the professions that are contemplated are historically occupied by men.

This jurisprudential and doctrinal change that tries to classify as an occupational contingency those diseases derived from the exercise of the domestic workers (including caregivers) is developed extensively in " Jurisprudential review of the ailments and pathologies suffered by housekeepers" (MARTÍNEZ MORENO et al, 2023). This article analyzes the legal concept of occupational disease, included in the GSSL and its specification in Royal Decree 1299/2006, and stresses that, if a link with work is accredited, we would be facing an occupational contingency, even though the ailment is not expressly included in the legal framework. The report confirms a recurrent clinical picture in housekeepers, marked by musculoskeletal injuries and associated psychic symptoms, as a result of the repetitive and demanding workload. The inclusion of pathologies in group 2 of the table of occupational diseases is analyzed, detailing how ailments such as carpal tunnel syndrome, tendinitis, epicondylitis, tenosynovitis or lumbosciatalgias find a place in the activities of housekeepers, although their administrative recognition is tedious due to the resistance of mutual insurance companies, the scarce investigation, and the need to resort to legal proceedings.

In terms of equality, emphasis is placed on the need to interpret the law with a gender perspective, in accordance with Article 4 of LO 3/2007, to identify the systematic exclusion of ailments associated with feminised work from the regime for the protection of occupational diseases. Consequently, various *lege ferenda* measures are proposed, highlighting the urgency of updating the table of occupational diseases of Royal Decree 1299/2006 to explicitly include the most common pathologies in highly feminised sectors, such as housekeepers and carers, as well as establishing regulatory mechanisms that guarantee homogeneous and equitable treatment.

## 5. New challenges. Provide early retirement to employees in the care sector

Finally, it is necessary to mention the possible consequences that the new Spanish regulations on pensions may have for caregivers. Specifically, *Royal Decree 402/2025 of 27 May, which regulates the prior procedure for determining the cases in which it is appropriate to allow the retirement age to be brought forward in the Social Security system through the application of reduction coefficients*, establishes a regulated and specific procedure for applying reduction coefficients in the retirement age in those professions considered "exceptionally gruelling, toxic, dangerous or unhealthy" that have high rates of morbidity or mortality, when it is not feasible to mitigate these conditions through improvements in the work environment. The new framework requires proving that the activity carried out falls within these assumptions, through objective indicators such as the proportion of employees who during a specific period are in process of temporary disability, either due to common or professional contingency. In addition, a minimum age for early retirement is set at no less than 52 years, and a specific contribution is established to finance the benefits derived from the application of these coefficients.

Although the text does not expressly mention the group of caregivers, those who carry out professional care work in homes or care centers could be included if it is determined that their work entails conditions of hardship, unhealthiness or danger, and high indicators of morbidity or mortality are accredited. In such a case, these workers could benefit from a reduction in the retirement age, although not below 52 years of age, provided that they meet the technical and procedural requirements (registration with Social Security, minimum contribution time, etc.). "It should be clear that it is not a question of establishing activities or professions that give rise to the application of coefficients, but of regulating the procedure for determining them" (SÁNCHEZ TRIGUEROS, C., 2025, 16 June). However, access to these coefficients will require joint processing by trade unions, business organisations or representative associations, and the approval of the care group as a "particularly gruelling activity" through the regulated procedure.

As pointed out by the Ministry of Inclusion, Social Security and Migration, another of the major advances of this Royal Decree is that it defines the terms that would give rise to the determination of the professions benefiting from this early retirement (MISSM, 2025). Focusing on the care sector, it is worth highlighting the "permanent use of physical force", with respect to the concept of "gruelling". Secondly, in relation to "toxicity", it would seem more difficult to situate the profession of caregiver. While the third indicator, that of "dangerousness", should be noted that it contemplates those activities that are favourable to or likely to cause an accident at work or occupational disease, compared to other jobs. Finally, in terms of "unhealthiness", we would be faced with activities with a highly negative impact on the health of the worker.

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

## 6. Conclusions

The care sector has been and continues to be a highly feminized sector and increasingly in need of migrant workers, as the aging of the population requires many hands and a lot of vocation in care. However, institutions and legislation must be up to the task and respond with the same quality with which we want our relatives to be cared for. We must take care of those who care. This is the purpose of the Horizon Care4Care Project and for this reason, we have put caregivers at the centre of our research, analysing their working conditions and studying the situations of discrimination that occur in the sector based on gender and migrant status.

The different realities that coexist in this sector mean that we need to pay attention to the different particularities, especially in domestic work, to ensure that all care work is decent work, that is, work free of indirect discrimination on grounds of sex, work with decent working conditions and work with minimum guarantees in terms of social protection.

In recent years, there have been important changes in Spanish institutions, promoted by the application and ratification of Conventions 189 and 190 of ILO and various resolutions of the Court of Justice of the European Union; domestic workers are now guaranteed the right to unemployment benefit, as well as FOGASA coverage, improvements and bonuses in contributions are enjoyed and registrations, cancellations and variations in Social Security must now be communicated and managed by the employer of the relationship (Royal Decree Law 16/2022, born because of the CJEU, of 24 February 2022, in Case C-389/20); Royal Decree 893/2024, on health and safety in the field of family home service, advances in the equalisation of domestic employment with the other sectors; from the CJEU Judgment of 19 December 2024, in case C-531/23, the need to amend Royal Decree 1620/2011 to regulate the obligation to carry out a daily working day record in households is highlighted; and the ALS Law goes a step further by protecting those people who are forced to leave their jobs for care reasons.

On the other hand, in the light of Article 4.1 of Directive 79/7/EEC and under the application of Article 4 of Organic Law 3/2007, which regulates the principle of gender mainstreaming in the interpretation and application of the norms and standards, there is a change opening the doors to classifying illnesses suffered by carers as occupational contingencies. It would also leave the option, based on this gender perspective principle, to start discussing whether care work could be qualified as 'gruelling' and thus give carers the possibility to access early retirement, through Royal Decree 402/2025.

However, there are still many challenges to be faced in the care sector to be able to talk about decent employment in all categories of caregivers, not only in paid work, but also in unpaid care. It is time to give the value it deserves to care, whatever modality.

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