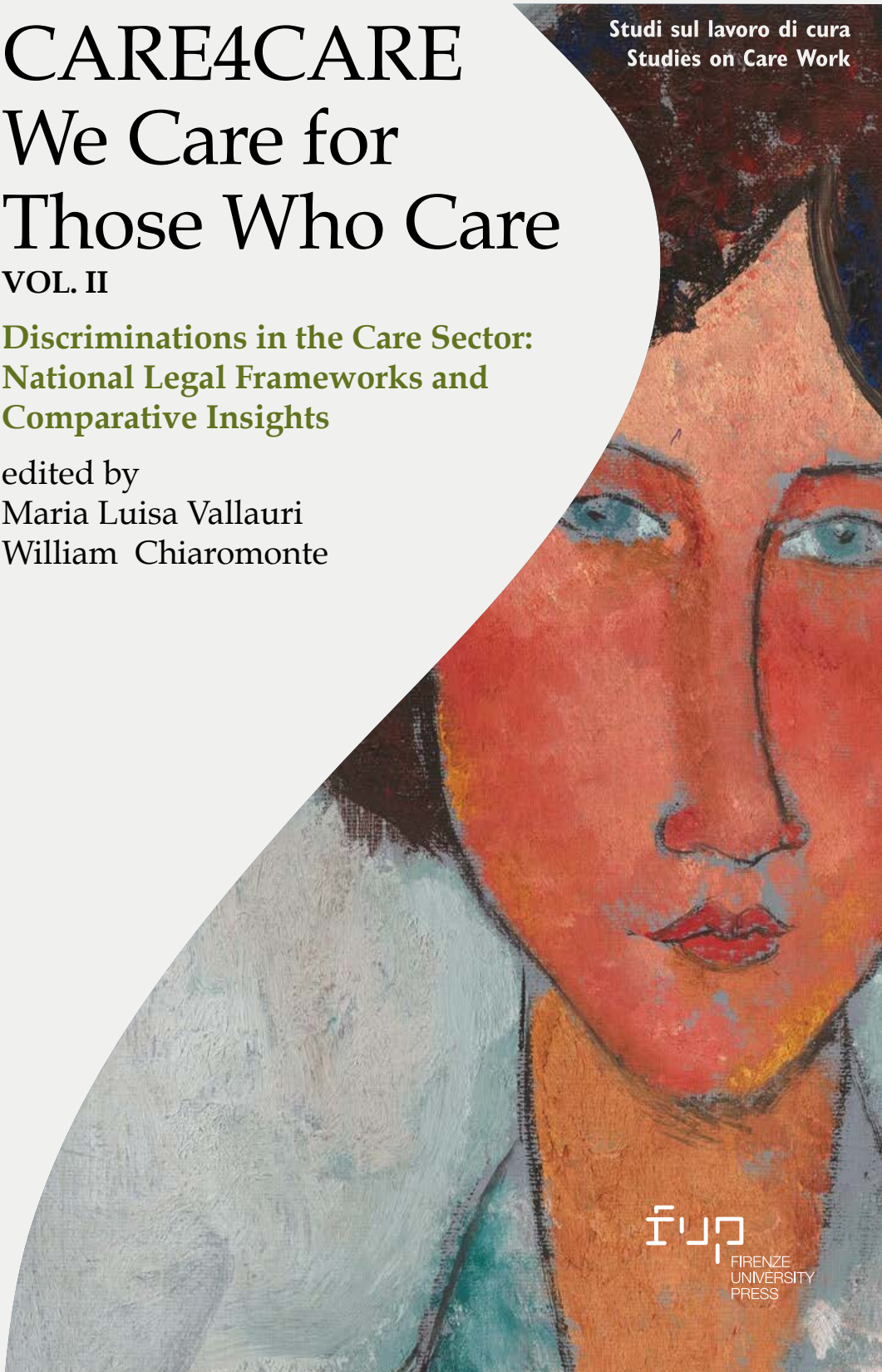
CARE4CARE
We Care for Those Who Care

VOL. II

Discriminations in the Care Sector: National Legal Frameworks and Comparative Insights

edited by
Maria Luisa Vallauri
William Chiaromonte

Studi sul lavoro di cura
Studies on Care Work



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Introduction

Maria Luisa Vallauri

1. A Starting Point: Who Care for Those Who Care?

Since the Communication to the European Parliament, the Council and the European Economic and Social Committee of 20 November 2017 containing the EU Action Plan 2017-2019, the European Commission included the care work sector among those sectors "key to the future of European society and economy".

The COVID-19 pandemic has made even more clear the centrality of care work in modern societies but it also made more visible many critical issues affecting the working conditions of care workers, such as: the lack of adequate economic resources, the workforce shortage, the pressure put on care workers, the risks for their well-being, the underfinancing of social care as a consequence of the reorganisation and partial retrenchment of the welfare state involving also privatisation and commodification of public services, the weaker bargaining power in these sectors than in many male-dominated sectors, the undervaluation of female-dominated jobs, the prevalence of undeclared work in domestic care work, patterns of discrimination in the sector on grounds of gender and nationality (and the intersectionality between these two factors).

Therefore, in her State of the Union address on 15 September 2021, President of the European Commission Ursula von der Leyen announced a European Care Strategy, pointing out, among the others, the need for decent working conditions for all workers in the care sector. One year later the European Care Strategy was presented by the European Commission to ensure quality, affordable and accessible care services across the European Union and improve the

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situation for both care receivers and the people caring for them, professionally or informally.

All this brought a question to our minds: who cares for those who care?

The willingness to care for those who care was the starting point of the CARE4CARE project funded by the Horizon Europe program under GA. n. 101094603 for a three-year lifespan, the results of which are collected in the three volumes that inaugurate the series "Studi sul lavoro di cura - Studies on Care Work".

2. Objectives and Goals of the Project

Care workers are mainly women and migrants, which makes the care sector an interesting field to verify the dynamics of segregation and exclusion that affect the labour market. At the same time, it is a challenging testing ground, which allows to design and verify new measures to counteract discrimination and promote social inclusion.

The CARE4CARE project investigated in a comparative and multidisciplinary perspective the working conditions of care workers and their perception of the working environment and dynamics in six EU Member States (France, Germany, Italy, Poland, Spain and Sweden) in order to develop suitable tools to improve job quality and counteract discrimination in the sector, such as: elaborating policy strategies to tackle the undervaluation of care work, with particular attention to the key role that trade unions, employers' associations as well as equality and monitoring bodies can play both at national and EU level; designing training programs to empower trade unions, families' and employers' associations to improve job quality in the sector; setting up of a network on care work, which will implement a web platform accessible to care workers, in order to improve their rights' awareness.

More precisely, the project aimed at highlighting the risks and conditions of vulnerability of the target, with a specific focus on discrimination and socio-economic undervaluation.

The ambition was, then, to create a model of analysis and regulation of the care sector that can be replicated in other European countries and can bring out new relevant strategies for intervention in order to elaborate legislative and policy proposals at the national and the EU level.

Lastly, the project aimed at giving voice to care workers and to their representatives in the design and delivery of policies and measures that affect their lives. To this end, it seemed necessary to raise awareness and consciousness among care workers and trade unions by making rights clear and usable for workers and enhancing collective bargaining strategies.

Target of the project were workers employed in the public and private sector, caring for people with disabilities, the elderly and sick people: home caregivers, basic healthcare workers, healthcare professionals with at most a Bachelor's degree, such as nurses. Particular attention was also paid to undeclared work in the sector.

3. The Consortium

The CARE4CARE Consortium spanned the European Union from north to south and from east to west and comprises ten partners.

The Consortium has been led by a team of experts in labour law from the Department of Legal Sciences of the University of Florence (Italy). In addition to the University of Florence, six other Universities were involved: Lunds Universitet (Sweden), Universidad de Girona (Spain), Universidad de Sevilla (Spain), Europa - Universität Viadrina (Germany), Uniwersytet Rzeszowski (Poland), Université de Bordeaux - Centre National de la Recherche Scientifique (France).

Tuscan Organisation of Universities and Research 4 Europe - Tour4UE (Belgium) oversaw communication and dissemination with great expertise.

Two associations from civil society, European Federation for Family Employment & Home Care and European Federation for Services to Individuals, acted as a bridge with stakeholders at European level.

The Consortium could also rely on the support of the European Trade Union Institute (ETUI).

4. The Outputs of the Project

The outputs of this research project were twofold: research outputs and societal outputs.

Regarding the research outputs, firstly, the research provided a comparative analysis of the working conditions in the care sector; secondly, the research assessed the direct perception of working conditions and well-being at work, as well as awareness of rights; thirdly, the project investigated strategies and techniques of regulation of working conditions in the sector.

Regarding the societal outputs, the first outcome was represented by the drafting of the CARE4CARE Policy paper that includes: general policy objectives, possible measures in national laws, possible measures for national social partners and institutions, possible measures in European law and for European social partners and institutions.

The second outcome of CARE4CARE the design and delivery of training programmes to empower trade unions, employers and the representatives of families' associations who will be the target group of the training. The aim is to improve knowledge and skills to recognize vulnerabilities of care workers in order to improve job quality and counteract discriminations in the care sector.

The third outcome of CARE4CARE consists in the realisation of a web platform optimised for smartphones and tablets that is structured to provide user-friendly information on relevant national legislation to improve care worker's awareness of rights.

All partners have been heavily involved in the implementation of both research and societal outputs and in the communication and dissemination of the results, in order to maximize the impact of the project on the scientific community and civil society.

5. The Methodology

The main methodology adopted was legal research in a comparative and EU perspective.

A comparative analysis of legal aspects, labour market conditions and industrial relations aspects on job quality and working conditions for care workers was conducted, in order to get an assessment of the sector in the six EU Member States involved in the project and characterised by different models of welfare state.

A psycho-social survey was also conducted through focus groups, questionnaires and audits to outline a picture of the quality of work and awareness of workers' rights.

Both qualitative and quantitative data were collected to shed light on psychosocial working conditions that can affect care workers' well-being across the six EU member states involved in the research. Specific attention was given to how structural variables—such as demographic variables, work-related variables, psychological and interpersonal variables—are related to care workers' mental health and well-being both in private and public sectors.

6. Presentation of the Publication

The three volumes that inaugurate the series "Studi sul lavoro di cura - Studies on care work" bring together the results of the research conducted between 2023 and 2025 by the Consortium that I had the great privilege of coordinating.

Volume I: *Care Work and Working Conditions: National Legal Frameworks and Comparative Insights*—brings together national reports drawn up by esteemed labour law scholars from the Universities of Bordeaux, Florence, Frankfurt (Oder), Girona, Lund and Rzeszowski . The reports outline the regulatory framework applicable to care professionals, both from a legal and collective bargaining perspective in the six countries involved in the project. University of Lund, leader of Work package 2, prepared the comparative report that formed the basis for the development of intervention strategies to improve working conditions in the sector.

Volume II: *Discriminations in the Care Sector: National Legal Frameworks and Comparative Insights*—collects reports on the mapping of discrimination based on gender and nationality in the sector elaborated through the study of case law, national reports and statistics in the six countries. The comparative report drafted by University of Girona, leader of Work package 3, summarises the national overview to identify similarities and differences in order to develop strategies to counteract discriminations.

Volume III: *Building Dignified Care Work in Europe: Critical Reflections, Political and Social Tools*—brings together critical contributions on the issues raised by the research, written by scholars who, with different sensibilities and points of view, contributed to the realisation of the project. The legal analysis is accompanied by a psychosocial reflection developed by researchers of the University of Seville, leader of Work package 4, who conducted an investigation on working

conditions and the perception of rights in the sector. The volume also includes the keynote lecture given by Professor Silvia Borelli during the project kick-off meeting held in Florence on 16th–17th March 2023.

The Policy Paper drafted by the German team of Europa - Universität Viadrina Frankfurt (Oder), leader of Work package 5, on the basis of the overall research findings, is included in the appendix to the third volume, together with the Training model for trade unions developed by the Polish team of the University of Rzeszowski, leader of Work package 6, and the description of the Web platform built by the Italian team of the University of Florence, leader of Work Package 7.

The success of this project is due to the great communication effort made by Tour4UE, which is not reflected in the volumes but was essential in bringing our research to the attention of European institutions and of National and European stakeholders.

Equally important was the contribution of EFFE and EFSI as bridges with civil society, representing the sector's needs to researchers and thus enabling the design of targeted and more effective intervention policies.

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The ethical soundness of our work has been verified by Prof. Rupert Brown of the University of Sussex who checked every stage to ensure that the research complied with the highest ethical standards. We are very grateful to him for his discreet and estimable supervision and help.

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Heartfelt thanks to Mrs. Katherine Quezada and Mrs. Caroline Ibanez, Project Officers of the European Commission, and to Mrs. Maria Del Pilar Gonzalez Pantaleón, Policy Officer, who accompanied us during these three years of work, listening patiently to our requests and always offering us valuable advice with great competence and kindness.

We are also very grateful to all the administrative staff at our Universities, who work behind the scenes, but without whom we would not even have been able to embark on this fantastic adventure.

Finally, all our gratitude goes to our beloved project manager Fabio Ballerini, for his patient and confident guidance in the implementation of this project, never failing to give us his smile and good humour. Thank you so much, dearest Fabio!

I would like this to be a never-ending story.

My heart is full of gratitude to all my colleagues and now friends of the Consortium who contributed with their tireless work and great expertise to achieving the results we had set: Aude Boisseuil, Andrea Cano Redondo, William Chiaromonte, Marta Ciabatti, Simona Costa, Isabelle Daugareilh, Aurelie Decker, Francisco Josè Medina Diaz, Giulia Frosecchi, Thomas Hector, Andrea Iossa,

Cecilia Jornod, Eva Kocher, Hubert Kotarski, Agata Ludera-Ruszel, Inés Martínez-Corts, Camilla Matera, Michele Mazzetti, Anna Maria Molina, Stefano Pellegrino, Ziga Podgornik Jakil, Samuele Renzi, Mia Rönnmar, Guillaume Santoro, Leonor Tavares, Haoussetou Traore, Jenny Julén Votinius. Many of us did not know each other before we started working together, but we immediately found ourselves on the same wavelength. This is because we believed in the value and importance of the CARE4CARE project to improve the working conditions of care workers, on whom the well-being of each of us and our societies depends. I hope we will continue to work together to achieve even more improvements. *Ad maiora*!

CHAPTER 1

Comparative Care Workers' Discrimination Map Report[1]

Ferran Camas Roda, Andrea Cano Redondo, Anna Molina García, Marc Saez Zafra, Dolors Juvinyà Canal, Maria Antonia Barceló Rado, Michele Mazzetti

1. Executive Summary

This report, corresponding to WP3 of the "CARE4CARE: We care for those who care" research project, examines the care sector, focusing on the discrimination that workers may encounter due to their gender or migrant status.

This report offers a comparative analysis of six member countries of the Consortium (France, Garmany, Italy, Poland, Spain and Sweden), exploring how legislation, collective bargaining, caselaw, public or policy initiatives, activities of institutions, and reports from these bodies address the principle of anti-discrimination concerning care workers. WP3 also scrutinises how national equality bodies have tackled discrimination within the care sector.

CARE4CARE studies a selected group of care workers, namely, care workers in the public and private care sector, and in formal and informal economies, who perform paid work and provide personal assistance and/or health assistance to elderly persons, sick persons, and persons with disabilities. Focus is on care workers

[1] The contents of this report were finalized on June 28, 2024.

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Ferran Camas Roda, Andrea Cano Redondo, Anna Molina García, Marc Saez Zafra, Dolors Juvinyà Canal, Maria Antonia Barceló Rado, Michele Mazzetti, *Comparative Care Workers' Discrimination Map Report,* © Author(s), CC BY 4.0, DOI 10.36253/979-12-215-0896-3.03, in Maria Luisa Vallauri, William Chiaromonte (edited by), *CARE4CARE We Care for Those Who Care – Vol. II. Discriminations in the Care Sector: National Legal Frameworks and Comparative Insights*, pp. 19-51, 2025, published by Firenze University Press, ISBN 979-12-215-0896-3, DOI 10.36253/979-12-215-0896-3

who have at most a Bachelor's degree (i.e., home caregivers, basic care workers, social and care workers, and health professionals with at most a Bachelor's degree).

The report is structured into two main sections. The first section is dedicated to examining potential gender discrimination within the care sector, employing available data on the presence of women workers.

The study investigates whether national legislation aligns with anti-discrimination laws, particularly those derived from European Union directives. It subsequently analyses whether legislation or collective bargaining agreements regulating working conditions in the care sector contain clauses that could be perceived as direct or indirect gender discrimination. This includes an examination of contracts, professional classification, salaries, work-life balance, termination of contracts, and access to social benefits. This analysis is augmented by a review of relevant court rulings within the care sector. Furthermore, the report discusses the efforts of equality bodies on gender equality in the care sector, alongside public body reports addressing this issue. The findings aim to illuminate potential actions to prevent gender discrimination.

The second section mirrors the approach to gender discrimination, focusing on discrimination against workers based on their migrant status. This study begins with an overview of data on the presence of migrants in the general labour market, followed by a detailed look at the care sector. The report analyses the discrimination factors outlined in national legislation, derived from European Union Directives, which form the basis for applying the principle of anti-discrimination to migrants. These factors primarily include racial or ethnic origin and religion, affecting both foreign and national workers. In addition to legislative analysis, the report investigates data on complaints and court rulings related to migrant discrimination.

Although it is evident that while discrimination may occur in certain care sector occupations, it seldom leads to legal proceedings or court decisions.

Given the impact of the COVID-19 pandemic in 2020 and the demographic challenges facing our societies, the report also examines measures that could enhance migrants' access to the care sector. As with gender discrimination, this section analyses the work of equality bodies concerning migrant workers in the care sector.

Finally, the report addresses specific issues related to migrant workers in the care sector, including the regulation of workplace harassment and the exploitation regime for migrant workers. This analysis considers current European Directives and recently approved directives pending transposition by Member States. The report seeks to identify gaps in implementing European non-discrimination Directives as interpreted by the Court of Justice of the European Union.

2. Methodology

The University of Girona (UdG) served as the lead partner for Work Package 3 (WP3), responsible for tasks 3.1–3.3, with a particular focus on Task 3.2 and the comparative analysis. Academic partners from the six participating countries (UNIFI, UNI Lund, EUV, RU, UdB, UdS) contributed to tasks 3.1 and 3.3, while EFFE and EFSI played an active role in Task 3.3.

WP3 employed a socio-legal research methodology with a comparative and EU/international perspective.[2] The primary focus was on mapping and addressing discrimination in the care sector based on gender and migratory status. Key areas of investigation included employment contracts, wage remuneration (recognition of the principle of equal pay for equal work or work of equal value), staff classification criteria, work-life balance rights, health and safety from a gender perspective, dismissal regulations, social security registration, access to social security measures (notably unemployment benefits and retirement schemes), and the rights of migrant workers in comparison to other sectors (e.g., work permit renewal and family reunification). The intersectionality of gender and nationality as a driver of inequalities in the care sector was also examined.

In Task 3.1, data collection, research, and analysis were conducted within various national contexts in the EU (M03-M08). This included a legal analysis of antidiscrimination legislation and case law at the national level related to the care sector, as well as an analysis of collective bargaining agreements to identify measures against discrimination. Furthermore, following the legal literature review method, each partner conducted an in-depth study of national doctrine on the relevant topics in this WP.

The role of equality bodies in the care sector was investigated through a review of legislation, practices, and consultations to gather sector-specific information (D3.1).

Operationally, UdG prepared a template for the drafting of the national reports accompanying this comparative report. The template was structured in the form of a questionnaire with specific questions relating to the relevant research areas. This report is the outcome of international research collaboration. The comparative analysis is primarily based on the rich information and analysis provided by the following CARE4CARE WP2 national reports:

- the French Care Workers' Discrimination Map Report, WP3 (partner: COMPTRASEC – UMR CNRS 5114 – University of Bordeaux, authors: Isabelle Daugareilh, Guillaume, Santoro, Haoussetou Traore) (see chapter 2, *infra*),
- the German Care Workers' Discrimination Map Report, WP3 (partner: European University Viadrina Frankfurt (Oder), authors: Ziga Podgornik-Jakil, Dominic Andres, Eva Kocher) (see chapter 3, *infra*),
- the Italian Care Workers' Discrimination Map Report, WP3 (partner: University of Florence, authors: Maria Luisa Vallauri, William Chiaromonte, Giulia Frosecchi, Samuele Renzi, Michele Mazzetti) (see chapter 4, *infra*),

[2] Mark Van Hoecke, edited by, *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011); Amy Ludlow and Alysia Blackham, edited by, *New Frontiers in Empirical Labour Law Research* (Oxford: Hart Publishing, 2015); Bob Hepple and Bruno Veneziani, edited by, *The Transformation of Labour Law in Europe. A comparative study of 15 countries 1945–2004* (Oxford: Hart Publishing, 2009); Matt W. Finkin and Guy Mundlak, edited by, *Comparative Labor Law. Research Handbooks in Comparative Law* (Cheltenham: Edward Elgar, 2015).

- the Polish Care Workers' Discrimination Map Report, WP3 (partner: University of Rzeszow, authors: Agata Ludera-Ruszel, Hubert Kotarski) (see chapter 5, *infra*),
- the Spanish Care Workers' Discrimination Map Report, WP3 (partner: Universitat de Girona, authors: Ferran Camas Roda, Maria Antonia Barceló Rado, Dolors Juvinyà Canal, Marc Sáez Zafra, Anna Maria Molina Garcia, Andrea Cano Redondo) (see chapter 6, *infra*),
- the Swedish Care Workers' Discrimination Map Report, WP3 (partner: Lund University, authors: Mia Rönnmar, Jenny Julén Votinius) (see chapter 7, *infra*).

These national reports are drafted on the basis of a common questionnaire and written by distinguished experts in the field, who are familiar with the specific national labour law and industrial relations systems, legal cultures, and primary legal sources. In this comparative report, a reference made to a specific national context implies, if not otherwise stated, a reference to the corresponding national CARE4CARE WP2 report. The author of this comparative report is solely responsible for the interpretation of the findings and for any errors or omissions in the text of this report.

After the research phase at national level was completed, a first draft of the "Discrimination Map" (DM) was circulated among partners, outlining discrimination and the role of equality bodies in the field of care in six EU Member States (France, Germany, Italy, Poland, Spain and Sweden), including the interaction between national and European/international law and policy.

Task 3.2 involved data collection, research, and analysis in a comparative and EU/international context (M08-M13). This task focused on a legal analysis of relevant antidiscrimination provisions and case law at the EU/international level to evaluate their contribution to addressing discrimination in the care sector.

After the completion of Task 3.2, each national partner organised one or more seminars with national stakeholders to discuss the research results of WP2 and WP3, fulfilling Task 3.3. This task involved stakeholder dialogue aimed at research dissemination, exchange of best practices, and policy development (M14-M16).

Stakeholder involvement was robust at both national and EU levels, ensuring comprehensive engagement and feedback.

WP2 and WP3 leaders, with organisational support from TOUR4EU, EFFE and EFSI, hosted a seminar at the EU level involving all partners and stakeholder representatives, including trade unions, family and employer representatives, civil society organisations, and EU/international organisations (approximately 50 participants). This collaboration with the partner leading WP8 facilitated the promotion on social media (D3.2).

Stakeholders' involvement facilitated the revision of national and comparative reports to complete the final draft (D3.3) for Task 3.4 (M16-M18).

This comprehensive analysis provided essential structural variables necessary for conducting activities in Task 4.1 of WP4.

3. Conceptualization

In the development of both the national and comparative reports, it became evident that a uniform lexicon was necessary for the mapping of discriminations referenced in WP3. Consequently, this section includes a glossary that provides definitions for the terms employed throughout the research.

3.1 Discrimination and Harassment

Discrimination and harassment include the notions of direct discrimination, indirect discrimination, and harassment (including sexual harassment).

Direct discrimination occurs when an individual is treated less favourably than another person in a comparable situation based on gender, race, ethnic origin, religion, or belief. Indirect discrimination arises when an apparently neutral provision, criterion, or practice places persons of a particular racial or ethnic origin, gender, religion, or belief at a disadvantage compared to others. However, this is not considered discrimination if the provision, criterion, or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Harassment refers to unwanted conduct related to the sex, or ethnic origin, or religion [...], of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment; or in case of sexual harassment, where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person.

3.2 Equality Bodies (or Entities for the Promotion of Equal Treatment)

Equality bodies refer to entities that are entrusted with a range of powers (amicable settlement (e.g., mediation or conciliation), litigation, investigations, binding decision-making), depending on the State concerned. These powers, when combined, can sometimes imply a different role: impartiality for some of the powers, and partiality for others (when the equality body sides with the victim).

For instance, in the area of discrimination on the grounds of ethnic origin or race, the legal basis of equality bodies is to be found in Art. 13 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

This article states that:

> Bodies for the Promotion of Equal Treatment
> Article 13
> 1) Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
> 2) Member States shall ensure that the competences of these bodies include:

– without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,—conducting independent surveys concerning discrimination,
– publishing independent reports and making recommendations on any issue relating to such discrimination.

3.3 Undeclared Work

Undeclared work is a general and all-inclusive concept to define any paid activities performed by any worker (national or non-national, documented or undocumented) that are lawful as regards their nature but not declared to public authorities, taking account of differences in the regulatory systems of the Member States.

Within the general notion of "undeclared work" other, more detailed, notions can be identified:

- Under-declared employment: when formal employers pursue the illegal practice of reducing their tax and social security payments, and therefore labour costs, by under-declaring the remuneration of employees. This occurs when employers pay their formal employees two salaries: an official declared salary and an additional undeclared ('envelope') wage which is hidden from the authorities for tax and social security purposes. Alternatively, an employer can under-declare the number of hours an employee works, such as to evade paying the minimum wage.
- Envelope wages: often used in the context of under-declared employment, an envelope wage is a cash-in-hand wage paid by a formal employer to a formal employee in addition to their official declared salary, to reduce their tax and social security payments and therefore labour costs. It arises from an agreement between the employer and employee, and additional conditions may be attached to its payment, which are not in the formal written contract or terms of employment.
- Undeclared self-employment: paid activity conducted by the self-employed where income is not declared for the purpose of evading either tax and/or social insurance contributions owed. The self-employed may not declare either some or all their income.
- Bogus self-employment: often referred to as false self-employment or dependent self-employment, this is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are de facto dependent employment. National legislation and/or court decisions determine this status. This employment status is used to circumvent tax and/or social insurance liabilities, or employers' responsibilities.

3.4 Informal Economy

Informal economy covers all economic activities that are—in law or in practice—not covered or insufficiently covered by formal arrangements (e.g.,

unlawful temporary agencies; cooperatives not formally established as legal entities; etc.).

3.5 Undocumented Migrants (or "Irregular Migrants")

An undocumented migrant is non-national (or a third-country national) who enters or stays in a country without the appropriate documentation. Migrants can find themselves as undocumented in one of the following two ways.

Firstly, they may possess documentation that acts as proof of identity, but they do not have documentation that proves their right to enter and stay in the country, or such documentation is fraudulent or no longer valid. In this meaning, this expression is used as a synonym of "irregular migrant" (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ((adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, Art. 5(b)).

Secondly, they may lack any documentation proving their identity their right to enter and stay in the country. Undocumented migrants without any form of identity documentation face greater challenges in accessing services, obtaining residence or work permits, and returning to their countries of origin. Over the long term, they may also risk statelessness if they are unable to obtain any evidence of their nationality.

4. Map of Discrimination

This comparative report of WP3 of the Project is divided into two large blocks in which it is intended to map, on the one hand, the discrimination that workers in the care sector may suffer, on the one hand because of gender, on the other because the person is an immigrant.

In this sense, in order to carry it out, we have studied the legislation of the different countries participating in the project, court rulings, conflicts that may have appeared in the media, administrative practices or government initiatives such as political strategies, and of course, meetings with entities of the care sector interested in this project.

Our work has always been based on the most current regulations or acts, and for that reason, in this brief introduction, we cannot miss the opportunity to mention the 112th session of the International Labor Conference held this June 2024,[3] when the final comparative report of WP3, now presented, is being carried out in this project.

Of particular note are the Conclusions of the General Discussion on Decent Work and the Care Economy:

[3] International Labour Organisation: 112th Session of the International Labour Conference (3–14 June 2024): <https://www.ilo.org/international-labour-conference/112th-session-international-labour-conference> (Accessed September 23, 2024).

- First, in these Conclusions it is stated that the care workforce is heterogeneous. It adds that "While some care workers are highly skilled and well remunerated, many others, especially migrant workers and domestic workers, remain in the informal economy, receive low pay and are excluded, in law or in practice, from protection measures, including social and labor protection". These conclusions are of interest since the Report that follows includes certain considerations that support this assertion.
- Also of interest in the Conclusions are its assertions that decent work and the care economy also present other challenges, such as strong occupational segregation on ethnic, racial and gender grounds, and the undervaluation of care work. Indeed, it is clear from the General Discussion on Decent Work and the Care Economy that the burden of paid and unpaid care work borne by women can be highly dependent on race, ethnicity, socioeconomic status and place of origin.

On these and other bases, the Conclusions derived from the 112th session of the Conference, express that considering the principles outlined above, Governments, employers' organisations and workers' organisations, in accordance with their respective spheres of responsibility, with the support of the ILO, should, among other actions:

- Promote macroeconomic and employment policies that generate decent jobs in the care economy, including by formalising informal care jobs and enterprises and preventing the informalisation of those that are formal, and ensure sufficient fiscal space.
- Preventing and combating all forms of discrimination against care workers, with particular attention to women, migrant workers, racialised groups and people in vulnerable situations.

These comments are quoted here because, to a large extent, some of these considerations emerge from the comparison of the reports presented by the countries participating in the project, and in this sense, they go into some of them in greater depth.

4.1 Discrimination on the Basis of Gender

4.1.1 National Legislation on Gender Discrimination in Employment

A study of the different Constitutions of the countries analysed shows that the principle of anti-discrimination is anchored in their regulations.

The comparative analysis of Constitutions across the studied countries reveals a consistent integration of anti-discrimination principles within their legal frameworks. Legislation has been carefully crafted to align with EU directives on gender discrimination in employment, with particular emphasis on provisions against harassment. Directive 2006/54/EC of the European Parliament and Council (effective from 5 July 2006) mandates equal opportunities

and treatment of men and women in employment and occupation, defining harassment and sexual harassment as critical considerations.[4]

Following the legal framework, the reports highlight significant policy initiatives. For instance, the Spanish report discusses the government's new Care Strategy: the State Strategy for a new model of community care - A process of deinstitutionalisation (2024-2030). This strategy emphasises dignity, respect, and non-discrimination, aiming to create safe, nurturing, and supportive environments for individuals requiring care. It incorporates a gender perspective to address disparities in access, use, and control of social resources and services between men and women. Additionally, the strategy adopts an intersectional approach, acknowledging that individuals may face discrimination due to multiple overlapping social categories, such as gender, socio-economic status, disability, or migrant status. This approach informs tailored measures to dismantle barriers experienced by vulnerable population groups.

The discrimination documented in the reports takes various forms in relation to contexts and subjects. In Italy, gender-based discrimination surfaced prominently during a National Stakeholder Meeting, particularly concerning maternity rights. For example, a female employee in a public health institution faced resistance when seeking to transition from full-time to part-time employment due to maternity reasons. Despite legal protections ensuring equal treatment for part-time and full-time working mothers, initial denial by the administration required intervention from labour inspectors and legal recourse for resolution.

Moreover, reports underscore instances of discrimination against foreign workers. For instance in Italy, an Albanian worker encountered harassment and coercive tactics leading to resignation upon return from maternity leave. Despite efforts to address the employer's discriminatory behaviour, procedural limitations hindered effective resolution.

Intersectional discrimination is another significant issue highlighted across reports. As in the case of a Moroccan female workers in Spain wearing the Hijab that encountered considerable workplace challenges due to their ethnicity and religious practices. Such discrimination underscores the complex interplay of gender, ethnic background, and religious identity in shaping individuals' experiences within the labour market.

In conclusion, these reports collectively affirm the alignment of national legislation with EU directives on gender discrimination in employment. They underscore the importance of robust legal frameworks and policy initiatives in combating discrimination and promoting equality in the workplace.

[4] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0054> (Accessed October 14, 2024).

4.1.2 Presence of Women Workers in the Care Sector

The reports submitted for WP3 consistently highlight the substantial presence of women in the care sector across all countries studied.

In some instances, when considering the care sector, notable gender disparities are evident across countries such as Germany, Sweden, and France, where female representation exceeds 80% (the Polish report highlights the sector's high feminization). For instance, the German report underscores that a substantial majority of employees in the German care sector are women (81%–83%), contrasting sharply with the broader German labor market, where men predominate (54% versus 46% women). The report indicates that women dominate across all care occupations except emergency medical services, where three-quarters of employees are men. Women are slightly more represented in outpatient care compared to inpatient care and are more prevalent in elderly care than in medical nursing. The largest number of women in the care sector are employed in nursing in medical care.

Turning to the Report of Sweden, it states that labour market is one of the most gender-segregated across Europe, though this trend is gradually diminishing.[5] The pronounced gender divide has been attributed to the rapid increase in women's labour force participation between the 1970s and 1990s, when a large proportion of Swedish women entered the labour market in already female-dominated occupations, including care workers' occupations.[6] Today, the most common occupation in Sweden is "assistant nurse in home care, home health care and residence homes for the elderly". Women make up 89% of the employees in this occupation. Similarly, except for emergency medical services (*ambulanssjukvårdare*), other occupations in the care sector are heavily female-dominated.[7]

The French report underscores the high feminization of healthcare professions. According to a 2019 survey on the care sector,[8] 86% of nurses are women; 88% of care assistants are women; 94% of home helpers are women. The proportion of female employees in the broader home help, support, care, and services sector is estimated at 95% as of amendment no. 59 of 2023. The majority of employees are women (82.3% in 2015 according to the Dares), with few qualifications (only 7.5% have more than a baccalaureate, compared with 38.4% of all employed people) and an average age higher than that of the working population (46 compared with 41).[9]

[5] I. Bagøien Hustad, J. Bandholtz, A. Herlitz and S. Dekhtyar, "Occupational Attributes and Occupational Gender Segregation in Sweden: Does It Change Over Time?" *Frontiers in Psychology* 11 (2020); A. L. Ellingsæter "Scandinavian welfare states and gender (de)segregation: recent trends and processes," *Econ. Ind. Democracy* 34 (2013): 501–18.

[6] H. Melkas and R. Anker "Occupational segregation by sex in nordic countries: an empirical investigation," *Int. Labor Rev.* 136 (1997): 341–64.

[7] Swedish Occupational Register 2021.

[8] L. Chassoulier, et al. *IRES report Investing in the care sector - A gender equality issue* (IRES, 2023).

[9] E. Kulanthaivelu and L. Thierus, "Les salariés des services à la personne: comment évoluent leurs conditions de travail et d'emploi ?" *DARES Résultats* 038: 1.

Regarding Italy, the report delves into various types of care workers: health professionals with a maximum of a Bachelor's degree, social and care workers, basic care workers, and home caregivers. The Report states that Italian legislation is highly fragmented, particularly concerning the professional roles of Social and Care Workers and Basic Care Workers. It is also important to mention that during the Italian National Stakeholders Meeting,[10] some employer associations and trade unions emphasised the issue of labour shortages. According to the report, the main cause of these labour shortages has been the numerous turnover blocks introduced by legislation in order to contain public spending on healthcare.[11] The report points out that according to the National Institute for Public Policy Analysis (Istituto nazionale per l'analisi delle politiche pubbliche, or INAPP) there were slightly under 618,000 care workers in Italy in 2020, with 68.7% of women and 31.3% of males working in this field.[12] More than 72% of individuals work in healthcare institutions, with nurses and midwives accounting for 59.3%, physicians and dentists for 23.1%, and other carers (social and care workers, basic care workers) for 17.6%.[13]

Finally, the Spanish report highlights the distinction between paid and unpaid care, yet underscores that caregiving responsibilities predominantly fall on women. Many women assume caregiving roles not by choice but due to economic and social pressures. The report also identifies a significant, largely female workforce being diverted to caregiving roles without adequate coverage or recognition. Moreover, it emphasizes that men do not equally share caregiving responsibilities, perpetuating a discriminatory allocation of care duties that reinforces gender inequality. In any case, in relation to family domestic work, according to data from the Ministry of Labour, in 2019 (data will be discussed later, as of 2022) the number of 402,500 people affiliated to the Special System for Domestic Employees was reached, of which 18,000 are men and 384,500 are women.[14] These figures allow us to visualize how this social protection system is intensely feminized, whether we are talking about Spanish nationals or foreign-

[10] The Care4Care project methodically engages stakeholders, including trade unions, employers' associations, and civil society organizations, at both national and EU levels. The primary objective is to gather different perspectives, insights, suggestions, and crucial information to enrich and update the research report. In Italy, the national stakeholder meeting was held on 10 April 2024 in Rome, while the European-level discussion took place on 17 April 2024 in Brussels. These meetings served as crucial moments to engage stakeholders, ensuring that their voices are heard and that their insights contribute significantly to the project outcomes.

[11] FNOPI, *Scheda sulla professione infermieristica*. Schede di analisi (FNOPI, 2020).

[12] Luisa D'Agostino e Alessia Romito, "L'evoluzione del mercato del lavoro del comparto sanitario nel contesto della digitalizzazione dei servizi e delle prestazioni" (Istituto nazionale per l'analisi delle politiche pubbliche - INAPP, 2023).

[13] D'Agostino e Romito, "L'evoluzione del mercato del lavoro."

[14] Spain: Ministry of Inclusion, Social Security and Migration: Social Security Affiliations <http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/afi/afi.pdf> (Accessed October 22, 2024).

ers. In this regard, if we review the statistics corresponding to foreign workers affiliated to Social Security who are registered as workers,[15] it turns out that out of a total of 170,444 affiliated to the Special Family Home System, 10,251 are men and 160,179 are women. On the other hand, the work of domestic workers confirms the increasing presence of migrant workers in the context of a process of progressive replacement of native women, as will be demonstrated later with the data on this subject recorded to date.

In summary, these reports underscore common themes such as the predominant presence of women in the care sector across Europe. They also highlight challenges related to informal employment practices and the integration of migrant populations, particularly within domestic services. These findings underscore the urgent need for comprehensive policies addressing gender equality, labour rights, and social protections within the European care sector.

4.1.3 Provisions in Legislation or Collective Agreements on Employment Contracts, Occupational Classification, Wages, Health and Safety, Termination of the Contract or Social Benefits in the Care Sector

A) In general terms, the different reports show that there are no special regulations that distinguish employment contracts in the care sector. In other words, the definition and meaning of an employment contract are the same in the care sector as in other sectors. There are no specific provisions on employment contracts with regard to gender.

In Italy, Germany and Spain "special" regulations on occupations specific to the care sector applies to parents. In France, such a specialisation is recognised within the care sector, primarily through collective bargaining. National collective agreements emphasise the unique environment of the employer's or user's home where the worker is employed. They highlight the importance of accountability and loyalty among staff, particularly to prevent the exploitation of vulnerable individuals receiving care.

The Italian report refers to the *libretto di famiglia* (family booklet). This family booklet is a particular form of employment contract that lies halfway between self-employment and subordinate employment, allows non-entrepreneur natural persons to manage operations relating to occasional work (registration, deposits, baby-sitting bonus and reimbursements) carried out by self-employed persons. The family booklet is a prefinanced nominative payment booklet consisting of payment slips with a nominal value of 10.00 euros, aimed at paying for work activities lasting no more than one hour. The activities that the user can remunerate by means of the family booklet are specified by law and consist of minor domestic work, including gardening, cleaning or maintenance work; home care for chil-

[15] Spain: Ministry of Inclusion, Social Security and Migration: Social Security Affiliations <http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/aex/aex.pdf> (Accessed October 22, 2024).

dren and elderly, sick or disabled persons; private lessons. In any case, there is no maternity protection for occasional work paid with the family booklet. Until 31 December 2025, employers hiring or converting domestic workers to indefinite contracts for assisting elderly individuals aged at least eighty years, already receiving the accompanying allowance, are granted a 100% exemption from total social security contributions and insurance premiums for up to 24 months.

German Report points out that there are special regulations for the care sector in the Working Hours Act, for instance, the general rest period after the end of the daily working time can be reduced from eleven hours to ten hours for care workers according to section 5 (2) if this reduction is compensated by the extension of another rest period within one month. Section 5 (3) codifies an exception for on-call duty specifically created for care workers: Interruptions made during on-call duty can be compensated for at other times if the interruption does not exceed half of the rest period.

Similarly, the Spanish report indicates that no specific provisions have been identified regarding employment contracts in the care sector that differ from contracts in other productive sectors. However, it is noteworthy that within the realm of domestic service, the employment relationship between the worker and the head of the household is considered "special," governed by specific regulations distinct from those of ordinary employment regimes. Nevertheless, there has been a legal trend towards unification of these contract types, particularly evidenced by the abolition of the non-causal annual temporary contract that was applicable in this sector until 2022, and its alignment with the provisions of the Workers' Statute concerning temporary contracts.

The Spanish report highlights initiatives by the government aimed at incentivising hiring in two specific contexts: firstly, within the "family context," and secondly, for caregivers within large families. These initiatives involve granting bonuses to employers who hire in these categories, effectively reducing the tax or Social Security contributions required for such employment. When it comes to hiring a carer within the framework of large families, the law states that carers are considered to be

> natural persons in the service of the family home in which the object of their special employment relationship is constituted by services or activities provided in the home of large families that are officially recognised as such under said law, and which consist exclusively of the care or attention of the members of said large family or of those who live in the home of the same, The latter may be verified by means of the corresponding inspection (see the Sixth Final Provision of Royal Decree-Law 2/2024, of 21 May, adopting urgent measures to simplify and improve the level of unemployment protection assistance, and to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on reconciling family and working life for parents and carers and repealing Council Directive 2010/18/EU).

To conclude, no legal regulations have been found that differentiate between employment contracts in the ordinary field (those performed by a worker in any

sector) and the care sector. In countries such as Spain, in recent years there has been a unification of the types of employment contracts between the common and ordinary work and those performed in domestic work.

B) Regarding whether legislation or collective agreements provide for a system of occupational classification in the care sector, it has not been identified that specific professional classification systems exist in either legislation or collective bargaining agreements. No evidence of gender bias in occupational classification has been detected.

However, this issue can be viewed in relation to the question of whether the regulations or collective bargaining affecting the care sector recognize in any way the important presence of women in this sector or in any of the occupations. Most countries take a general perspective applicable to both genders. Yet, some, like Sweden and France, use neutral language for workers in the care sector. In Spain, specific legislation on domestic work recognises the significant female presence in the sector, addressing potential discrimination issues. Nevertheless,, collective agreements in countries such as Spain do not reflect the significant feminization of the sector.

To sum up, regarding occupational classification, a common observation is that gender is irrelevant for the professional classification of workers. Nonetheless, reports, such as the German one, note that while there are no gender biases in legislation and collective bargaining agreements, empirical data show differences in pay between men and women with the same qualifications. For instance, in Germany, in the occupational subgroup nursing without specialization, the median pay of full-time male nursing employees in 2022 was 3,956 EUR, while it was only 3,771 euros for female nursing employees; in elderly care, it was 3,452 euros for men and 3,283 euros for women. Meanwhile, reports from Poland suggest certain care occupations are gender-specific, with "nursing" being predominantly female. Occupational classification in the care sector, adheres to gender-neutral rules.

The Swedish report refers to the fact that some occupations in the care sector are clearly distinguished from others in that they require a license from the National Board of Health and Welfare, which also functions to classify these occupations. This applies to nurses and assistant nurses, who must produce a university diploma from a nurse programme or, for assistant nurses, an upper secondary school diploma from a health and care programme. However, Care assistants and personal assistants for persons with a disability are not covered by a license requirement.

Finally, the Spanish Report concludes that ccollective agreements provide for a classification system with respect to the work carried out in any case. For instance, the Agreement on care services for dependent people and the development of the promotion of personal autonomy, which cover all the Spanish State, categorises roles based on the function that is carried out, and where they are carried out (in a home for the elderly, home help, telecare). In short, it does exist, and it presents a classification of care work, but it is based on the professional activity and not on the gender of the person who carries it out.

C) Regarding wages and particularly minimum wages in the care sector, it is important to note Directive (EU) 2022/2041 as a foundational document. This Directive aims to establish a framework ensuring: a) adequate statutory minimum wages that provide for decent living and working conditions; b) promotion of collective bargaining for wage-setting; c) enhanced access for workers to minimum wage protection as stipulated by national law and/or collective agreements.[16]

The Italian report indicates that Italy does not set a statutory minimum wage by law. Generally, remuneration is determined freely by the parties involved. Remuneration is generally determined through collective bargaining, historically leading to progressive national wage increases. However, Italian case law has expanded the application of collective agreements' wage sales to all workers employed in a specific sector under Article 36 of the Constitution. The adoption of Directive 2022/2041 on adequate minimum wages in the EU does not oblige member states to introduce statutory minimum wages, nor does it establish a common threshold valid throughout the EU. It merely establishes some criteria to ensure minimum wages, above the subsistence threshold, considering the cost of living and purchasing power of the relevant member state. The two alternative ways to achieve this are to set a statutory minimum wage or to extend the coverage of collective bargaining. This coverage will have to reach 80% also, if necessary, through an action plan under EU monitoring. Notably, neither collective bargaining nor legislation in Italy includes provisions for gender-differentiated pay structures. Anti-discrimination laws and the principle of equal treatment prohibit gender-based salary discrepancies.

In Germany, the Sixth Nursing Working Conditions Ordinance prescribes minimum wages for the care sector, varying by occupational classification. The collective agreements for the public sector—are prevalent in the care sector—further differentiate according to occupational classification. Moreover, Sec. 2 (1) 6. *PflegeArbbV* differentiates the minimum wage according to the level of training (nursing assistants without a degree, nursing assistants with one-year training, and nursing professionals with three years of training and a state examination) and their work experience. Collectively agreed wages in other sectors are mostly structured similarly to wages in the care sector: payment is based on tasks, education/qualification level and work experience. Even though these three characteristics are referred to with varying intensity, structural differences are not discernible.

In the Act on the method of determining the basic remuneration of certain employees employed in healthcare entities (Act of 8 June 2017, Journal of Laws from 2022, item 2139), Poland stipulates a general statutory minimum wage for employees in the health sector. For all other care employees not employed in healthcare entities, the minimum wage is regulated in the Act on minimum

[16] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022L2041> (Accessed November 4, 2024).

remuneration, that since July 2023 shall be monthly 3.600 PLN (amount 807 EUR, Act of 10 October 2022, Journal of Laws from 2020, item 2207).

Sweden lacks statutory regulation of wages, including a statutory minimum wage. Wages are set within the framework of sectoral collective bargaining with extensive elements of local wage agreements and individual wage setting. Wages may not be determined on the basis of gender, and collective agreements must be in accordance with the requirements in the Discrimination Act (2008:567).

France upholds the principle of equal pay for equal work or work of equal value (the notion of "equal value" is defined in article L. 3221-3 of the French Labor Code), enshrined in legislation since 1972. Although the pay gap has narrowed steadily over the last 25 years (from 22.1% in 1995 to 15.5% in 2021 for comparable working hours and jobs), significant differences remain due to the fact that women are more likely to work part-time, and to the gendered distribution of occupations and lower-paying jobs.[17]

In Spain, domestic workers in family homes are subject to specific minimum wage regulations distinct from other sectors. This difference applies exclusively to domestic workers who work on an hourly basis, on an external basis. In this case, according to Royal Decree 1620/2011, the minimum reference wage will be the one established in the royal decree setting the minimum interprofessional wage for temporary and seasonal workers and domestic employees annually, which includes all remuneration concepts. This minimum wage shall be paid entirely in cash, in proportion to the hours actually worked. In this regard, based on Royal Decree 99/2023, of February 14, 2023, which sets the minimum interprofessional wage for 2023, in particular its article 4, it is foreseen that the minimum wage for domestic employees will be 8.45 euros per hour actually worked. The Randstad study on salary trends (2024) in Spain[18] shows salary rates in the health sector (care is excluded from the scope) highlight varying pay rates for roles like nurses and nursing assistants, ranging from euros 16,000 to euros 52,000 annually depending on experience and location.

In summary, minimum wage frameworks vary across countries, established either through collective bargaining agreements or legislative mandates. However, principles of equal pay for work of equal value are uniformly upheld, aiming to mitigate gender-based wage disparities across the care sector.

D) The issue of contract termination in the care sector reveals contrasting approaches across Europe, reflecting varied legal frameworks and judicial interpretations.

In Italy, domestic workers and home caregivers are exempt from statutory protections against dismissal (Article 62 of Legislative Decree no. 151 of 26 March 2001 and Articles 2240 and 2244 of the Civil Code). This allows for termination at will, without formal procedures, even during maternity.

[17] See *Insee Focus* 292 (March 2023); Ph. Roussel, *Femmes et hommes, l'égalité en question* (Insee, 2022).

[18] See Randstad, *Informe de Tendencias Salariales* (2024).

Conversely, Spain implemented a 2022 reform abolishing unrestricted termination by employers of domestic workers. Now, termination is permissible only under specific circumstances such as economic constraints or a substantial change in family needs, or due to the worker's conduct affecting the employer's trust.

Legal cases underscore the significance of termination practices in the care sector. For instance, in Italy, the Catanzaro Court of Appeal (6 May 2014, no. 676) ruled on a case involving a female employee dismissed by a private clinic. The dismissal, part of a collective redundancy process, was deemed discriminatory due to gender bias in the classification of employees. The court upheld the employee's appeal, highlighting discriminatory criteria used in her dismissal.

Another case is German. In 2021, the Regional Labour Court in Mecklenburg-Vorpommern addressed a case where a professional nurse working for a disabled person faced contract termination due to the employer's death. Pregnant at the time, she argued against the termination citing maternity protection laws (Sec. 17 MuSchG), but the court upheld the contract's fixed-term nature, resulting in dismissal. In Spain, the Supreme Court Judgment of January 29, 2020 (Appeal no.: 2401/2017) involved a domestic worker dismissed by her employer, which was initially ruled unfair and later nullified due to pregnancy discrimination. The court awarded increased compensation, though it did not reinstate the worker or reconsider the nature of the dismissal under applicable laws.

These cases highlight the judicial nuances and protections (or lack thereof) regarding termination in the care sector across Europe. While Italy maintains flexible dismissal rules for domestic workers, Spain and Germany illustrate evolving legal protections and judicial interpretations, particularly concerning discriminatory dismissals and maternity rights. These examples underscore the complexities and disparities in legal frameworks governing employment termination within the care sector across different European jurisdiction.

E) When examining unemployment benefits, significant disparities emerge across Europe, as illustrated by various national reports. Italy's report highlights a notable issue concerning domestic workers and home caregivers. Legislative Decree no. 22 of 4 March 2015 mandates a stringent condition for accessing unemployment benefits: individuals must have worked for at least 30 days in the 12 months preceding job termination. This criterion disproportionately affects domestic workers, who often face challenges in proving their work attendance due to the nature of their roles. The calculation method, based on conventional wages and hourly thresholds, further complicates access to benefits for part-time domestic workers, reinforcing inequalities within the sector.

This Italian regulation potentially conflicts with European directives, particularly in its implications for indirect discrimination based on gender. The Court of Justice of the European Union, in its landmark judgment of February 24, 2022 (Case C-389/20, CJ v Tesorería General de la Seguridad Social), ruled that similar exclusions from unemployment protection could constitute indirect discrimination under Directive 79/7/EEC. This ruling stemmed from a case in Spain, highlighting systemic gender disparities within care work sectors predominantly staffed by women.

F) In addressing provisions for women's occupational safety and health, it is crucial to note that the care sector, particularly in domestic service (or the provision of services for family homes), is frequently characterised by menial, precarious, poorly remunerated, and socially undervalued positions. Many roles within this sector are not adequately recognised or valued by society.

It is essential to highlight data from the Report on Spain,[19] which reveals a high incidence of work incapacity due to health issues within the care sector. Contributing factors include the inadequate recognition by many female caregivers of the physical demands of their work and a lack of training on managing both the physical and psychological aspects of caregiving. This lack of awareness and preparation significantly increases the risk of workplace accidents.

Moreover, well-documented issues such as health burnout—prevalent among geriatric workers due to the low expectations of patient recovery—and the general stress associated with caregiving, particularly for severely ill or disabled patients, further exacerbate these challenges. Additionally, psychosocial risks in the workplace, including violence, harassment, and stress, further compound the difficulties faced by caregivers in this sector.

4.1.4 Provisions in Legislation or Collective Agreements for Reconciling Work and Family Life[20]

Across the countries analysed in this project, legislation addressing the balance between work and family life generally applies universally, without specific provisions tailored exclusively to the care sector.

Reports from Germany, Spain, and Poland indicate that regulations concerning work-life balance apply broadly across sectors, including the care sector. Notably, in Spain, public authorities encourage care facilities for individuals with disabilities to implement measures facilitating work-life balance for their staff. This initiative supports new service provisions under public agreements, promoting conditions conducive to the reconciliation of work and family life.

In France, the 2018 agreement on quality of life at work and professional equality within private hospital NCCs emphasises practical measures for balancing work, family, and personal life. Recommendations include flexible meeting schedules and adaptations for night workers transitioning to day shifts, enhancing overall working conditions and accommodating family responsibilities. These provisions, however, do not specify gender-based considerations exclusively for women in the care sector.

[19] M. Ángeles Durán, *La riqueza invisible del cuidado* (Universitat de València, 2022), 446.

[20] As a basis for dealing with this issue, Partners have referred to Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers. Article 1 of this Directive sets forth minimum requirements aimed at achieving equality between men and women in terms of labour market opportunities and treatment at work. It seeks to facilitate the reconciliation of work and family life for workers who are parents or carers by establishing individual rights related to: a) paternity leave, parental leave, and carer's leave; and b) flexible working arrangements for workers who are parents or carers.

Similarly, Sweden's report highlights that while specific rights regarding work-life balance do not explicitly target female care workers, court cases have addressed issues of discrimination, particularly concerning parental and caregiving responsibilities. Notably, cases have examined dismissals related to caregivers' family obligations, underscoring legal protections but not gender-specific legislative measures.[21]

In Spain, while legislation lacks explicit provisions for written leave of absence tailored to care workers, the transposition of EU Directive 2019/1158 aims to enhance work-life balance for parents and caregivers. This includes the introduction of non-transferable parental leave, designed to encourage gender equality in caregiving responsibilities.

In conclusion, the absence of specific legal provisions or court cases focusing on work-life balance for women in the care sector across the analysed countries indicates a generalised approach to legislative frameworks. While collective agreements may offer some flexibility, the overall lack of targeted measures suggests potential challenges in reconciling care work with family responsibilities. Addressing these issues requires comprehensive public resources and broader societal engagement to promote gender equity in caregiving roles and facilitate a more balanced distribution of work and care responsibilities.[22]

4.1.5 Presence, Role and Effectiveness of Equality Bodies in Relation to the Rights of Workers in Care Occupations[23]

Equality Bodies have prioritised examining workers' rights within care occupations to enhance the recognition and value of these roles, as seen in France. The French Report underscores the systemic undervaluation of jobs predominantly held by women, emphasising the need for proactive measures under the principle of "equal pay for work of comparable value". This includes efforts to elevate the status of personal service professions through improved income, working conditions, social protections, training opportunities, and overall recognition.

The French Report highlights initiatives such as the guide by the Defender of Human Rights and the High Council for Professional Equality.[24] These re-

[21] Swedish Labour Court judgement AD 2003 No 70.

[22] CES: <https://www.ces.es/documents/10180/5282746/Inf0122.pdf/8283bf1c-0f10-1f2d-7e55-444949c4def1> (Accessed September 24, 2024).

[23] Methodologically it is noteworthy that the national reports from each country were issued prior to the approval of the two new Equality Bodies Directives (Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies covering equal treatment irrespective of racial or ethnic origin, religion or belief, disability, age, or sexual orientation, as well as equality between women and men in social security and access to goods and services, amending Directives 2000/43/EC and 2004/113/EC; Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies focusing on equal treatment and opportunities between women and men in employment and occupation, amending Directives 2006/54/EC and 2010/41/EU).

[24] Défenseur des droits, *Guide pour une évaluation non discriminante dans les emplois à dominance féminine* (Paris: Défenseur des droits, 2013).

sources address the undervaluation of female-dominated professions, advocating for policies that promote equality across various dimensions. Additionally, the Clersé-CGT report supports these findings,[25] citing feedback from a consultation titled "Mon travail le vaut bien" ("My job is worth it"),[26] where nurses and care assistants expressed pride in their work but stressed the importance of implementing effective measures for gender equality.[27] Recommendations include regular evaluations of equality measures by companies, administrations, local authorities, and hospital facilities.

Apart from Equality Bodies' reports, other documents offer valuable insights. Notably, the Spanish Report includes findings from the Economic and Social Council's publication on Women, Work, and Care: Proposals and Future Perspectives.[28] This report highlights significant information gaps, as official data often lack gender disaggregation and qualitative analyses, impeding accurate diagnoses of women's situations across sectors. The report stresses that making women's specific issues visible is crucial for designing effective solutions. It recommends that statistical agencies improve the production and updating of sex-disaggregated data to better understand women's realities in areas such as time use, income, Social Security affiliation, health, healthcare access, entrepreneurship, digitalisation, science and technology, and social protection.

Additionally, incorporating a gender perspective in all research, including qualitative analysis, is essential to capture the full scope of women's experiences and identify persistent inequalities.

4.2 Discrimination on the Basis of Migrant Status

4.2.1 National Legislation Against Discrimination on the Grounds of Race or Ethnic Origin, Religion or Belief, in the Field of Employment or Occupation[29]

Anti-discrimination legislation in the partner countries aligns with EU Directives 2000/43/EC and 2000/78/EC, focusing primarily on ethnicity, religion, or

[25] L. Chasoulier, S. Lemière et R. Silvera, *Investir dans le secteur du soin et du lien aux autres* (Clersé-CGT, 2023), 172 ff.

[26] See in particular Chasoulier, Lemière et Silvera, *Investir dans le secteur du soin,* 172 ff.

[27] Défenseur des droits, 10e baromètre, *Guide pour une évaluation non discriminante*.

[28] CES: <https://www.ces.es/documents/10180/5282746/Inf0122.pdf/8283bf1c-0f10-1f2d-7e55-444949c4def1> (Accessed September 24, 2024).

[29] As a legal basis for addressing this issue, Partners have considered the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. This Directive aims to combat discrimination on the grounds of religion or belief, disability, age, or sexual orientation in employment and occupation, with the objective of implementing the principle of equal treatment in the Member States. Additionally, the Council Directive 2000/43/EC of 29 June 2000 implements the principle of equal treatment between persons irrespective of racial or ethnic origin. This Directive provides a framework for combating discrimination based on racial or ethnic origin, aiming to enforce the principle of equal treatment across Member States.

belief. Notably, migrant status is not uniformly recognised as a discriminatory factor across these legal frameworks. Spain, however, acknowledges migrant status as a significant barrier to employment, highlighting it as a factor of vulnerability.

Starting with the Constitution, Italian labour law incorporates specific anti-discrimination provisions, albeit without a comprehensive framework. Discrimination based on ethnicity, religion, and other factors is addressed through various legal provisions. The Italian labour legislation, for instance, protects care workers under employment contracts from discriminatory practices.

Poland's Constitution guarantees equality before the law and prohibits discrimination based on race, ethnic origin, and religion. The Labour Code extends anti-discrimination protection to care workers across healthcare entities, ensuring equitable treatment in employment.

Sweden imposes a constitutional obligation on public entities to combat discrimination based on skin colour, national or ethnic origin, language, or religion. However, immigrant status is not explicitly protected under the Discrimination Act, which instead focuses on broader principles of equal treatment and non-discrimination.

Starting with the Constitution, French law prominently prohibits discrimination based on race or origin, explicitly listing criteria such as ethnic origin, colour, or membership in national minorities. This comprehensive approach extends to various legal contexts, ensuring equality and non-discrimination, particularly within care services.

Spanish legislation includes robust anti-discrimination measures in labour and criminal law. Royal Legislative Decree 2/2015 and subsequent amendments establish severe penalties for discriminatory acts. The transposition of EU Directives into national law through Law 62/2003 and its 2022 amendment, Law 15/2022, provides comprehensive protection against all forms of discrimination. This includes expanding protection to socio-economic status, health conditions, and other personal or social circumstances.

In conclusion, while EU Directives 2000/43/EC and 2000/78/EC set a common foundation for anti-discrimination legislation across member states, there are variations in implementation and scope. Each country studied demonstrates a commitment to combating discrimination, with distinct legal frameworks and protections. Spain's recent legislative updates exemplify proactive measures to broaden anti-discrimination safeguards, establishing a robust framework for equality legislation within the European Union.

4.2.2 Legislation Concerning the Rights and Duties of Third-Country Nationals of the EU

All EU countries have specific regulations governing the access of foreigners to their respective states. These regulations often aim to favour qualified immigration while preventing the exploitation of migrants.

In 2024, the Directive 2024/1233/EU of the European Parliament and of the Council, of 24 April 2024 concerning a single application procedure for a

single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast) has been approved. Article 1 of the Directive provides for the establishment by the Directive of a

> common set of rights for third-country workers legally residing in a Member State, irrespective of the purpose of their initial admission to the territory of that Member State, based on equal treatment with nationals of that Member State.

Directive 2024/1233/EU established extended areas for equality, namely "employment and working conditions, including as regards pay, dismissal, working hours, leave and vacations, and equal treatment of men and women, as well as health and safety at work"; in addition also the

> right to strike and to take industrial action, in accordance with the national law and practice of the Member State, and to freedom of association, affiliation and participation in organisations of workers or employers or in any professional organization, including the rights and benefits which such organisations may confer, such as the right to negotiate and conclude collective agreements, without prejudice to national provisions relating to public policy and public security.[30]

Directive 2024/1233/EU repeals Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 establishing a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and establishing a common set of rights for third-country workers legally residing in a Member State. The national reports were compiled under Directive 2011/98/EU as transposed into national law.

Certain national reports highlight issues of interest regarding immigration legislation. For example, the report from Italy focuses on Legislative Decree no. 286 of 25 July 1998 (Consolidation Act on Immigration), which is the cornerstone of the country's immigration system and has been continually and progressively tightened. Beneficiaries of international protection are granted unlimited access to the national labour market. In contrast, asylum applicants are permitted to work only after sixty days from the submission of their application for international protection, provided the application has not yet been processed and the delay is not attributable to the applicant. Additionally, the residence permits issued under these circumstances cannot be converted into residence permits for work purposes (Article 22, Legislative Decree no. 142 of 18 August 2015). Moreover, the Italian report notes that no specific incentives are provided to facilitate labour market access for asylum seekers, international protect.

[30] Directive (EU) 2024/1233 of the European Parliament and of the Council, of 24 April 2024, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401233> (Accessed October 28, 2024).

According to the German report, the rights and obligations of EU third-country nationals are regulated by the Immigration Act (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern, Zuwanderungsgesetz, ZuwandG*). In August 2023, Germany passed the Act on the Further Development of Skilled Labour Immigration (*Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung*) to implement the EU Blue Card Directive 2021/1883 and improve labour market access for low-skilled workers and asylum seekers. Skilled labour pillar still is the central element of immigration: the report states that whoever is a skilled worker should be able to pursue any qualified occupation in the future. The Federal Employment Agency ensures that foreign workers are not employed under less favourable terms than German nationals in equivalent positions (Sec. 39 (2) no. 1).

Sweden's current legislation includes the Aliens Act (2005:716) and the Aliens Ordinance (2006:97). Major changes are underway to address the misuse of residence permits for studies and to propose legislative changes limiting work during studies. Following reports of extensive abuse of residence permits for studies where students use their residence permits primarily to work, the Migration Agency and the Swedish Association of Higher Education Institutions (SUHF) has been tasked to take action to stop the fraud, and a government inquiry has been set up to propose legislative changes to limit the possibilities to work during studies.[31] In the area of labour immigration, in February 2024, a government inquiry presented a proposal recommending an additional increase of the recently raised wage floor. The proposal is that that the minimum wage level should correspond to the median salary or to around 3400 euros / month.[32] For occupational groups facing a labour shortage, the proposal suggests that the government could require wages to match the lowest rates specified in collective agreements or established industry practices. This exception is particularly relevant for the care sector, where addressing the labour shortage is a pressing concern. Sweden's municipalities and regions estimate that by 2031, they will need to recruit over 30,000 new nurses, 93,000 assistant nurses, and 20,000 new care assistants due to retirements and an overall increase in demand for staff.[33]

Spain regulates the rights and duties of foreigners through Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration (LE/2000), and Royal Decree 557/2011 (RLE/2011). This legislation recognises the rights and responsibilities of immigrants based on their legal status in Spain, specifically whether they have been authorised by the State to

[31] Government Promemoria, *Improved conditions for foreign doctoral students and researchers to work in Sweden and more accurate decisions on residence permits for studies,* 8 April 2024, HR2024/00827. The due date for the inquiry report is in late 2024.

[32] Proposed to enter into force in January 2025. Government Inquiry Report SOU 2024:15 *Nya regler för arbetskraftsinvandring.*

[33] Swedish Association of Local Authorities and Regions, *Välfärdens kompetensförsörjning. Personalprognos 2021–2031 och hur välfärden kan möta kompetensutmaningen* (2022), 38.

reside or work there. For foreigners in an irregular situation, meaning those in Spain without a residence permit granted by the Spanish State, it is important to note that they lack the legal right to work and cannot access any type of employment. However, if they are working despite this, Article 36.5 of the LE/2000 states that

> the lack of a residence and work permit, without prejudice to the employer's responsibilities to which it gives rise, including those of Social Security, shall not invalidate the employment contract with respect to the rights of the foreign worker, nor shall it be an obstacle to obtaining benefits derived from cases contemplated by the international conventions for the protection of workers or others that may correspond to them, provided that they are compatible with their situation.

4.2.3 Presence of Migrant Populations (Both EU and Non-EU Nationals) in Employment and in the Care Sector

The project reports indicate varying levels of migrant participation across sectors, with a significant presence noted in the care industry. Despite empirical observations suggesting a notable concentration of migrant women in caregiving roles, reports, such as those from Italy, emphasise the lack of scientific data to conclusively verify this perception. Existing databases do not provide sufficient evidence to substantiate the prevalent notion of high migrant female representation in this field.

France and Italy report a minimum of 9-10% migrant employment, while Spain follows with 12-13%. Sweden and Germany report higher percentages, approximately 20% and 29%, respectively.[34] In France, the immigrant population constituted 10.3% of the total in 2022, higher than in previous years (5.0% in 1946, 7.4% in 1975, 8.5% in 2010, and 9.3% in 2018). Most immigrant occupations are in services (64%), with significant roles also in construction (19%) and industry (17%). Moreover, security guards and unskilled construction workers have a rate of 28% and 27% of immigrants respectively. Notably, domestic help employs the highest proportion of immigrants, with 39% of positions held by immigrants, significantly more than the overall immigrant employment rate in France. According to a 2019 survey on the care sector, 86% of nurses are women and 2.1% are immigrants; 88% of care assistants are women and 9.6% are immigrants; 94% of home helpers are women and 19% are immigrants. Moreover, according to the *Insee Enquête Emploi* 2019 survey focusing on selected care professions—nurses, care assistants, and home helpers—it reveals the following statistics: among nurses (combining public and private sectors), 86% are women and 2.1% are immigrants; for care assistants, the figures are 88% women and 9.6% immigrants; and among home helpers (*auxiliaires de*

[34] Insee, *Chiffres clés*, 10 July 2023.

vie), 94% are women and 19% are immigrants.[35] This occupation notably shows a significant over-representation of foreign-origin workers, far exceeding the proportion found in other sectors.

In Italy, third-country nationals accounted for 10.3% of the workforce in 2022, with substantial representation from Albanian, Chinese, and Moroccan communities. The report indicates that in 2022, 31.6% of workers in personal and collective services were foreigners, along with 17.7% in agriculture, 17.3% in catering and tourism, and 15.6% in construction. In sectors with the highest incidences of foreign employment, the majority of foreigners have non-EU citizenship. Non-EU employees account for more than 10% in the tourism and catering sector (13.4%) and agriculture (12.4%), while in collective and personal services the incidence rises to 22.6%.

In Germany, as of 2022, 23.8 million people had a migration background, representing 29.27% of the total population of 81.3 million. The term "migration background" refers to individuals who were either not born with German citizenship or have at least one parent who was not born with German citizenship, a classification used by the Federal Statistical Office since 2005. Among these, 13.4 million people (16.48% of the total population) did not have German nationality, even though they may have been born in Germany to non-German parents under the jus sanguinis rule (Sec. 4 StAG, Nationality Act). Most non-German nationals in Germany came from EU countries, with the largest groups being Romanian nationals (883,670), followed by Polish nationals (880,780), Italian nationals (644,970), and Croatian nationals (436,325). However, the largest single group of foreigners in Germany had Turkish nationality (1,487,110), followed by Ukrainians (1,164,200) and Syrians (923,805), the latter two groups primarily due to the ongoing war in Ukraine and the aftermath of the Syrian civil war.[36] In 2022, Germany had 5.6 million foreign employees (4.9 million regularly employed), constituting 14.43% of the total workforce of 38.8 million (34.4 million regularly employed). Of these, 2.7 million were from EU countries, with the majority being Romanian nationals (564,000) and Polish nationals (553,000). Additionally, 2.9 million foreign employees were from non-EU countries, with the majority holding Turkish nationality (650,000). German report notes a significant presence of non-German employees in the care sector accounting.

In Sweden, the number of foreign-born residents has markedly increased from 1 million in 2000 to nearly 2.2 million by 2023, constituting approximately 20% of the population.[37] A significant majority of these individuals were born outside the EU. Third-country immigrants now represent about 15% of Swe-

[35] L. Chassoulier et al. *IRES report*.

[36] Statistisches Bundesamt, "Ausländische Bevölkerung nach Altersgruppen und ausgewählten Staatsangehörigkeiten am 31.12.2022" (31 December 2022), <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/Tabellen/auslaendische-bevoelkerung-altersgruppen.html> (Accessed September 25, 2023).

[37] Statistics Sweden, *Swedish and foreign-born population by region, age and sex 2000–2023*.

den's total population, positioning the country as the EU's third-largest host of non-European residents, following Luxembourg and Malta.[38] The primary countries of origin for immigrants to Sweden include Syria and Iraq, with notable populations also originating from Iran, Somalia, and Afghanistan. In recent years, Sweden has implemented several legislative and policy changes aimed at reducing immigration and altering its demographic composition. By 2023, the annual influx of immigrants had approached nearly 100,000 individuals. The report highlights that foreign-born individuals represent a larger share of employees in the health and social care sector compared to other sectors, particularly those born outside Europe.[39]

As of 1 January 2023, Spain's population stood at 48,085,361 inhabitants, showing an annual growth of nearly 600,000 people. Of these, 12.7% held foreign nationality, and 17.1% were born outside Spain. The largest demographic increases in 2022 were observed among citizens from Colombia (142,391), Ukraine (83,401), and Venezuela (64,498). As of the same date, the largest groups of foreigners in Spain were Moroccans (893,953), Romanians (629,755), and Colombians (453,911).

Regarding the labour market, Spain reported a total of 2,667,664 affiliates in November, with 867,610 originating from EU countries (462,042 men and 405,568 women) and 1,800,054 from non-EU countries (1,031,842 men and 768,212 women). Women constituted 44.0% of the affiliates, while men comprised 56.0%. By origin, 32.5% were from EU countries, and 67.5% were from other countries.

By autonomous community, Catalonia had the highest number of affiliates with 635,913 (23.84%), followed by Madrid (562,194, 21.07%), Andalusia (317,847, 11.91%), and the Valencian Community (310,268, 11.63%), based on November averages.

The presence of migrants across various occupations within the care sector remains challenging to precisely quantify based on current reports. However, both Italy and Spain affirm the substantial representation of migrants in roles associated with domestic service and home caregiving. Moreover, Northern European countries exhibit a more pronounced foreign workforce presence in health and social care compared to other sectors.

Spain's report underscores the socioeconomic challenges faced by domestic workers, characterised by undervaluation, inadequate remuneration, and adverse working conditions. These conditions are exacerbated by the significant authority wielded by household employers, resulting in potential arbitrariness. Furthermore, the inherent instability of these roles, often involving simultaneous employment across multiple households, poses risks to the safety and wellbeing of workers.

[38] Eurostat, *Population on 1 January 2024 by age group, sex and country of birth*.

[39] Swedish Occupational Register; The Association of Private Care Providers, *Privat vårdfakta 2022. Fakta och statistik om den privat drivna vård- och omsorgsbranschen* (2022), 31.

4.2.4 Measures to Promote Migrant's Access in the Care Sector

With the onset of the COVID-19 pandemic in 2019, measures were introduced to facilitate access to specific roles within the care sector for foreign personnel. These included easing entry into employment for health professionals such as foreign nurses and doctors and supporting domestic workers in irregular situations to obtain necessary residence and work permits.

However, current reports consistently highlight persistent staff shortages across the care sector. Notably, Italy has enacted legislative measures to enhance immigrant access to caregiving roles. For instance, Italy introduced a law allowing "professional nurses employed in public and private healthcare facilities" to enter the country outside the annual quotas set by the State, facilitating expedited market entry.

Similarly, Germany's report illustrates provisions for granting temporary residence permits to recognise foreign qualifications, particularly beneficial in the health and care sectors. These permits aim not only to validate professional qualifications against German standards but also to authorise practice in regulated fields such as health, elderly, and childcare. Administered under the "Triple-Win" programme, collaborations between the German Society for International Cooperation (GIZ) and the Central Placement Office (ZAV) of the Federal Employment Agency streamline recruitment of nursing staff from abroad. Employers under this programme are required to provide language training up to CEFR level B2, cover qualification recognition costs, and arrange suitable accommodation, with each nurse placement incurring a gross fee of 7,900 EUR.

In Sweden, the National Board of Health and Welfare annually assesses supply and demand dynamics for licensed healthcare professionals, issuing reports like the National Planning Support. Approximately one-third of Sweden's regions have initiated international recruitment programmes targeting EU/EEA countries and Switzerland, while one-fifth are actively pursuing similar initiatives with non-EU/EEA countries, albeit encountering administrative complexities. Language proficiency remains a critical barrier, prompting investments in language training and support services to facilitate professional licensing and employment, as exemplified by Skåne's establishment of an international office that has successfully facilitated employment for 94% of supported individuals.[40]

In France, exemptions from work permit requirements are granted for occupations facing shortages. These sectors, such as healthcare roles including nurses and care assistants, are identified nationally. According to French law, "Article L. 414-13 allows residence permits under Articles L. 421-1 and L. 421-3 to be issued without considering employment availability in professions and geographic areas with recruitment difficulties".[41] The list of shortage occupations is speci-

[40] National Board of Health and Welfare, *Bedömning av tillgång och efterfrågan på legitimerad personal i hälso- och sjukvård samt tandvård. Nationella planeringsstödet 2023* (2023).

[41] Article L. 421-4 of the Ceseda. This provision appears in a sub-section entitled "Common provisions" applicable to TDS for professional reasons. Similarly, students at the end of their studies who wish to work in France are, under certain conditions, issued with a temporary

fied in the 1 April 2021 Order, exempting work permits for non-EU, non-EEA, and non-Swiss nationals from employment market tests. This regulation ensures that lack of local candidates or prior market search cannot be grounds for denying work permit applications from individuals seeking roles in designated professional families and regions. Recent data shows high demand for care sector occupations like care assistants, nurses, home health aides, and household assistants in certain French regions.[42] Additionally, France has bilateral agreements with several countries to manage migration, allowing workers from partner countries to enter, reside, and work without employment restrictions in sectors aligned with shortage occupations identified in the 1 April 2021 Order.[43] These agreements, including those with non-EU nations in Africa, specify shortage occupations distinct from those covered by standard legislation (as per the annex to the April 1, 2021 Order, formerly governed by the January 18, 2008 Order).

Overall, these initiatives underscore ongoing efforts across Europe to address staffing shortages in the care sector, using targeted policies and bilateral agreements to facilitate immigrant employment and mitigate workforce deficiencies.

4.2.5 Activities of Equality Bodies or Organisations Regarding Racial, Ethnic or Religious Discrimination or the Rights of Migrant Workers in the Care Sector

Equality bodies exist in all countries, although with different competencies.

The actions and reports by equality bodies on the rights of migrant workers in the care sector vary significantly across France, Germany, Poland, Sweden, Spain, and Italy. In conclusion

There are notable disparities in the actions and reports of equality bodies regarding the rights of workers in the care sector across the six countries.

In France, the Ombudsman's survey emphasises systemic discrimination and the intersection of inequalities in the personal services sector, with an important focus on the challenges faced by women and immigrant workers.

In Germany several organisations, including the EU Office for Equal Treatment of Workers, Minors and German Institute for Human Rights (*Deutsches Institut für Menschenrechte* or DIMR), are actively documenting and addressing

residence permit for a period of six months, renewable once, at the end of which they may obtain a residence permit as an employee without having to prove that they are in employment. Foreign students must have obtained a diploma at least equivalent to a Master's degree, or one that appears on a list established by decree, from a nationally accredited higher education establishment. They must also have an employment contract, either open-ended or fixed-term, in line with their training and with pay above a threshold determined by decree and adjusted, where appropriate, according to the level of the diploma concerned.

42 V0Z60: Corsica; Grand Est; Hauts-de-France; Occitanie; Pays de la Loire; V1Z80: Bourgogne-Franche-Comté; Grand Est; Hauts-de-France; Ile de France; Normandie; Occitanie; T2A60: Centre-Val de Loire; Occitanie; Pays de la Loire.

43 See the official website of the Ministry of the Interior: Bilateral agreements relating to professional mobility, <https://www.immigration.interieur.gouv.fr/Immigration/Les-accords-bilateraux/Les-accords-bilateraux-relatifs-a-la-mobilite-professionnelle> (Accessed December 5, 2023).

the challenges faced by home care workers, particularly in Europe This, highlighting the legal problems and respect for working conditions.

In Poland despite the existence of key equality bodies, the rights of workers in the care sector have not been specifically addressed.

In Sweden, the Equality Ombudsman has carried out some follow-up activities, but has no specific reports on workers in the care sector.

No specific reports have been found in Spain, although general knowledge suggests that there is a perception of discrimination in the care sector.

In Italy, the National Office for Racial Discrimination (Ufficio nazionale antidiscriminazioni razziali or UNAR) has not focused on care workers, but the Association for Legal Studies on Immigration (Associazione per gli Studi Giuridici sull'Immigrazione or ASGI) reports highlight wider issues of institutional discrimination affecting access to welfare.

Overall, while some countries have proactive equality bodies that address the rights of workers in the care sector, others do not have specific actions and reports.

4.2.6 Legislation on Harassment of Migrant Women Workers in the Domestic Sector or Exploitation in the Workplace with Respect to Undocumented or Irregular Migrant Workers

In general, the countries examined have aligned their legislation with Directives 2000/43/EC, 2000/78/EC, and 2006/54/EC, focusing on employment regulations. However, it is notable that several countries lack specific regulations addressing domestic work. For instance, Poland's legal framework does not directly address domestic workers, leaving them in precarious employment situations often categorized under civil law contracts or self-employment, which do not ensure adequate protection.

Similarly, while some countries have legislation governing domestic work, there is often a lack of specific laws addressing harassment in this sector. Domestic workers are particularly vulnerable to harassment due to the isolated nature of their work, yet they face challenges in substantiating such cases.

Regarding the exploitation of irregular migrants, the countries studied comply with Directive 2009/52/EC, which establishes minimum standards for sanctions against employers of illegally staying third-country nationals. France and Poland outline their legislative measures against workplace exploitation, although practical enforcement remains challenging, particularly for undocumented migrant workers who fear reprisals due to their immigration status.

Sweden has introduced a national strategy to combat labour-related crime, supported by active engagement from social partners and legislative reforms.[44]

[44] Government Inquiry Report SOU 2024:14 *Arbetslivskriminalitet: Myndighetssamverkan. En gemensam tipsfunktion. Lärdomar från Belgien och gränsöverskridande arbete*; Government Inquiry Report SOU 2024:15 *Nya regler för arbetskraftsinvandring*; Government Inquiry Report SOU 2023:8 *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland; Government Inquiry Report* SOU 2022:36 *Arbetslivskriminalitet, en de-*

The report states that there has been important engagement from the side of the social partners in some of the affected industries, and also from other actors.[45] Recent legislative changes have been adopted, with further reforms currently underway in response to both completed and ongoing governmental inquiries.[46]

In Italy, there is concern over illegal labour recruitment exploiting vulnerable workers, notably in the agricultural and agri-food sectors known as "caporalato". Law no. 199/2016 introduced provisions to combat this, amending Article 603 bis of the Penal Code.[47] The practice retains foreign labour in Italy and attracts new migrants, often undocumented and vulnerable. Fear of deportation prevents these workers from reporting exploitation, highlighting the difficulty undocumented foreigners face in accessing justice. This results in underreported cases of severe labour exploitation and enduring poor living conditions, including precarious health, limited access to water, basic medical care, and adequate housing.

Directive (EU) 2024/1233, adopted on 24 April 2024, introduces a unified procedure for a single permit allowing third-country nationals to reside and work in EU Member States, alongside common rights for legally residing third-country workers (recast). It includes sanctions for employers who exploit the working conditions of regular foreign workers. Under Article 13, Member States must establish measures to prevent abuses and enforce penalties for breaches of national equal treatment provisions. These measures involve monitoring, assessments, and inspections, especially in high-risk sectors. The directive mandates effective, proportionate, and dissuasive penalties for non-compliant employers. Member States must ensure labour inspectorates or competent authorities have access to workplaces, including employer-provided accommodation with the worker's consent. Article 14 facilitates complaints and legal redress for third-country workers, requiring Member States to establish accessible mechanisms for lodging complaints directly or through legitimate third parties and competent national authorities were provided by law.[48]

finition. En inledande bedömning av omfattningen. Lärdomar från Norge; Government Inquiry Report SOU 2021:88 *Ett förbättrat system mot arbetskraftsexploatering m.m. Slutbetänkande av Utredningen om arbetskraftsinvandring*; Government Inquiry Report Ds 2021:1 *Myndigheter i samverkan mot arbetslivskriminalitet.*

45 Government Inquiry Report SOU 2023:8 *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland,* particularly Chapter 2.

46 Government Inquiry Remit Dir. 2023:68 Tilläggsdirektiv till Delegationen mot arbetslivskriminalitet (A 2021:04).

47 See, among others, the contributions published in "Riflessioni giuslavoristiche sullo sfruttamento del lavoro," *Lavoro e Diritto* (2021); Marco Omizzolo, *Sotto Padrone. Uomini, Migranti e Caporali Nell'agromafia Italiana* (Milano: Feltrinelli, 2019); Marco Omizzolo, a cura di, *Articolo 1. L'Italia è Una Repubblica Fondata Sul Lavoro Sfruttato* (Modena: Infinito Edizioni, 2022).

48 For more comments, see Ferran Camas Roda's blog: *Nueva Directiva europea sobre permiso único y régimen común de derechos para trabajadores extranjeros,* <https://www.ferrancamas.com/blog-derecho-laboral-inmigracion/nueva-directiva-europea-sobre-permiso-unico-y/ia624> (Accessed July 9, 2024).

These legislative and policy measures underscore ongoing efforts across Europe to protect the rights of migrant workers, albeit with varying degrees of implementation and effectiveness.

5. Conclusions

This comparative report has provided a structured overview of key issues identified in each national report within WP3 of the project. While the summary herein offers a condensed perspective, it is essential to delve into the detailed national reports for a comprehensive understanding of discrimination dynamics across different countries.

Within the contexts of gender discrimination and discrimination based on migrant status in the care sector, common themes have been explored, including the alignment of legislation with anti-discrimination principles, the significant representation of women and migrants in care roles, and the identification of discriminatory practices within legal frameworks and collective bargaining agreements.

In terms of gender discrimination within the care sector, it is noteworthy that all countries in the project consortium have established anti-discrimination and anti-harassment legislation. Women are prominently represented in care professions across these nations. Instances of direct or indirect discrimination in legislation or collective bargaining are generally absent, with a notable exception in Italy concerning regulations on domestic service and unemployment benefits, which may contravene European directives against indirect discrimination based on sex.

Conversely, regarding discrimination based on migrant status in the care sector, the legislation of participating countries, as well as European legislation, does not explicitly recognize immigrant status as a ground for discrimination. However, vulnerabilities associated with immigrant status affecting labor market access and job security are acknowledged. Discriminatory situations linked to migrant status often intersect with factors such as race, ethnicity, religion, or nationality, particularly visible within domestic work.

Victims of discrimination in the care sector frequently refrain from reporting incidents, resulting in limited legal precedents. This underreporting extends to issues concerning undocumented migrants, where data availability remains sparse across most countries, despite estimations indicating a significant presence of irregular workers, notably in Germany.

Key considerations for future action include the importance of adopting an intersectional approach to address gender-related challenges within the care sector and closely monitoring initiatives aimed at enhancing migrant access to these professions, particularly in light of Europe's aging population. Recent Directives adopted at the conclusion of WP3, such as those pertaining to equality bodies and single leave regulations (Directive 2024/1233), are poised to play pivotal roles in reinforcing equality standards and combating employer abuses against migrant workers.

In conclusion, this comparative report underscores the complexities and ongoing efforts across Europe to address discrimination in the care sector comprehensively. It emphasizes the necessity for continued legislative scrutiny, proactive measures, and robust data collection to uphold equality principles and safeguard the rights of all workers, particularly those in vulnerable positions due to gender and migrant status.

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CHAPTER 2

French Care Workers' Discrimination Map Report[1]

Isabelle Daugareilh, Guillaume Santoro, Haoussetou Traore

1. Mapping Gender Discrimination Among Care Workers

French legislation mainly refers to the concept of sex, which is used to guarantee equality between women and men by prohibiting discrimination based on sex. This concerns aspects such as equal pay, access to employment and sexual harassment. The notion of "gender", which refers more to the socially constructed behaviors and norms associated with being male or female, is often used to address gender stereotypes, discrimination linked to the social expectations associated with a certain sex and to promote diversity.

As mentioned above, legislative activity has developed considerably over the last 50 years. In addition to the provisions of the Labor Code[2] aimed at prohibiting all forms of discrimination, the legislator has promoted collective bargaining at branch and company level[3] to contribute to professional equality between women and men.

Like many sectors of activity, the care sector has been the subject of a great deal of collective bargaining activity. Each of the national collective agreements in the care sector includes chapters devoted to professional equality. These in-

[1] The contents of this report were finalized on June 28, 2024.

[2] All references to a code refer to a French code.

[3] The study covers collective bargaining in 6 branches of activity. A study of company agreements was not feasible in the time available.

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clude the 2021 National Collective Convention (NCC) of individual employers and home-based employment branch the 2012 NCC for personal services companies branch, the 2010 NCC for the home help, supports, care and services branch and the 2002 NCC for private hospital branch. Some of these branches have signed agreements or riders on equal treatment. These include the agreement of 12 June on quality of life at work and professional equality in the NCC for private hospitals of 2002, and Rider 59/2023 on equality in the NCC for the home help, support, care and services branch of 2010. Rider 59 specifies that "company agreements relating to professional equality may not derogate in a less favorable manner from the provisions contained in the said branch rider".

However, we have found no national agreement or rider for the NCC for des private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951, nor for the NCC establishments and services for the maladjusted and disabled of 1976.

The 2010 NCC for the home help, support, care and services goes further in its commitments in principle, firstly by affirming "a proactive approach to promoting gender diversity and professional equality and combating all forms of direct and indirect discrimination", and secondly by covering all aspects of the employment relationship: recruitment, remuneration, classification, promotion, mobility, career development, assessment, vocational training, organization and working conditions, disciplinary measures or dismissal and retirement rights.[4] The NCC specifies that "the gender mix necessarily involves better representation of men in the intervention professions and of women in the management professions, where they are under-represented".[5] Rider no. 59 of 17 July 2023 recalls in its preamble the desire of the partners to change "representations and behaviors, to make a decisive contribution to changing professional equality, to promote gender diversity" and "to prevent sexist and sexual violence in the workplace". The aim of this rider "is to improve the mechanisms for reducing inequalities and to act on the causes".

Of all the branch agreements and conventions on professional equality, the agreement of 12 June 2018 of the NCC for private commercial hospitals has the particularity of dealing with quality of working life and professional equality and is in line with the ANI of 19 June 2013 relating to a policy for improving quality of working life and professional equality. The partners explain this at length in the preamble to the agreement. They

> affirm their commitment to quality of life at work and professional equality in an increasingly constrained economic environment, in a rapidly changing technical environment, in a particularly complex social environment and in an increasingly demanding physical environment in view of the lengthening of working life, in an environment in which the pain, distress and end of life of patients and residents are part of the daily life of a certain number of staff.

[4] Title VIII - Article 1st Preamble.

[5] Title VIII - Article 1st Preamble.

Taking up the terms of the national interprofessional agreement of 19 June 2013, the social partners wish to reiterate that "quality of life at work and professional equality are first and foremost about work, working conditions and whether or not they open up the possibility of 'doing a good job' in a good atmosphere". Quality of life at work and professional equality are also associated with employees' expectations in terms of professional recognition within the company and work/life balance. Equal treatment is thus treated as a component of quality of life at work.

As for the civil service, long before the merger of civil services and the adoption of a civil service code, equal treatment had been the subject of a Memorandum of Understanding on professional equality between women and men in the civil service in 2013, endorsed by the circular of 22 December 2016 on the policy of professional equality between women and men in the civil service. Then an agreement on professional equality between women and men in the civil service was concluded in 2018, transposed into the civil service code by the order of 24 November 2021. The reference framework for negotiating agreements on the quality of life and working conditions (QLWC) in the civil service, which includes the issue of equal treatment for men and women, was adopted in June 2023.

Prior to answering the questions, especially when these questions relate to the existence of clauses specific to one or other sex in sources of law and particularly in agreements, it is advisable to recall the legal rule of nullity laid down by article L. 1142-3 of the Labor Code in the following terms:

> Any clause in a collective labour agreement or contract of employment which reserves the benefit of any measure whatsoever, to one or more employees, on the basis of sex, is null and void. However, these provisions do not apply where the purpose of the clause is to apply provisions relating to: 1) the protection of pregnancy and maternity, 2) the prohibition of prenatal and postnatal employment, 3) breastfeeding, 4) the resignation of an employee in a medically certified state of pregnancy, 5) paternity and childcare leave, 6) adoption leave.
>
> This
>
> does not preclude the adoption of temporary measures for the sole benefit of women aimed at establishing equal opportunities between women and men, in particular by remedying de facto inequalities that affect women's opportunities

under article L. 1142-4 of the Labor Code. These measures are the result of: 1) regulatory measures taken in the areas of recruitment, training, promotion, organization and working conditions; 2) stipulations in extended branch agreements or extended collective agreements; 3) application of the plan for professional equality between women and men. This principle and its adjustments are scrupulously respected in collective agreements in the care sector, as we shall see below.

It is also worth highlighting another provision of the Labor Code associated with violence, discrimination and harassment, which is set out in Article L. 1142-1 of the Labor Code:

> No one shall be subjected to sexist harassment, defined as any harassment related to a person's sex, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.

1.1 National Legislation on Sex Discrimination in the Field of Employment

French legislation on combating discrimination on the grounds of sex includes fairly similar provisions in employment law (1.1.1) and civil service law (1.1.2) applicable to workers in the care sector.

1.1.1 Non-Discrimination Labor Law in the Private Sector

The fight against gender-based discrimination in the workplace includes a substantial body of rules set out in the Labor Code. These include, on the one hand, rules aimed at prohibiting employers from taking certain gender-related characteristics into account when making decisions (1.1.1.1), and on the other, means of action based on prevention, information and collective bargaining (1.1.1.2).

1.1.1.1 Prohibition of Sexist Discrimination in the Workplace

After establishing the principle of equal treatment in terms of pay (1.1.1.1.1), the French legislator prohibited measures, decisions or attitudes taken by the employer based on prohibited criteria relating to sex (1.1.1.1.2), sexual harassment and sexist behavior (1.1.1.1.3). More recently, the French legislator has used quotas to implement a proactive policy of equal representation of men and women in company management (1.1.1.1.4).

1.1.1.1.1 Equal Pay for Men and Women

The principle of equality is a fundamental pillar of French law.[6] The Preamble to the 1946 Constitution describes it as a principle that is particularly necessary for our times. Thus, "the law guarantees women equal rights with men in all areas".[7] It was enshrined as a general principle of law by the Conseil d'État, and then established as a principle of constitutional value by the Conseil constitutionnel.[8] Since 2008, a second paragraph has been added, stating that "the law promotes equal access for women and men to electoral mandates and elective functions, as well as to professional and social responsibilities".

The equality model in French law has been influenced by the conceptual framework of international law and Community law (now European Union law).

[6] M.-T. Lanquetin, *Discrimination*. Répertoire de droit du travail (Paris: Dalloz, 2023).

[7] Article 3 of the Preamble to the 1946 Constitution.

[8] G. Braibant, "Le principe d'égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d'État," *La Déclaration des droits de l'homme et du citoyen et la jurisprudence* (1989).

As will be explained *below*, French law has ratified numerous ILO conventions and transposed many European directives. ILO Convention no. 100 of 1951 on equal pay for men and women for work of equal value and Article 119 of the Treaty of Rome[9] requiring equal pay for men and women were major events in the promotion of gender equality in employment relations and paved the way for the enactment of the Equal Pay Act of 22 December 1972,[10] the provisions of which were incorporated into the Labor Code.[11] This law was supplemented by a succession of laws designed to combat the phenomenon of unequal pay between women and men. For example, the Labor Code requires all employers to ensure that "women and men receive equal pay for equal work or work of equal value".[12] The Court of Cassation has noted that the principle of equal pay for men and women is merely an application of the general rule of "equal pay for equal work". From this it deduced that "the employer is required to ensure equal pay for all employees of either sex, provided that the employees in question are placed in an identical situation".[13]

1.1.1.1.2 Prohibition of Sexist Discrimination

The concept of discrimination emerged late in French law. Initially confined to the sphere of public law, the scope of discrimination has gradually been extended to private behavior, particularly that falling within the scope of employment law.[14] French anti-discrimination law has evolved gradually, reflecting changes in French society and the French government's European and international commitments. It was not until 1982 that French labor law took discrimination into consideration with the insertion of Article L. 122-45 of the Labor Code,[15] which was gradually amended and supplemented to become the core of the legislation on combating discrimination in employment relationships in France.[16] After the failure of the Act of 16 November 2001 to create a general

[9] Now Article 157 of the TFEU.

[10] Law no. 72-1143 of 22 Dec. 1972 on equal pay for men and women.

[11] Article L. 3221-2 of the Labor Code requires all employers to ensure equal pay for women and men "for the same work or for work of equal value".

[12] Article L. 3221-2 of the French Labor Code.

[13] Cass. soc., 29 October 1996, no. 92-43.680.

[14] M.-T. Lanquetin, "Le principe de non–discrimination," *Dr. soc.* 2 (2001): 186–90.

[15] Now Article L. 1132-1 of the Labor Code.

[16] Article L. 1132-1 of the French Labor Code prohibits any discrimination against an employee on the grounds of "origin, sex, morals, sexual orientation, gender identity, age, family situation or pregnancy, genetic characteristics, particular vulnerability resulting from his or her economic situation, apparent or known to the perpetrator, actual or supposed membership or non-membership of an ethnic group, nation or so-called race, political opinions, trade union or mutualist activities, elected office, religious beliefs, physical appearance, family name, place of residence or bank account, state of health, loss of autonomy or disability, ability to express oneself in a language other than French, status as a whistleblower, facilitator or person in a relationship with a whistleblower, within the meaning of the Directive.

anti-discrimination law, the Act of 27 May 2008 containing various provisions for adapting to Community law led to the enshrinement in the Labor Code of the concept of direct and indirect discrimination in order to comply with European Union law,[17] which has thus led to a number of technical and conceptual advances in French law.[18]

French law distinguishes between direct and indirect discrimination.

Discrimination is direct[19] when, for a prohibited reason, an employee is treated "less favorably than another is, has been or will be treated in a comparable situation". It is not necessary to establish a comparison with one or more other employees.[20] It is sufficient to prove that the reason for the employer's action is based on a prohibited criterion. Differences in treatment between employees are authorized provided that they "meet an essential and determining occupational requirement, and that this objective is legitimate and the requirement proportionate".[21]

Indirect discrimination aims to conceal the act inspired by the use of a prohibited criterion. It can be defined as a provision or practice that is neutral on the face of it, but which is likely to place people at a particular disadvantage compared with other people.

The concept of positive discrimination, which consists of giving preferential treatment to certain categories of the population in order to improve equality of opportunity, is not explicitly recognised as such in French legislation. However, measures to promote equal opportunities have been put in place. Nor does the law recognise the concepts of systemic discrimination and intersectoral discrimination.

The legal definitions of discrimination are reproduced *in extenso* by certain national collective agreements in the care sector. This is the case in the 2021 NCC of individual employers and home based-employment des (Part II, chap.1st Art.9, 10), article 11 of which states that differences in treatment are authorized in the following terms:

> The principles of equal treatment and non-discrimination do not prevent differences in treatment where they meet objective criteria: – an essential and determining occupational requirement; – where the objective is legitimate and the requirement proportionate.

French employment law prohibits discrimination. Non-discrimination implies equal treatment in many aspects of the employment relationship. Article L. 1132-1 of the French Labor Code stipulates that

[17] M.-T. Lanquetin, "Discrimination: la loi d'adaptation au droit communautaire du 27 mai 2008," *Dr. soc.* 7–8 (2008): 778–88.

[18] J. Porta, "Discrimination, égalité et égalité de traitement. À propos des sens de l'égalité dans le droit de la non-discrimination," *RDT* (2011): 290 and 354.

[19] Law no. 2008-496 of 27 May 2008 containing various provisions for adapting to Community law in the field of anti-discrimination.

[20] Cass. soc., 10 November 2009, no. 07-42.849.

[21] Article L. 1133-1 of the French Labor Code.

> no person may be excluded from a recruitment or appointment procedure or from access to an internship or period of in-company training, and no employee may be penalized, dismissed or subjected to a direct or indirect discriminatory measure in terms of pay, training, redeployment, assignment, qualification, classification, professional promotion, working hours, performance assessment, transfer or renewal of contract.

The article also sets out an exhaustive list of prohibited criteria, including those relating to sex, morals and sexual orientation.[22]

Article L. 1134-1 of the Labor Code makes it easier for employees to meet the burden of proof. It is up to the employee to present factual evidence suggesting the existence of direct or indirect discrimination. In the light of this evidence, it is up to the defendant to prove that its decision is justified by objective factors unrelated to any discrimination. The judge will form his or her opinion after ordering, if necessary, any investigative measures that he or she deems useful.

According to Article L. 1132-4 of the French Labor Code, any provision or action taken in respect of employees that disregards the provisions on non-discrimination is null and void. Wherever possible, the rule will result in the payment of damages, but also in the restoration of the situation prior to the discrimination.

1.1.1.1.3 Sexual Harassment and Gender-Based Harassment

The law prohibits two types of sexual harassment. The first consists of repeated comments or behavior with a sexual or sexist connotation, which either violate the dignity of the employee by being degrading or humiliating, or create an intimidating, hostile or offensive situation.[23] In a law passed on 2 August 2021,[24] the legislator specified that this type of harassment should also be recognized in two cases: when the same employee is subjected to such comments or behavior by several persons, in a concerted manner or at the instigation of one of them, even though each of these persons has not acted repeatedly; and when the same employee is subjected to such comments or behavior, successively, by several persons who, even in the absence of concerted action, know that these comments or behavior constitute repetition.[25] The second form of sexual harassment is based on a single act of particular intensity, in that

> any form of serious pressure, even if not repeated, exercised with the real or apparent aim of obtaining an act of a sexual nature, whether this is sought for the benefit of the perpetrator or for the benefit of a third party.[26]

[22] Article L. 1133-1 of the French Labor Code.

[23] Article L. 1153-1, 1) of the French Labor Code.

[24] Act no. 2021-1018 of 2 August 2021 to strengthen occupational health prevention.

[25] Article L. 1153-1, 1), a and b) of the French Labor Code.

[26] Article L. 1153-1, 2) of the French Labor Code.

The legislator also intends to combat the "ordinary sexism" that employees may encounter, and since 2015 has prohibited sexist behavior.[27] Accordingly, no one may be subjected to sexist behavior, defined as any behavior related to a person's sex, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.[28] The Conseil supérieur à l'égalité professionnelle entre les femmes et les hommes (Higher Council for Professional Equality between Women and Men) illustrates in a report[29] the manifestations of ordinary sexism by: sexist remarks and jokes; gender-based incivilities; policing of social gender codes; colloquial questioning; false seduction; benevolent sexism; sexist considerations on maternity or family responsibilities.

1.1.1.1.4 A Balanced Representation of Women and Men in Management Positions

A law passed on 25 January 2011 on the balanced representation of men and women[30] imposed a minimum quota of 40% women on boards of directors and supervisory boards. Quotas have shattered the inertia in terms of economic parity that prevailed in governance bodies. France now ranks first in the world in terms of the number of women on the boards of directors of major listed companies, with over 46% women by 2021. Parity on the boards of small caps, unlisted companies and especially SMEs remains limited. What's more, the law has not had the expected trickle-down effect: there are still too few women on executive and management committees.

In order to accelerate the participation of women in economic and professional life, the "Rixain" law of 24 December 2021[31] includes a number of measures aimed at achieving greater equality between women and men in companies. To this end, Article 14 introduces a requirement for balanced representation of women and men among senior executives and members of the management bodies of large companies, together with a requirement for transparency in this area.

It sets out new obligations for companies with at least 1,000 employees. From now on, these companies must calculate and publish any gaps in representation between men and women among their senior executives and members of their management bodies, every year by 1st March at the latest. They must then inform the Social and Economic Committee of the results and how they are to be published, and forward this information to the authorities.

[27] Law no. 2015-994 of 17 August 2015 on social dialogue and employment.

[28] Article L. 1142-2-1 of the French Labor Code.

[29] Conseil supérieur à l'égalité professionnelle entre les femmes et les hommes, *Le sexisme dans le monde du travail: entre déni et réalité* (2015).

[30] Act no. 2011-103 of 25 January 2011 on the balanced representation of women and men on boards of directors and supervisory boards and on professional equality.

[31] Law no. 2021-1774 of 24 December 2021 aimed at accelerating economic and professional equality.

From 1st March 2026, companies will have to achieve a target of 30% of women and men in senior management and 30% of women and men on management bodies. This target will rise to 40% from 1st March 2029: companies will then have two years to comply with these targets, failing which they will be subject to a financial penalty.

1.1.1.2 Measures to Combat Discrimination and Promote Equality

Anti-discrimination and professional equality law is made up of a number of measures that may appear disparate. An analysis of these means of action shows that they rely on similar levers to form a coherent system whose objective is to reduce inequalities. These measures can be analyzed in terms of institutions (1.1.1.2.1), players (1.1.1.2.2), sources (1.1.1.2.3) and tools (1.1.1.2.4).

1.1.1.2.1 Institutions

The Rights Defender: the Défenseur des droits replaces the Halde – High Authority to Combat Discrimination and Promote Equality (Haute Autorité de Lutte contre les Discriminations et pour l'Égalité) on 1st May 2011.[32] It is an independent administrative authority whose mission is to defend the rights of users of public services, defend and promote the rights of the child, combat discrimination and promote equality, ensure compliance with the code of ethics for security professionals and protect whistleblowers.

The High Council for Professional Equality between Women and Men: this is an independent consultative body reporting to the Prime Minister. Its mission is to ensure consultation with civil society and to lead the public debate on the broad outlines of policy on women's rights and equality. It contributes to the evaluation of public policies relating to gender equality by assessing the impact of legislation, collecting and disseminating gender equality analyses and formulating recommendations and opinions.

The High Authority for Health: this is an independent scientific public authority. In particular, it takes action on quality of life in the workplace and professional equality as part of the certification of establishments and, more specifically, the evaluation of regional experiments carried out as part of "clusters" on quality of life in the workplace, in conjunction with regional health agencies.

The National Observatory on Violence in the Healthcare Environment covers the public and private health and medico-social sectors, as well as community medicine: it collects, on a voluntary basis, reports of violence committed against individuals in healthcare establishments. It develops and disseminates tools and best practices, and encourages the coordination of players in the field.

[32] Organic Law no. 2011-333 of 29 March 2011: OJ, 30 March. Act no. 2011-334 of 29 March 2011: JO, 30 March.

1.1.1.2.2 The Players

Preventing sexual harassment. French labor law contains a robust system for preventing sexual harassment. Employers must take "all necessary steps to prevent, put an end to and punish acts of sexual harassment".[33] The duty of prevention applies regardless of the size of the company, failing which the employer may be held liable. It involves taking immediate steps to put a stop to the harassment as soon as the employer is aware of the facts, but also taking all the preventive measures required under the general health and safety obligation. The Labor Code requires all employers to inform employees, trainees and job applicants about sexual harassment. The contact details of the authorities and services competent to deal with sexual harassment must be made available to employees: the occupational physician or occupational health service, the labor inspectorate, the defender of rights, the referent provided for in article L. 1153-5-1 in any company employing at least 250 employees, the referent provided for in article L. 2314-1 of the Labor Code where a social and economic committee exists. This information is communicated by any means: posted on the premises, on the company's intranet site or sent by e-mail before each meeting.

Preventive health and safety measures for workers. The French Labor Code requires employers to take "the necessary measures to ensure the safety and protect the physical and mental health of workers".[34] To do this, they must plan prevention by integrating technology, work organization, working conditions, social relations and the influence of environmental factors into a coherent whole, in particular the risks associated with moral harassment, sexual harassment and sexist behavior.[35]

The contact person for companies with at least 250 employees. In all companies employing at least 250 people, an employee adviser responsible for guiding, informing and supporting employees in the fight against sexual harassment and sexist behavior is appointed.[36] His or her duties include raising awareness and providing training for employees; referring employees to the relevant authorities (labor inspectorate, occupational health department and Human Rights Ombudsman); implementing internal procedures to encourage the reporting and handling of situations of sexual harassment or gender-based harassment; conducting an internal investigation following the reporting of sexual harassment within the company.

The Social and Economic Committee advisor. Article L. 2314-1 of the French Labor Code stipulates that the Social and Economic Committee must appoint an anti-sexual harassment and gender-based harassment officer from among its members for a period ending with the term of office of the committee's elected members.

[33] Article L. 1153-5 of the French Labor Code.
[34] Article L. 4121-1 of the French Labor Code.
[35] Article L. 4121-2 of the French Labor Code.
[36] Article L. 1153-5-1 of the French Labor Code.

1.1.1.2.3 Sources

Rules of procedure. The company's internal regulations must include a reference to the provisions of the Labor Code on sexual harassment and sexist behavior. In companies with at least 20 employees, the internal rules must set out the provisions relating to moral and sexual harassment and sexist behavior set out in the Labor Code.[37]

Negotiation of company agreements in favor of professional equality. The legislator has made collective bargaining the central lever for getting companies to take action in favor of equal pay and equal opportunities, and has laid down public policy and "suppletive" provisions.

Thus, in companies where one or more trade union sections of representative organizations have been set up and where one or more trade union delegates have been appointed, the employer undertakes negotiations every year (or at least once every four years if a collective agreement on the frequency of compulsory negotiations has been concluded): negotiations on remuneration, in particular actual salaries, working hours and the sharing of added value within the company; negotiations on professional equality between men and women, in particular on measures to eliminate pay differentials, and the quality of life and working conditions. In the absence of an agreement providing for measures to eliminate pay differentials between women and men, the negotiations on actual salaries provided for in 1) of article L. 2242-1 of the Labor Code also cover the planning of measures to eliminate pay differentials and differences in career development between women and men. In the absence of an agreement on professional equality between women and men at the end of the negotiations referred to in 2) of article L. 2242-1 of the Labor Code, the employer draws up an annual action plan designed to ensure professional equality between women and men.

In the absence of the above-mentioned agreement, or in the event of non-compliance with its stipulations, the employer shall, in companies where one or more trade union sections of representative organizations have been formed (and where at least one trade union delegate is present), initiate negotiations each year on professional equality between women and men and the quality of life and working conditions.

This annual negotiation covers in particular: the balance between personal and professional life for employees; the objectives and measures for achieving professional equality between women and men, in particular with regard to eliminating pay differentials, access to employment, professional training, career development and professional promotion, working and employment conditions, in particular for part-time employees, and job mix; measures to combat any discrimination in recruitment, employment and access to professional training.

[37] Article L. 1321-2 of the French Labor Code.

Negotiation of branch conventions (NCC) or agreements (NCA). According to article L. 2241-1 of the French Labor Code, the organizations bound by a branch agreement or, failing that, by professional convention or agreements, meet at least once every four years to negotiate on measures to ensure professional equality between women and men and on measures to remedy any inequalities observed, as well as on the provision of tools to companies to prevent and take action against sexual harassment and sexist behavior.

The branch collective agreements studied include the legal provisions on non-discrimination and professional equality and sometimes introduce specific measures, such as the appointment of an equal opportunities correspondent in companies (NCC for personal services companies of, 2012).

1.1.1.2.4 Tools

Calculation and publication of a professional equality index. Each year, companies with at least 50 employees must calculate and publish on their website the overall score of the gender equality index, as well as the score obtained for each of the related indicators. The index, calculated out of 100, is made up of 4 or 5 indicators, depending on whether the company has more or fewer than 250 employees: the gender pay gap; the gender pay gap in the distribution of individual pay rises; the gender pay gap in the distribution of promotions (only in companies with more than 250 employees); the number of female employees receiving pay rises when they return from maternity leave; parity among the 10 highest paid employees.

If the index is below 85 points, companies must set and publish improvement targets for each of the indicators. If the index falls below 75 points, companies must publish their corrective measures.

These measures, which may be annual or multi-year, and these objectives must be defined as part of the mandatory negotiations on professional equality or, in the absence of an agreement, by a unilateral decision of the employer after consultation with the Social and Economic Committee.

If the company fails to publish its results in a visible and legible manner, or fails to implement corrective measures, or if these measures are ineffective, the company is liable to a financial penalty representing up to 1% of its annual payroll.

The Equality and Diversity label. Created in 2004, the Gender Equality Label aims to promote equality and gender diversity in the workplace. Introduced in 2008, the Label Diversité aims to prevent discrimination and promote diversity in the public and private sectors. These State labels recognize good practice in recruitment and career development to promote gender equality, the prevention of discrimination and diversity in the workplace.

The assessment is based on a number of criteria, divided into 3 areas: actions taken by the company to promote equality in the workplace; human resources and management; and support for parenthood in the workplace. If it meets the criteria set out in the specifications, the application is submitted to a Professional Equality labelling committee for approval, which awards the label for a period of 4 years, with an interim control procedure.

1.1.2 Non-Discrimination Law in the Civil Service

Civil service law contains provisions relatively similar to labor law for combating gender discrimination, sexual harassment and sexist behavior (1.1.2.1.1). To this end, public sector employers have obligations (1.1.2.1.2) and means are provided to prevent acts of discrimination, harassment and sexist harassment (1.1.2.1.3).

1.1.2.1 Combating Discrimination and Harassment

1.1.2.1.1 The Principles of Non-Discrimination

The General Civil Service Code incorporates the provisions of a 1983 law,[38] known as the Le Pors law, and includes a chapter on protection against discrimination. Article L. 131-1 prohibits any distinction between civil servants on the grounds of their ideas, origins, status or personal situation, and article L. 131-2 adds gender to the prohibited criteria.

Civil service law also uses the concepts of direct and indirect discrimination defined above. The inclusion of the objective concept of indirect discrimination in the general civil service regulations is intended to combat structural and systemic discrimination.

The General Civil Service Code expresses reservations by allowing that "separate recruitment for women or men may, exceptionally, be provided for when membership of one or other sex constitutes a determining condition for the performance of the duties".[39] However, this is only possible for the job categories listed in a decree issued by the Conseil d'État, after consulting the Conseil supérieur de la fonction publique.

Civil service law approaches the principle of equality from the angle of respect for equal treatment, in particular when it comes to access to the civil service, in the organization and running of the entrance examination.

1.1.2.1.2 Sexual Harassment and Sexist Abuse in the Civil Service

The General Civil Service Code also contains a specific chapter on protection against harassment. Thus, no public employee may be subjected to sexual harassment "consisting of repeated comments or behavior with a sexual connotation which either undermine their dignity by being degrading or humiliating, or create an intimidating, hostile or offensive situation for them". The Code also defines sexual harassment as

> any form of serious pressure, even if it is not repeated, exercised with the real or apparent aim of obtaining an act of a sexual nature, whether this is sought for the benefit of the perpetrator or a third party.[40]

[38] Law no. 83-634 of 13 July 1983 on the rights and obligations of civil servants.

[39] Article L. 131-4 of the General Civil Service Code.

[40] Article L. 133-1 of the General Civil Service Code.

In the chapter on protection against gender-based discrimination, the General Civil Service Code specifies that no public employee should be subjected to sexist conduct

> defined as any conduct related to a person's gender, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.[41]

1.1.2.2 Public employers' obligations in terms of equal treatment

- The legal and contractual obligations of public employers regarding equal access for women and men to civil service bodies, job categories, grades and positions.

In addition to complying with the rules on the chairmanship and balanced composition of competitive examination panels, action can be taken at school level to achieve greater gender diversity in competitive examination applications, lecturers or teachers, and awareness-raising initiatives aimed at employers to prevent or combat gender stereotypes when taking on trainees or as part of the placement process, etc. Public-sector employers undertake to combat gender stereotypes, particularly in their recruitment policies and practices, whether for permanent or contract positions, in order to ensure genuine gender diversity in their teams and to combat discrimination at all stages of recruitment. In this respect, particular attention must be paid to competition and vacancy notices, as well as to recruitment campaigns, which must be devoid of any gender stereotypes.

- Obligations regarding measures to assess and address pay differentials between men and women.

Regardless of their status, in order to guarantee equal rights in the career development of civil servants and equal pay. Although equal treatment for members of the same body or job category is guaranteed by the civil service statute, pay differentials between women and men persist for identical bodies, job categories and functions. The bonuses and allowances allocated to civil servants can only take account of the duties they perform, their professional results[42] and the collective results of the department to which they belong.[43] Particular attention should be paid to the situation of female- and male-dominated bodies, job categories and sectors, based in particular on the work of the Human Rights Defender in the context of the *Guide to non-discriminatory evaluation of female-dominated jobs*. Professional equality action plans must include measures

[41] Article L. 131-3 of the General Civil Service Code.

[42] In the local civil service, we talk about professional commitment rather than professional results.

[43] Article L. 714-1 of the General Civil Service Code.

to reduce pay differentials. In particular, public employers will ensure that, for identical bodies and job categories or positions, they analyze all remuneration components and assess any bias in the systems for rating positions, allocating bonuses, including variable merit-based portions, or when an employee is on family leave (maternity leave, medical leave and illnesses related to pregnancy, adoption leave, paternity leave), overtime, a time savings account or part-time work. These compensation schemes are maintained for local authority civil servants during leave linked to parental responsibilities without prejudice to their modulation according to the professional commitment of the local authority civil servant and the collective results of the service.

- Transparency requirements for remuneration components.

This transparency obligation applies to public sector employees when they are recruited, whether through competitive or non-competitive examinations, directly or through mobility or career development. The elements of remuneration concerned are, in particular, the indexed pay scales, the criteria for awarding bonuses and any available information enabling their level to be assessed.

- Obligations to close the career gaps between men and women in the civil service due to parenthood.

The Government would like employees on parental leave or available to raise a child to retain all their rights to advancement to a higher step, up to a maximum of five years over the course of their career. The years spent in these positions, up to a limit of five years, will be treated as actual service in the body or job category for the purposes of assessing promotion rights. This measure has no impact on the pension rights of the employees concerned. In addition, parents will be able to take advantage of statutory leave to raise a child up to the age of 12. To give civil servants an alternative to parental leave, any civil servant on annualized part-time leave will be able to choose to accumulate the period not worked over a limited period of time. The aim is to smooth out the impact of the period of absence on the employee's pay. The provisions relating to promotion to a higher grade will be amended as part of the "civil service" bill in order to take into account the respective situations of women and men in the bodies, job categories and grades concerned when drawing up promotion tables by choice. In the event of imbalances in the pools of employees eligible for promotion, the action plans will have to specify the measures implemented to guarantee equal access for women and men to the promotion grades concerned. In addition, the tables for promotion by choice must specify the proportion of women and men among those eligible for promotion and those promoted. The implementation of these measures will be monitored by the relevant consultative bodies.

- Obligations to provide support in situations of pregnancy, parenthood and work-life balance.

The 2018 agreement stipulates that

> family-related leave, working hours, childcare arrangements, housing and transport are all elements to be taken into account in the overall reflection on professional equality and in human resources management

and that

> one of the obstacles identified to professional equality is an unbalanced distribution between women and men of tasks related to the family (children, ascendants) and of the time devoted to it, not only during the day, but also throughout life. The arrangements for leave granted when a child arrives at home can be rethought to encourage co-parenting and remove the obstacles, directly or indirectly, to women's careers.

Recognizing co-parenthood is a key factor in promoting an equal sharing of responsibilities between the two parents, but also in supporting parenthood in all its aspects, and thus taking better account of changes in family structures and society. This is why the 2018 agreement decides to: 1) create a special leave of absence entitling a public employee spouse to attend 3 of the 7 compulsory medical procedures during and after pregnancy. 2) Secure the list of beneficiaries of the special leave of absence for childbirth, based on the model of paternity and childcare leave. 3) Exclude sick leave during pregnancy from the application of the waiting period. 4) Encourage the use of time savings accounts at the end of family leave. 5) To make the rules governing the use of parental leave more flexible. 6) Encourage new forms of work organization to promote professional equality and quality of life at work. 7) Promote access to crèche places for civil servants.

- Obligations to step up the prevention of and fight against sexual violence, harassment and sexist behavior.

The action plans must include a focus on preventing and combating all forms of sexual and gender-based violence, setting out the timetable and procedures for implementing the measures defined in the circular of 9 March 2018 (initial and ongoing training for managers, staff representatives dedicated to preventing and combating sexual and gender-based violence, an information, communication and awareness-raising system for all staff, defining and implementing a system for reporting and dealing with sexual and gender-based violence, protecting and supporting victims).[44] The action plans will also include indicators for monitoring the reporting and handling of cases. Public employers who are obliged to implement a multi-year action plan are required by law to set up a system for reporting, dealing with and monitoring gender-based and sexual violence. A charter for the operation of systems for reporting and dealing with situations of violence was drawn up in 2019 by the Directorate General for Administration and the Civil Service in order to ensure equal treatment of employ-

[44] Circular of 9 March 2018 on combating sexual and gender-based violence in the civil service NOR: CPAF1805157C.

ees.[45] Finally, public employers are encouraged to extend the application of this system to violence and harassment of a non-work-related nature detected in the workplace. In close collaboration with those involved in prevention (in particular prevention or occupational medicine, staff social services, bodies dealing with health and safety issues in the workplace), public employers are required to take all measures aimed at providing support and assistance to employees who are victims of acts of sexual violence, harassment or sexist behavior. The victimized employee will not be moved during the administrative investigation, except at his or her express request, and the alleged perpetrator of the violence must be subject to precautionary measures to ensure the neutrality of the investigation and the protection of the victim. In accordance with the commitments made in the 2013 protocol, special attention must also be paid to staff who are victims of domestic violence, particularly in the context of social action and the provision of emergency accommodation or when examining requests for mobility.

1.1.2.3 Preventive Measures in the Field of Professional Equality

1.1.2.3.1 An Agreement to Promote Professional Equality

An agreement dated 30 November 2018[46] structures the policy in favor of professional equality in the civil service. This new agreement builds on the achievements of the previous agreement of 2013 and includes around thirty actions with ambitious advances for civil servants. It aims to strengthen the governance of equality policies, create the conditions for equal access to jobs and professional responsibilities, eliminate pay and career progression gaps, provide better support for pregnancy, parenthood and the work-life balance, and strengthen the prevention of and fight against sexual and gender-based violence. The implementation of the measures in the agreement by public employers is closely monitored by a six-monthly monitoring committee made up of the signatories. Some of the measures have been included in the law on the transformation of the civil service of 6 August 2019.[47]

1.1.2.3.2 Professional Equality Action Plans

The decree of 4 May 2020[48] defines the procedures for drawing up and implementing action plans relating to professional equality in the civil service.

[45] Directorate-General for Administration and Public Service, Charter for the operation of devices for reporting and treating situations of sexual violence, discrimination, sexual or moral harassment and sexist acts of 2019.

[46] Agreement of 30 November 2018 on professional equality between women and men in the civil service.

[47] Law no. 2019-828 of 6 August 2019 on the transformation of the civil service.

[48] Decree no. 2020-528 of 4 May 2020 defining the procedures for drawing up and implementing action plans relating to professional equality in the civil service.

This structuring obligation applies to all ministries and their public establishments, to local authorities and their Établissements publics de coopération intercommunale with more than 20,000 inhabitants, and to all public establishments in the hospital civil service. The decree specifies the authorities responsible for drawing up the plans, the procedures for assessing compliance with this obligation and, where applicable, the procedure for imposing financial penalties of up to 1% of the total payroll of the employer concerned if the action plan is not implemented.

1.1.2.3.3 Balanced Representation in Social Dialogue Bodies

Since 2018, the rule has been that candidate lists must now be made up of a number of women and men corresponding to the proportion of women and men represented on the body concerned.[49]

The rules of balanced representation apply when candidatures are submitted. They apply to all list ballots, for the election of social committees, joint administrative committees and joint consultative committees in each of the three civil service sectors.

1.1.2.3.4 Warning Systems

Reporting procedures were introduced by a decree dated 13 March 2020[50] in accordance with the commitments made in the agreement of 30 November 2018. Public servants who believe they are victims of discrimination, moral or sexual harassment or sexist behavior, or who witness such practices, have special procedures for reporting them. These procedures include a procedure for receiving reports, a procedure for directing victims to the services responsible for providing them with support and assistance, and a procedure for directing them to the competent authorities to take any appropriate "functional protection" measures and to ensure that the facts in question are dealt with, possibly by conducting an administrative investigation.

1.1.2.3.5 Equality Advisors

The introduction of equality officers is also one of the commitments made in the agreement of 30 November 2018. The role of the referents is to inform, raise awareness, advise employees and departments within their structure, participate in the assessment and diagnosis of the professional equality policy, and

[49] Article 54 of Act no. 2007-483 of 20 April 2016 on professional ethics and the rights and obligations of civil servants.

[50] Decree no. 2020-256 of 13 March 2020 on the system for reporting acts of gender-based violence, discrimination, harassment and abuse in the civil service.

monitor the implementation of actions carried out by the administration to which they report. The introduction of referents within the State and its public establishments is governed by a circular dated 30 November 2019.[51] It requires each State administration to set up a network of equality referents, appointed within each department or service so that all public employees can contact a local equality referent, without prejudice to the introduction of pooling. It sets out the procedures for deploying equality advisors, their tasks, the organization of the system in the State civil service, how the advisors' work is to be coordinated with that of the other players involved in professional equality, the procedures for implementing this obligation, and the procedures for informing civil servants about this system.

1.1.2.3.6 The Equality and Diversity Label

The provisions of the Equality and Diversity label set out above for the private sector also apply to the civil service.

1.2 Comments on the Presence of Female Workers in the Care Sector

Like education and social work, the healthcare professions are highly feminized. The feminization of the healthcare professions is a constant, as demonstrated by a 2005 study on "The feminization of the healthcare professions in France".[52] It affects all professions in the health, social and personal care sectors. The latest figures for 2023 from the Caisse nationale de solidarité pour l'autonomie (CNSA) put the number of professionals in the personal assistance sector at 1,362,300, 87% of whom are women.[53]

According to a 2019 survey[54] on the care sector, 86% of nurses are women; 88% of care assistants are women; 94% of home helps are women. In the home help, support, care and services sector, the proportion of female employees is estimated at 95%, according to amendment no. 59 of 2023.

The majority of employees are women (82.3% in 2015 according to the DARES), with few qualifications (only 7.5% have more than a baccalaureate, compared with 38.4% of all employed people) and an average age higher than that of the working population (46 compared with 41).[55]

[51] Circular of 30 November 2019 on the establishment of Equality referents within the State and its public establishments.

[52] S. Bessière, "La féminisation des professions de santé en France: données de cadrage," *Revue Française des affaires sociales* 1 (2005): 17–33.

[53] CNSA, *Les chiffres clés de l'aide à l'autonomie* (2023).

[54] L. Chassoulier et al., *IRES Investir dans le secteur du soin et du lien aux autres - Une perspective d'égalité de genre* (IRES, 2023).

[55] E. Kulanthaivelu et L. Thierus, "Les salariés des services à la personne: comment évoluent leurs conditions de travail et d'emploi?" *DARES Résultats* 38 (2018): 1.

Women's work in the care sector has been seen and organized as an extension of their activity within the family. Today, 67% of family careers are women.[56]

With the exception of certain occupations such as nursing, these are often less skilled than other occupations (e.g. care assistant or home help). Female workers therefore have few or no qualifications compared with the working population as a whole, and this has an impact on their pay, which is lower than that of working women as a whole. Low pay is exacerbated by the use of part-time work and the fact that women are less likely to be found in management positions, which, as in many sectors, are monopolized by men.[57]

1.3 Publication of Statistics and Databases on the Care Sector

Various institutions (INSEE, DREES, DARES) publish statistics and databases that have made it possible to calculate the proportion of women in care professions. However, the publications relate to specific professions or certain themes with different timeframes, which means that it is not always possible to obtain precise figures for the care sector as a whole or for the professions that interest us in this study (nursing, care assisting, home help). On the other hand, gender differences are common.

The databases studied present aggregated data, mainly at national and regional level.

Most databases are public and freely accessible. Some studies provide statistics to which explanatory databases are attached.

- INSEE data: INSEE Références, *Femmes et hommes, l'égalité en question* (2022), <https://www.insee.fr/fr/statistiques/6047751?sommaire=6047805&q=soin>.
- DREES data: DREES, "Les salaires dans la fonction publique hospitalière. In 2021, the average net salary increases by 2.8% in constant euros." *Études et résultats* 1278 (2023), <https://drees.solidarites-sante.gouv.fr/sites/default/files/2023-09/ER1278.pdf>; DREES, "Près d'une infirmière hospitalière sur deux a quitté l'hôpital ou changé de métier après dix ans de carrière." *Études et résultats* 1277 (2023), <https://drees.solidarites-sante.gouv.fr/publications-communique-de-presse/etudes-et-resultats/pres-dune-infirmiere-hospitaliere-sur-deux>.
- DARES data: DARES, *Portraits statistiques des métiers* (2023), <https://dares.travail-emploi.gouv.fr/donnees/portraits-statistiques-des-metiers>; DARES, *Les métiers en 2030* (2023), <https://dares.travail-emploi.gouv.fr/publication/les-metiers-en-2030-le-rapport-national>; DREES, *Demography of the health professions*, <https://drees.shinyapps.io/demographie-ps/>;

[56] T. Blavet and Y. Caenen, "Les proches aidants: une population hétérogène," *Les dossiers de la DREES* 110 (2023).

[57] CESE, *Les métiers de la cohésion sociale* (2022).

DREES, *Statistique annuelle des établissements de santé* (SAE), <https://data.drees.solidarites-sante.gouv.fr/explore/dataset/708_bases-statistiques-sae/information/>.

1.4 Description of Statistics and Databases

Data from the INSEE Références survey, *Femmes et hommes, l'égalité en question*, 2022, show that working conditions in the nursing and midwifery professions are intensifying or deteriorating. 75% of working people say their work is intensifying or deteriorating, 87% of them women.

A study by DREES on salaries in the hospital civil service[58] has yielded some data. In 2021, the full-time equivalent net salary of women in the hospital civil service will average 2,459 euros per month, 19.6% less than that of men (3,058 euros). This gap is up by 0.5 points over one year, following a sharp fall the previous year (-1.5 points), as the COVID-19 bonus has mainly benefited occupations in which women are more heavily represented.

With equivalent status, the pay gap between women and men is much smaller, but persists: women earn on average 1.5% less among civil servants, 6.8% less among contract staff; the gap peaks at 14.3% among medical staff, as women are notably younger in this category. In total, for the same status, age, grade, hierarchical category and type of establishment, women receive 3.7% less than men, a gap that has increased by 0.3 points, following a 0.2 point drop in 2020. However, this gap cannot be interpreted as a measure of the differences in pay between women and men for the same job. Some of the residual differences are due to unobserved characteristics (seniority, experience, tasks performed, etc.). Furthermore, full-time equivalent pay is used to compare pay for an equivalent amount of work: it does not take into account differences in employment conditions (in particular the greater or lesser use of part-time work), which also contribute to differences in monthly earnings between women and men.[59]

A DARES study from 2023 provides statistical portraits of the occupations we have chosen to study, which we present below.

In 2017-2019, the "Healthcare assistants" family of occupations will include 727,000 people, 91% of whom will be women. 20% will be under 30 and 27% over 50, and 60% will have a CAP, BEP or equivalent qualification. Among care assistants, 60% work on Saturdays, 56% on Sundays and 15% at night. Among full-time employees, 39% say they earn less than 1,500 euros net per month, and 0% say they earn more than 3,000 euros. The median net full-time salary was 1,549 euros per month in 2017-2019. At the national level, the tension and recruitment difficulties in 2021 are very high among care assistants.

[58] In 2021, the average net salary will increase by 2.8% in constant euros, DREES, "Les salaires dans la fonction publique hospitalière," *Études et résultats* 1278 (2023).

[59] DREES, "Les salaires dans la fonction publique hospitalière".

In 2017-2019, the "Nurses, midwives" job family will include 644,000 people, 85% of whom will be women, 20% of whom will be under 30 and 25% over 50, and 60% of whom will have a 2-year higher education qualification. Nurses and midwives account for 2.4% of national employment and 11.9% of employment in Mayotte, the region with the highest proportion. 16% of them work in the Île-de-France region, where they are most numerous. In this profession, 63% work on Saturdays, 57% on Sundays and 22% at night. Among full-time employees, 6% say they earn less than 1,500 euros net per month, and 7% say they earn more than 3,000 euros. The median net full-time salary was 2,028 euros per month in 2017-2019. At national level, the tension and recruitment difficulties in 2021 are very high among nurses and midwives.

In 2017-2019, the "Home helpers and domestic assistants" occupation family included 558,000 people, 95% of whom were women, 11% under the age of 30, 48% over the age of 50 and 41% with a CAP, BEP or equivalent qualification. Home helps and housekeepers account for 2.1% of national employment and 3.9% of employment in Martinique, the region with the highest proportion. 12% of them work in Île-de-France, the region where they are most numerous. In this profession, 46% work on Saturdays, 35% on Sundays and 6% at night. Among full-time employees, 78% say they earn less than 1,500 euros net per month, and 2% say they earn more than 3,000 euros. The median net full-time salary was 1,290 euros per month in 2017-2019. At national level, the tension and recruitment difficulties in 2021 are very high among home helps and household helps.

In the home help, support, care and services sector, the proportion of female employees is estimated at 95%, according to amendment no. 59 of 2023.

1.5 Legislation on the Care Sector and the Professions

The presence of women has been taken into account in the lexicon used to describe the professions of nurse and care assistant, which is not the case for the professions of life auxiliary or home help, as the term is neutral. The texts applicable to these two professions use inclusive writing. The use of the terms "aides-soignantes" and "infirmières" in the feminine perhaps reflects the strong feminization of the care sector. It's difficult to say what is meant by "auxiliaires de vie" or "aides à domicile", as the term is gender-neutral.

Thus the public health code (art. 4311-1) uses the masculine and feminine to qualify the profession of nurse and the directory of health and autonomy professions uses inclusive writing and displays professions such as "caregiver and nurse".

However, this attention to the significant presence of women in this sector of activity is not reflected in the name of the diplomas for access to these professions. Thus, there is the State Nursing Diploma (DEI) and the State Nursing Assistant Diploma (DEAS).

The use of the terms "caregivers" and "nurses" in the feminine form perhaps reflects the strong feminization of the care sector. It is difficult to say what is meant by "care assistants" or "home helpers", because the term is neutral.

French law is characterized by the neutrality of legislation relating to the care professions, with legal requirements applying regardless of gender at all stages of the care worker's career, from conditions of access (1.5.1) and the recruitment procedure (1.5.2) to progression in the profession (1.5.3).

1.5.1 Access Conditions

The criteria used for recruitment are strictly based on the professional skills and/or aptitudes required to ensure equal access to employment for all. In very general terms, it was the Lyon-Caen law of 1992[60] that tried to make recruitment less subjective by specifying the methods authorized both when the job is offered and during the selection of the candidate. Title V of this law, on "Provisions relating to recruitment and individual freedoms", amends various provisions of the Labor Code. Articles L. 121-6 to L. 121-8 of the Labor Code expressly refer to job applicants.

The company must therefore have made an offer for a vacant job or a job to be created.[61]

The rules governing the candidate selection procedure are set out in Article L. 120-2 of the Lyon-Caen Act (now Article L. 1121-1 of the French Labor Code), which states that "no one may restrict a freedom unless this is justified" by virtue of the principle of proportionality. This provision prohibits any restriction on labor law that is not justified by the nature of the task to be performed and not proportionate to the aim pursued.

Employers are required to publish their job offers on dedicated Pôle emploi or equivalent websites. Discriminatory references in job advertisements, such as gender, are prohibited, except in the case of certain types of civil service employment.[62] With this in mind, a number of articles have been added to ensure that recruitment methods and the information requested from employees are relevant. Article L. 1221-6 of the French Labor Code requires that the questions asked of an employee during a job interview must be directed towards one goal: assessing the employee's ability to occupy the proposed position. Questions relating to marital status, qualifications or the existence of a non-competition clause (which may give rise to civil liability) are permitted. Conversely, questions relating to private life, such as trade union membership, religion or pregnancy, are prohibited on the grounds of respect for privacy under article 9 of the French Civil Code. The Labor Code states that no employee may be discrimi-

[60] Law no. 92-1446 of 31 December 1992 on employment, the development of part-time work and unemployment insurance, OJ no. 1 of 1st January 1993, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000542542>. Law adopted following the report by Professor Gérard Lyon-Caen, *Les libertés publiques et l'emploi*, Rapport, *La documentation française* 27 (1992).

[61] J.-E. Ray, "Une loi macédonienne? Étude critique du titre V de la loi du 31 décembre 1992," *Dr. soc.* (1993): 110.

[62] Article L. 325-16 of the General Civil Service Code.

nated against on the grounds of pregnancy.[63] This protection has been elevated to the level of a fundamental freedom by the social chamber of the Cour de cassation (French Supreme Court).[64] It considers that the dismissal of an employee on the grounds of her pregnancy infringes the principle of equal rights between men and women guaranteed by paragraph 3 of the Preamble to the Constitution of 27 October 1946, and constitutes a fundamental freedom in the same way as the right to strike, the exercise of trade union activity or the state of health.

Lastly, employers are required to be transparent when using certain methods (audio-visual recording of the interview), so that candidates are informed before they are used.

Thus, the principle of non-discrimination implies, in particular in the drafting of external or internal job offers, that job titles mention both genders or are gender-neutral and are formulated in an objective and non-discriminatory manner, particularly with regard to the definition of recruitment criteria. These criteria must therefore be strictly based on the skills required and the qualifications of the candidates.[65]

In addition to the existing legal and regulatory provisions, the conditions of access to the care professions are addressed within the framework of national branch collective agreements in order to provide guarantees of protection against unjustified differences in treatment or even prohibited discrimination in recruitment, assignment, remuneration, vocational training and career development, regardless of gender, family status or pregnancy.

To this end, certain extended collective branch agreements specifically indicate the presence and importance of women in the total number of employees in the sector. By way of illustration, the national collective convention of individual employers and home-based employment branch stipulates that

> the representative trade unions and professional organizations in the branch of individual employers and home-based employment may rely in particular on the family employment observatory in order to assess the gender mix of jobs in the sector and any inequalities between women and men in access to employment and continuing vocational training.[66]

This particular attention to the presence of women in the personal services sector is reflected in the following terms:

> Aware of the prejudices and stereotypes in the personal services sector in particular, due in particular to the very high proportion of women in the sector,[67]

[63] Article L. 1132-1 of the French Labor Code.

[64] Cass. soc., 29 January 2020, no. 18-21.862, no. 116 FS-P+B.

[65] Article 2, paragraph 2, title VIII of the NCC for home help, support, care and services of 2010.

[66] Article 13 of the NCC individual employer and home-based employment of 2021.

[67] S. Bessière, "La féminisation des professions de santé en France: données de cadrage," *Revue Française des affaires sociales* 1 (2005): 17–33.

> the parties also undertake to promote diversity in the branch via objective recruitment and professional assessment mechanisms

and

> the fact of making a job offer or a request for an internship or training conditional, refusing to hire, penalizing, to dismiss a person on the grounds of their origin, sex, family status, physical appearance, name, genetic characteristics, sexual orientation, age, state of health, disability, morals, political or trade union opinions and activities, membership or non-membership of a particular ethnic group, nation, race or religion, is punishable by criminal penalties under Articles 225-1, 225-2 and 225-4 of the French Criminal Code.[68]

The social partners in the personal services sector also stipulate that the employer must appoint an "equal opportunities correspondent" and consult the works council where one exists in the company. This "equal opportunities correspondent" is responsible for monitoring training and awareness-raising initiatives and for combating prejudice and stereotypes carried out by the employer. In companies with employee representatives but no works council, it is recommended that an "equal opportunities correspondent" be appointed from among the members of staff. The parties stress the important role of management in this area. Notwithstanding the employer's legal obligations, an assessment report is drawn up annually by the "equal opportunities correspondent". This report summarizes: recruitment procedures within the company, the distribution of new recruits with indications of gender, age and any cases of disability. This report is sent to the Works Council as part of the single annual report.[69]

In civil service law, Order no. 2021-1574 of 24 November 2021 repealed the provisions of the special statutes of the territorial and hospital civil services[70] relating to conditions of access or recruitment,[71] career management,[72] and the promotion of civil servants,[73] previously amended by the 2012 law containing various provisions relating to the civil service.[74]

[68] Article 1, paragraphs 2 and 5, Part 3: Employment and career development policy, Chapter I of the NCC for personal services companies of 2012.

[69] Article 1st - 2 of the NCC for personal services companies of 2012.

[70] Law no. 86-33 of 9 January 1986 on the hospital civil service, amended by Law no. 2019-828 of 6 August 2019 on the transformation of the civil service, JORF no. 0182 of 7 August 2019.

[71] Law on the Status of the Territorial Public Service, Article 34 ff. ; Statute of the hospital public service and order no. 2020-1447 of November 25, 2020 on various health and family measures in the public service, JORF no. 0286 of 26 November 2020.

[72] Law on the status of the territorial public service, article 48 ff.; statute of the hospital public service, article 2 ff.

[73] Law on the Statute of the Territorial Public Service, article 77 ff.

[74] Act no. 2012-347 of 12 March 2012 on access to permanent employment and the improvement of employment conditions for contractual agents in the civil service, the fight against discrimination and various provisions relating to the civil service, JORF no. 0062 of 13 March 2012.

Conditions of access to care professions based on (diploma or professional aptitude). It is interesting to be able to analyze more concretely the conditions of access to the care professions,[75] in this case those relating to access to the professions of nurse, care assistant and home help, also known as life auxiliary. For example, there is a skills repertoire that describes and documents the skills required to work as a nurse[76] or care assistant.[77]

Nurses and nursing assistants are classified as medical auxiliaries in the French Public Health Code. The profession of nurse is subject to specific regulations in the Public Health Code.[78] Thus,

> any person who habitually provides nursing care on medical prescription or advice, or in application of the role assigned to him or her, is considered to be practising the profession of nurse. Nurses take part in various activities, particularly in the fields of prevention, health education and training or supervision.[79]

The profession of nurse may only be practised by persons holding a diploma, certificate or authorization as provided for in the Public Health Code.[80]

Care assistants work in collaboration with nurses in health establishments or home services and may provide care within the respective limits of the qualification recognized as a result of their training. When the nurse is not present, the care assistant may carry out routine daily care related to a stabilized state of health or a stabilized chronic pathology which could be carried out by the person themselves if they were autonomous or by a career.[81] The profession of care assistant is carried out by holders of the diplôme d'État d'aide-soignant, the certificat d'aptitude aux fonctions d'aide-soignant or the diplôme professionnel d'aide-soignant.[82]

Homecare professions are part of the medico-social sector. The Caisse nationale de solidarité pour l'autonomie (CNSA) has a broad definition of these professions,[83] which include: home help, social auxiliary, care assistant, social and family intervention technician, etc. Home helpers are professionals who assist people who need help in their own homes. To work as a home carer, a diploma

[75] On the notion of carer in France: See I. Daugareilh, G. Santoro and H. Traoré, Conditions de travail et d'emploi des travailleurs du care en France, WP2 report for the European CARE4CARE project (2024), p. 20 ff.

[76] Public Health Code, diplôme d'État d'infirmier, référentiel d'activités et de compétences, arrêté du 31 juillet 2009, annexe II, BO Santé - Protection sociale - Solidarités no. 2009/7 du 15 août 2009, 9 p., <https://sante.gouv.fr/IMG/pdf/arrete_du_31_juillet_2009_annexe_2.pdf> (Accessed December 4, 2023).

[77] Référentiel de certification des Aides-soignants, Arrêté NOR SSAH2110960A - Annexe II 10 juin 2021, available on the Ministry of Health website, 11 p., <https://sante.gouv.fr/IMG/pdf/10_juin_2021_-_vf_annexe_ii_referentiel_certification_as.pdf> (Accessed December 4, 2023).

[78] Articles L. 4311-1 to L. 4314-6 of the French Public Health Code.

[79] Article L. 4311-1 of the French Public Health Code.

[80] Article L. 4311-2 of the French Public Health Code.

[81] Article R. 4311-4 of the French Public Health Code.

[82] Article L. 4391-1 of the French Public Health Code.

[83] CNSA, Les chiffres clés de l'aide à l'autonomie, 2023.

is required (Diplôme d'État Accompagnant éducatif et social or Auxiliaire de vie sociale, Bac Pro accompagnement, soins et services à la personne).

1.5.2 The Recruitment Procedure

In principle, it is the employer who chooses the job applicant. However, in the recruitment procedure, the principles of equal treatment and non-discrimination[84] do not preclude differences in treatment where they meet objective criteria such as an essential and determining occupational requirement, the objective of which is legitimate and the requirement proportionate.[85]

During the job interview, the employer may only ask for written or oral information directly related to the job or work placement in question, in order to assess the applicant's skills and suitability for the job.

Employers must not take a woman's pregnancy into consideration when refusing to hire her or terminating her probationary period.[86]

Similarly, under civil service law, civil servants are recruited by competitive examination, unless otherwise stipulated.[87] Under civil service law, the recruitment procedure is subject to the conditions governing the organization of competitions. Candidates for competitive examinations must meet these conditions as well as those set out in the specific statute of the body to which they are applying on the closing date for applications, unless otherwise specified in the specific statute of the body concerned.[88]

In the hospital civil service, the competitions mentioned in section 1 are opened, under the conditions laid down by the specific statutes: 1) Either by the competent State authority, at national, regional or departmental level; 2) Or by the appointing authority. The specific statutes may also provide for these competitions to be opened and organized within a region or department on behalf of several establishments among those covered by article L. 5, by the appointing authority of the establishment with the largest number of beds.[89] The number of posts put up for competition is equal to the number of posts declared vacant for this competition.[90]

[84] For example, article 12.1 of the national collective agreement for private employers and home employment stipulates that: "… the criteria used for recruitment may not take into consideration the fact that the candidate belongs to one or other sex and must be strictly based on the professional skills and qualifications of the candidates for recruitment". In the same vein, NCC for private hospitals of 2002: Titre IV: Contrat de travail, chapitre Ier: Formalités de recrutement - embauche préalable: article 37. See also, Agreement of 12 June 2018 on quality of life at work and professional equality.

[85] Article 11, Part II, Chapter I of the NCC of individual employers and home-based employment branch of 2021.

[86] Article 2, para. 3, Title VIII of the NCC for the home help, supports, care and services branch of 2010.

[87] Article L. 320-1 of the General Civil Service Code.

[88] Article L. 325-34 of the General Civil Service Code.

[89] Article L. 325-32 of the General Civil Service Code.

[90] Article L. 325-33 of the General Civil Service Code.

Finally, during the recruitment procedure for civil servants, the public employer asks applicants to provide data relating to their training and social or professional environment, in addition to the data required to manage the recruitment process, in order to produce studies and statistics on access to jobs. The collection and processing of this data is subject to strict regulations.[91]

Where the specific statutes of the job categories so provide, candidates for competitions for access to category A job categories who are declared suitable by the selection board are appointed as trainees by the Centre national de la fonction publique territoriale.[92] At the end of their initial training period, set by the specific statutes of the job categories, students are entered on a list of suitable candidates drawn up in application of the provisions of paragraph 1 and published in the Official Journal;[93] they are then appointed to the posts filled. Hospital civil service competitions give rise to the drawing up of a list ranking in order of merit the candidates declared suitable by the selection board.[94]

The procedure for recruiting contract staff must also comply with certain legal requirements. The recruitment of contract staff to fill permanent posts is decided following a procedure that guarantees equal access to public posts. The competent authority publishes the vacancy and the creation of these posts under the same conditions as the recruitment procedure for civil servants.[95]

In addition, it is specified that

> no measure concerning, in particular, recruitment, tenure, remuneration, training, assessment of professional value, discipline, promotion, assignment or transfer may be taken in respect of a public servant taking into consideration the fact that: 1) he has been subjected to or refused to be subjected to conduct contrary to the principles set out in Articles L. 131-1, L. 131-2 and L. 131- 3; 2) They have lodged an appeal with a hierarchical superior or taken legal action to ensure that these principles are respected; 3) Or they have witnessed conduct contrary to these principles or reported it ….[96]

[91] Article L. 325-21 of the General Civil Service Code: This data may only be that mentioned in article 6 of law no. 78-17 of 6 January 1978 relating to information technology, files and civil liberties. This data is not disclosed to the members of the jury. The list of data collected as well as the procedures for collecting and storing this data are set by decree in the Conseil d'État, following a reasoned and published opinion from the Commission nationale de l'informatique et des libertés.

[92] Article L. 325-44 of the General Civil Service Code.

[93] Article L. 325-45 of the General Civil Service Code.

[94] Article L. 325-47 of the General Civil Service Code.

[95] Article L. 332-21 of the General Civil Service Code. These provisions do not apply to: 1) Senior posts whose appointment is left to the Government's decision, as mentioned in article L. 341-1; 2) The posts of Director General of the departments mentioned in 1) and 2) of article L. 343-1; 3) The posts covered by 1) and 2) of article L. 6143-7-2 of the Public Health Code.

[96] Article L. 131-12 of the General Civil Service Code.

In the performance of their duties, no distinction may be made between civil servants on the grounds of gender.[97]

However, the Order of 2021 on the General Civil Service Code provides that "separate recruitment for women or men may, exceptionally, be provided for when membership of one sex or the other is a determining condition for the performance of the duties".[98] In such cases, the list of bodies for which separate recruitment for men or women may be organized is drawn up after consultation with the Conseil supérieur de la fonction publique de l'État and the relevant social committees. The procedures for these separate recruitments are set after consultation with the relevant social committee. The terms and conditions of the physical tests and the separate ratings according to the sex of the candidates referred to in Article L. 325-16 are set after consultation with the competent social committee.[99]

1.5.3 Progression in the Profession

In France, in the healthcare sector, career development follows salary development, both in terms of how it is determined and how much it is paid. A reference coefficient is set for each group of professions in order to determine the basic salary under the collective bargaining agreement, to which may be added any technical supplements linked to the employee's supervisory role or qualifications. A promotion allowance and a seniority bonus may be added to this salary, which may be increased by the technicality supplement.

Generally speaking, career progression or the employee's development in the profession is linked to the gradual acquisition of technical skills and competencies through seniority in the profession. Seniority refers to periods of actual or equivalent work. For example, the national collective agreement for private not-for-profit hospital, care, cure and nursing establishments[100] provides for 5 levels in its classification grid: junior, confirmed, senior and expert employees.

- The entry level is for managers with no experience in the job and up to and including the 3rd year in the job.
- The junior step is for executives with between 4 and 8 years' experience in the job.
- The senior step is for executives with between 9 and 13 years' experience in the job.

[97] Article L. 131-2 of the General Civil Service Code.

[98] Articles L. 131-4 and L. 325-31 of the General Civil Service Code: "A decree of the Council of State sets the list of job categories, positions or bodies for which separate recruitment for men or women may be organized in application of article L. 131-4".

[99] Article L. 325-24 of the General Civil Service Code.

[100] Article 08.01.1, Part IV, Title VIII of the NCC for private not-for-profit care and nursing establishments of 1951.

- The senior step is for managers with experience in the job between 14 years and 19 years inclusive.
- The expert level is for managers with 20 or more years' experience in the job.

Once they have been recruited, managers are automatically promoted to the next step in their profession. The length of the steps may be reduced in order to anticipate the transition to the next step. Any such advance must respect the principle of equal treatment or, failing that, be based on objective and relevant factors.

The technical supplement is calculated on the basis of the reference coefficient plus any additional remuneration linked to management, qualifications and/or the job itself. It is determined as follows:

- Entry-level executive: no top-up.
- Junior executive: 5% of base salary converted into points.
- Senior manager: 10% of base salary converted into points.
- Senior executive: 14% of base salary converted into points.
- Expert manager: 17% of base salary converted into points.

In addition, a career allowance (as referred to in article 8 of amendment no. 2002-02 of 25 March 2002) may be provided for. In any event, taking into account the duration of their work and their seniority in the company, the remuneration of part-time employees is proportional to that of employees who, with the same qualifications, hold an equivalent full-time job in the establishment or company.

We also note that

> career prospects and vertical mobility for care assistants, particularly towards nursing posts, remain limited, as they are subject to training at a nursing training institute (IFSI) and to passing the entrance examination.[101]

In the civil service, there are two aspects that determine the career path of care workers. The first is gender balance in appointments. According to the General Civil Service Code, at least 40% of each sex must be appointed to public posts in each calendar year: 1) Senior posts; 2) Other State management posts; 3) Management posts in State public establishments; 4) Management posts in the regions, départements, municipalities and public establishments for inter-municipal cooperation with more than 40,000 inhabitants and the Centre national de la fonction publique territoriale; 5) Management posts in the hospital civil service. The number of persons of each sex to be appointed in application of this rule is rounded down to the nearest whole number. This obligation does not apply to renewals in the same post or to appointments to the same type of post.[102]

[101] Chassoulier, Louisa, François-Xavier Dewetter, Sévérine Lemière et al. *Investir dans le secteur des soins et du bien aux autres. Un enjeu d'égalité entre les hommes et les femmes*. Rapport IRES. Clersé-IRES, 2023.

[102] Article L. 132-5 of the General Civil Service Code.

The second aspect concerns the balanced advancement of men and women in the profession. Firstly, advancement to a higher step is granted automatically and continuously from one step to the next on the basis of seniority. Civil servants are assessed by a grading system,[103] which also contributes to their advancement through the ranks. The grade is the title that confers on its holder the right to occupy one of the jobs that correspond to it.[104] The hierarchy of grades in each body or employment category, the number of steps in each grade, the rules for advancement to a higher step and promotion to a higher grade are set out in the specific statutes.[105] Under penalty of nullity[106] of the public servant's appointment,

> the grades of each body or employment framework are accessible by means of competition, internal promotion or advancement, under the conditions laid down by the specific statutes. They may, where appropriate, be accessible by direct integration or by external promotion.[107]

Similarly, under civil service law,

> promotion to a higher grade shall take account of the respective situations of women and men in the bodies, job categories and grades concerned, within the framework of the management guidelines laid down [...].[108]

The Government must submit a report to the Common Council for the Civil Service on the measures implemented to ensure professional equality between women and men. This annual report, the implementation procedures for which are defined by decree, includes data on recruitment, the number of women on juries, training, working hours, professional promotion, working conditions, pay and work-life balance. This report is then submitted to Parliament.[109]

In addition, public servants, like candidates for public office, are also protected against harassment. Thus, no measure concerning recruitment, tenure, remuneration, training, assessment of professional merit, discipline, promotion, assignment or transfer may be taken in respect of a civil servant on the grounds that the latter: 1) Has been subjected to or refused to be subjected to acts of sexual harassment as referred to in article L. 133-1, including, in the case mentioned in 1) of this article, if the comments or behavior have not been repeated, or the acts of psychological harassment mentioned in article L. 133-2; 2) Has lodged an appeal with

[103] Article 76 of the 1984 local and regional civil service regulations, amended by law no. 2014-58 of 27 January 2014: "The local authority's assessment of the professional value of civil servants is based on an annual professional interview conducted by the direct line manager, which results in a report being drawn up. The joint administrative committees are informed of this report; at the request of the person concerned, they may ask for it to be reviewed".

[104] Article L. 411-5 of the General Civil Service Code.

[105] Article L. 411-6 of the General Civil Service Code.

[106] Article L. 411-8 of the General Civil Service Code.

[107] Article L. 411-7 of the General Civil Service Code.

[108] Article L. 132-10 of the General Civil Service Code.

[109] Article L. 132-11 of the General Civil Service Code.

a hierarchical superior or taken legal action to put an end to these acts or acts; 3) Or because he has witnessed such acts or acts or has reported.[110]

1.6 Legislation and Collective Agreements on Professional Classification in the Care Sector

Pursuant to article L. 2141-1 of the French Labor Code, the organizations bound by a branch agreement or, failing that, by professional agreements, meet at least once every five years to negotiate "on the need to revise classifications, taking into account the objective of professional equality between women and men and job diversity".

The NCC for the home help, support, care and services of 21 May 2010 includes a section on classification and pay systems.

Here is an example of a classification grid relating to the conditions for promotion to the upper echelons for employees in the response sector:

- Chapter II Classification grids.
- Article 13.
- Intervention channel: employee.

Article 13.1 Conditions for advancement through the ranks.

In the category of support staff, the conditions for advancement to level 1 are as follows:

Step 1	An employee who is in the process of acquiring the basic tasks of the job and who does not perform the essential acts of daily life (cf. art. 5.1).
Taking on the basic tasks of the job	
Step 2	Upgrading to step 2
Mastery of all the main tasks of the job	At the end of 48 months' practical experience in the job; or having completed 42 hours of training in step 1, linked to the main tasks of the job and having 1 year's practical experience in degree 1 step 1.
Step 3	Upgrading to step 3
Perfect command of all aspects of the job, including unusual situations	To have completed 105 hours of training in step 2, enabling them to work with a public as described in article 5.1 a, or to have 4 years' experience in step 2, and to have been assessed by management as having perfect mastery of all the duties of the job, as having the ability to adapt to unforeseen situations, and as having the ability to take the initiative and report back, in accordance with the assessment grids defined in the joint guide provided for in article 11.

[110] Article L. 133-3 of the General Civil Servant Code. See also article L. 135-1 of the Civil servant general Code, on the public servant as whistleblower.

In the category of support staff, the conditions for advancement to level 2 are as follows:

Step 1	Upgrading to degree 2 step 1
Taking on the basic tasks of the job	An employee who is in the process of acquiring the basic tasks of the job and holds a diploma related to the job performed, or a grade 1, step 3 employee with at least 4 years of practice in essential acts of daily living with a public as described in article 5.1 a.
Step 2	Upgrading to step 2
Mastery of all the main tasks of the job	At the end of 48 months' practice in the job of Level 2, Step 1, or having completed 70 hours of training in Level 1, in line with the tasks of the job and having 1 year's practice in Level 2, Step 1.
Step 3	Upgrading to step 3
Perfect command of all aspects of the job, including unusual situations	To have completed 105 hours of training in step 2, enabling them to provide enhanced social or health support, or to have 4 years' experience in step 2, and to have been assessed by management as having perfect mastery of all the duties of the job, as having the ability to adapt to unforeseen situations, and as having the ability to take initiative and report back, in accordance with the assessment grids defined in the joint guide provided for in article 11.

Article 13.2 Basic full-time salary for level 1 and 2 employees in the intervention sector, by step:

Intervention channel: employee level 1			Intervention channel: employee level 2		
Step 1	Step 2	Step 3	Step 1	Step 2	Step 3
Coef. 291	Code 304	Code 324	Coef. 344	Coef. 359	Code 383

The NCC for individual employers and home-based employment of 15 March 2021 provides for a job classification grid for employees, drawn up taking into account the diversity of activities carried out in the home of the private individual employer and the desire of the social partners to develop and enhance employees' skills. It forms the basis of the minimum wage scale applicable to the employee. This job classification grid enables individual employers and employees to determine the benchmark job performed and the corresponding minimum wage level.

The NCC for private hospitals of 18 April 2002 introduced a new classification system to replace the old classifications in previous collective agreements.

The NCC for personal services companies of 20 September 2012 also provides for a classification system for salaried staff drawn up taking into account the diversity of the activities or professions concerned, but also their common characteristics linked mainly to the place of performance chosen by the beneficiary of the service and the particular suggestions that arise from it.

The NCC for private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951 do not contain a classification system, but address them in subsequent riders.

There is no gender bias in the classification systems of the NCCs studied. However, classifications are a means of reducing pay inequalities between women and men and promoting job diversity.

1.7 Litigation or Disputes in the Media in France Over "Job Classification" in the Care Sector and Gender Discrimination

To our knowledge, there has never been a job classification dispute in the care sector of sufficient importance to warrant media coverage.

1.8 Provisions Specific to Employment Contracts in the Care Sector in Legislation or Collective Agreements

To examine to this question we analyse vocational training and job classification (1.8.2), promotion and criteria development (1.8.3), on the means put in place by the partners to combat discrimination and promote gender equality (1.8.4) and finally on harassment (1.8.5).

French legislation does not contain specific provisions on employment contracts in the care sector. Only branch and/or company collective agreements may have to do so. Thus, almost all the national collective agreements studied[111] emphasize the "special context" of the home (of the employer/user) as the place where the worker is employed, the duty of accountability and the requirement of loyalty on the part of staff, in particular to prevent the abuse of the weakness of people receiving care. Confidentiality and professional secrecy clauses can be found in most collective agreements applicable to care workers.[112] The regulations are geared more towards protecting users than healthcare workers.[113] In addition, all national collective agreements for public or private hospitals, whether commercial or not-for-profit, emphasize "the needs of the service" or "the requirements of the service" in order to provide for additional constraints or particular hardships (organization of working hours, timetables and distri-

[111] Excluding the NCC for private not-for-profit hospital establishments.

[112] NCC for personal services companies, section 3; article 1 and 2 - article 8, al. 2 titre IV, chapitre II of NCC for the home help, support, care and services branch; article 05.02.1 of NCC for private not-for-profit hospitals.

[113] On this subject, see article 8, paragraphs 3 and 4, title IV chapter II of NCC for the home help, support, care and services.

bution, duty roster with notice period) for employees, sometimes in return for compensation in the form of time off in lieu or allowances (as in the case of weekly days off or additional days of holiday).[114] Failure to comply with these special clauses may result in penalties that are often particularly severe.[115] In the public sector, entire chapters (Chapter II, Book Ier, Title II) are devoted to the issue of preventing conflicts of interest and criminal offences (art. L. 122-1 to L. 122-25) as well as to the issue of employee liability (Chapter V of the same title: art. L. 125-1 to L. 125-2). However, these specific contractual clauses are in no way directly or indirectly associated with sex.

1.8.1 Recruitment

The choice of recruitment is a matter for the employer. However, the employer must comply with a certain number of rules or general principles of labor law and civil service law.[116] Article L. 1142-1 of the French Labor Code sets out the prohibitions on job offers and recruitment:

> No one may:
> 1) Mentioning or causing to be mentioned in a job advertisement the sex or marital status of the candidate sought. This prohibition applies to all forms of advertising relating to recruitment, regardless of the nature of the employment contract envisaged.
> 2) Refusing to hire, transferring, terminating or refusing to renew an employee's employment contract on the grounds of sex, marital status or pregnancy on the basis of different selection criteria according to sex, marital status or pregnancy.
> 3) Take any measure on the basis of sex or pregnancy, in particular with regard to pay, training, assignment, qualification, classification, professional promotion or transfer.

When it comes to recruitment, collective agreements usually refer *in extenso* to the legal prohibition and the principle that the criteria used for recruitment must be strictly based on the professional skills and qualifications of the candidates for recruitment.[117] Collective bargaining agreements then go into more detail on the job offer (1.8.1.1), recruitment conditions (1.8.1.2) and stereotypes (1.8.1.3).

[114] See article 31, title IV of NCC of establishments and services for the maladjusted and disabled; article 05.01.2 of the NCC for private not-for-profit hospitals.

[115] Article 05.02.2 of the NCC for private not-for-profit hospitals: Miscellaneous prohibitions.

[116] Article L. 332-21 of the General Civil Service Code.

[117] Article 12-1, Part II, Chapter II of the NCC individual employer and home-based employment of 2021; NCC for home help, support and care services of 2010; Article 37 of NCC for private hospitals of 2002.

1.8.1.1 The Job Offer

In the NCC for the home help, support, care and services branch of 2010, the principle of non-discrimination implies, in particular in the drafting of external or internal job offers, that job titles mention both genders or that they are gender-neutral and present objective and non-discriminatory wording, particularly with regard to the definition of recruitment criteria.

The 2012 NCC for personal services companies stipulates that the text of the job advertisement must only include: the job title; the profile sought; details of how working hours will be organized; *and* pay conditions.

An agreement of 12 June 2018 on quality of life at work and professional equality, extended by order of 5 February 2021 of the NCC for private hospitals of 2002 was concluded to develop the conventional policy on equal treatment. Accordingly, company managers undertake to comply with the following measures: verification of neutrality in the drafting of job offers; dissemination of all job offers internally and to staff representative bodies; requirement for the offer to contain elements relating to the job description, the qualification requested (including certification) and the conditions of employment (full-time/part-time, permanent/ fixed-term contract, remuneration, etc.).

1.8.1.2 Conditions Governing Recruitment

The NCC for the home help, support, care and services branch of 2010 states that during the recruitment interview, the employer may only request written or oral information that is directly related to the performance of the job or training period concerned, in order to assess the applicant's skills and suitability for the job. Employers must not take a woman's state of pregnancy into consideration in refusing to hire her or in terminating her probationary period. Employers undertake to build partnerships with players likely to make vacancies accessible to as many people as possible and to broaden the range of applicants in order to remedy the imbalances observed. Staff representatives will make proposals for action to reduce these imbalances.

The 2012 NCC for personal services companies requires each company in the personal services sector to implement a recruitment procedure that eliminates any risk of discrimination and promotes professional equality. In order to ensure equal access to employment for all, recruitment criteria must be strictly based on required professional skills and/or aptitudes. The NCC stipulates the principle of equal access to night work, which in France has given rise to a conflict with European Union law (see introduction), in the following terms:

> The employer may not take gender into consideration: – to hire an employee for a job involving night work; – to transfer an employee from a day job to a night job or vice versa; – to take specific measures for night workers or day workers with regard to vocational training (article 7, title 1st).

Given the specific nature of night work, the employer must ensure that the conditions of access to and organization of training are adapted to enable night

workers to benefit from training. Where appropriate, the employer may propose temporary changes to the employee's working hours.

The agreement of 12 June 2018 on quality of life at work and professional equality, extended by order of 5 February 2021 of the NCC for private hospitals of 2002, provides for various means of combating discrimination in recruitment: diversification of recruitment channels and submission of offers, in particular to operators of the public employment service; setting up mixed recruitment teams, where possible. To avoid certain selection biases and highlight skills that are sometimes not very visible, it is recommended that the use of certain types of *curriculum vitae* be promoted. The industry is therefore committed to promoting the use of a curriculum vitae (CV) that focuses on the substance of an application rather than its form. Furthermore, in the context of external recruitment or internal promotion, the social partners recommend ensuring that the *ratio of* women and men interviewed corresponds to that of the applications submitted, given equal skills. Recruitment criteria should always be based on qualifications, skills and experience. In addition, Pôle emploi, Cap emploi or any other recruitment intermediary responsible for selecting applications on behalf of a company will be asked to ensure a balanced selection of applications with regard to the proportion of women and men received. The sector's social partners encourage companies to distribute—electronically or on paper—to candidates interviewed for a job, a document setting out the respective rights and obligations of the parties (employers and employees) in terms of recruitment, as set out in articles 1221-6 to 1221-9 of the French Labor Code.

1.8.1.3 Stereotypes

The 2012 NCC for personal services companies devotes a large part of its preamble to the principle of non-discrimination and equal treatment.

> Aware of the prejudices and stereotypes in the personal services sector in particular, due in particular to the very high proportion of women in the sector, the parties also undertake to promote diversity in the branch via objective recruitment and professional assessment mechanisms. A periodic report on this subject will be drawn up at branch level on the basis of information collected from companies in the sector.

The 2012 NCC for personal services companies requires companies to appoint an "equal opportunities correspondent" responsible for monitoring training and awareness-raising initiatives and for combating prejudice and stereotypes carried out by the employer. In companies with staff representatives but no works council, it is recommended that an "equal opportunities correspondent" be appointed from among the members of staff. The parties stress the important role of management in this respect. Notwithstanding the employer's legal obligations, an assessment report is drawn up annually by the "equal opportunities correspondent". This report summarizes: recruitment procedures within the company, the distribution of new recruits with indications of gender, age and any

cases of disability. This report is sent to the works council as part of the single annual report. It will also be sent to the union delegates during the mandatory annual negotiations. The time spent at this meeting is not deducted from the delegation hours of the persons concerned. Where the company does not have a staff representative, employees may ask the employer directly about the systems in place in the company and the measures taken to combat discrimination and promote professional equality over the past financial year. More generally, all management staff in companies in the sector must be trained to manage human resources in a way that guarantees non-discrimination and promotes equality.[118]

The agreement of 12 June 2018 on the quality of life at work and professional equality, extended by order of 5 February 2021 of the NCC for private hospitals of 2002, pursues the objective of improving the rate of gender diversity in jobs and promoting awareness of stereotypes among recruiters. The measurement indicators will be based on sex-disaggregated figures for the number of employees on fixed-term contracts (CDD) and open-ended contracts (CDI), distinguishing between full-time and part-time work.

1.8.2 Vocational Training, Job Classification and Gender

Job classification is one of the traditional subjects of collective bargaining at industry level in France. The industry agreements adopt classification grids, the purpose of which is to identify jobs in the sector by formalizing their description, to support employees in their professional development, to establish a hierarchy of jobs based on their content, *to* facilitate intra-sector mobility and professional equality as part of forward-looking management of jobs and skills initiated at national level and implemented at local level. None of the collective bargaining agreements applicable in the sector include gendered criteria in job classification.

Some partners see vocational training as a lever for ensuring equality in the workplace, and are working on measures to remedy the inequalities observed. For example, the NCC for individual employers and home based s of 2021 stipulates that since vocational training is an essential lever for ensuring equality between women and men in access to employment and in their career paths, employees must have equal access to all these schemes.[119]

In the 2010 NCC for the home help, support, care and services branch, it is expressly stipulated that "training initiatives, both for individual professional development and to adapt to changes in the structure, must benefit both sexes, whether they are full-time or part-time employees, and regardless of their family situation". Two specific objectives are being pursued. On the one hand, the sector's structures undertake to maintain and develop, through training, the conditions guaranteeing respect for parity in the exercise of positions of re-

[118] Article 1, part III of the NCC for personal services companies of 2012.

[119] Article 12.3, part II, chapter II of the NCC individual employers and home based employment of 2021.

sponsibility. Secondly, in order to facilitate the return to work after an absence of more than 1 year due to parental leave, organizations are invited to develop the practice of interviews. For example,

> after an absence of this nature, if it is necessary to update knowledge, this can be the subject of a training period. Companies must anticipate the need for employees to return to work and provide the necessary support.[120]

The period of absence of employees on maternity leave, adoption leave, parental presence leave or parental education leave is fully taken into account when calculating their rights under the Individual Right to Training (DIF).

In the agreement of 12 June 2018 on the quality of life at work and professional equality in the NCC for private hospitals of 2002, the social partners undertake to ensure: "– that the training courses on offer, and in particular the opportunities for access to certification, are aimed at both female- and male-dominated professions. Particular care will be taken to ensure that both sexes have balanced access to training leading to certification, regardless of working hours, so as to guarantee career development prospects for all employees, in the light of their needs and those of the company, with a view to strengthening gender diversity:

- Organize the training (place and time) in such a way as to enable everyone to take part, particularly employees with special family constraints. In this way, companies will be able to measure any gaps in access to training.
- Encourage the training of management and human resources professionals or those in charge of recruitment, as well as managers, in the implementation of measures conducive to professional equality (in terms of recruitment, management, etc.). These training courses must in particular comply with the guidelines that the Conseil Supérieur de l'Egalité Professionnelle (CSEP) (Higher Council for Professional Equality) may formulate in this area". As in most of the NCCs, the measurement indicators will have to take into account the number of employees, broken down by gender, who are on training, full-time, part-time and/or working night shifts.

1.8.3 Promotion, Career Development and Gender

The NCC for individual employers and home based employment of 2021 makes no provision for promotion, career development or gender, no doubt due to the fact that employers are private individuals, not companies, and therefore have only one employee.[121] As for the 2012 NCC of personal services compa-

[120] Article 4, Title VIII of the NCC for the home help, supports, care and services of 2010.

[121] However, the concepts of promotion and career development are less present in the collective agreement, as the primary objective of the existing employment relationship between a private individual employer and his employee is to meet a personal need of the private individual employer, which may not change over time. On the other hand, these two concepts are taken into account in the context of branch mechanisms, negotiated by the social partners, to recognize the loyalty of employees in the professional branch and encourage

nies, it merely stipulates that employees must not be discriminated against in the course of their careers and in their career development within the branch, whether in terms of access to training or promotion, pay or professional mobility.

On the other hand, two agreements in the sector devote a fairly long section to this issue, in line with the signatories' concern for gender diversity in the workplace, which is undoubtedly the central problem in the professions covered in this sector, characterized by a very clear gender polarity between operational jobs and managerial and responsible positions. Gender equality in employment means that women and men should have the same opportunities for career development and access to positions of responsibility.

Accordingly, the social partners of the 2010 NCC for the home help, supports, care and services reiterate their desire to eliminate any factor likely to prevent women and men from gaining access to managerial positions and positions of responsibility. They invite companies to take all necessary measures to achieve this objective, in particular:

- Examine the criteria used to define jobs that would exclude women or men from accessing them, even though they have all the skills required to do so. In particular, they will ensure that job titles do not lead to any gender discrimination.
- To ensure that women and men do not suffer any delay in their career progression as a result of periods of contract suspension such as maternity, adoption or parental leave. Support measures are taken before, during and on return from parental leave.
- To seek ways of enabling employees who so wish to maintain a link with them throughout the period of maternity leave or full-time parental leave, in order to facilitate the employee's return to work at the end of his or her absence.
- Ensure that the way in which work is organized within the same function does not constitute a factor of discrimination in the allocation of tasks and opportunities for promotion.
- Be particularly careful to ensure that any adjustments to working hours that may have been made, in particular to facilitate the reconciliation of private and family life, do not stand in the way of career development proposals.
- Offer a specific interview after parental leave of at least 1 year to all employees concerned, in particular when they return to their jobs or to a job that is at least equivalent.
- Undertake to correct any discriminatory treatment; the structures undertake to correct it.

Furthermore, the sector's social partners consider that the choice of part-time work or any reorganization of working hours should not act as a brake on

their development: introduction of a conventional indemnity for voluntary retirement (cf. appendix 4 to the collective agreement), professional training mechanism (appendix 2 to the collective agreement), job classification which provides for intra-sector mobility with salary enhancement in the event of a branch title.

career development. Furthermore, when full-time positions become available, priority will be given to offering them to part-time employees who have the required qualifications and skills and who so request.[122]

The 2010 NCC for the home help, support, care and services sets up a communication mechanism at sector level to support the contractual job gender balance policy, with the aim of "developing a strong communication campaign on the image and representation of professions", with the aim of "reducing the imbalance between men and women". The NCC encourages the companies falling within its scope to also put in place internal and external communication to promote gender diversity and professional equality, highlighting the human, economic and social issues involved. The NCC recommends awareness-raising initiatives for "all local managers, in particular to avoid any discriminatory behavior".[123] The NCC draws companies' attention to the need to ensure that their external communications with care recipients "do not contain any discriminatory wording".[124] Rider 59 of 2023 to the NCC adds that awareness-raising work can be carried out with the CSE when it exists or with the referent appointed within it, as well as with employees "to bring out concrete reflections on the obstacles to professional equality (for example, this could take the form of a questionnaire, one or more working groups, or be the subject of a discussion during a meeting on employees' right of expression) in order to bring out appropriate" and, above all, shared corrective measures.

The rider of 12 June 2018 on the quality of life at work and professional equality of the NCC for private hospitals of 2002 adopts measures to encourage professional promotion and/or access to responsibilities:

- In particular by ensuring that women and men have equal access to information about internal mobility opportunities for higher-level jobs and for jobs in all of the company's business lines. The aim is to combat the "glass ceiling" and "glass partition" effects, while promoting professional diversity. Professional training will be used as much as necessary to facilitate these mobility opportunities.
- By taking into account training courses taken and/or certifications acquired at the end of a training course or as part of a validation of acquired experience (VAE), at the initiative of both employees and employers.
- making the most of the professional interview, introduced by the Act of 5 March 2014, to identify solutions for career progression and encourage employees to take on more responsibility.

Specific training courses to prepare for competitive examinations and/or diplomas leading to certification must be equally accessible to women and men,

[122] Article 5, Title VIII of the 2010 NCC for the Home Help, Support, Care and Services Branch.

[123] Article 6, Title VIII of the 2010 NCC for the Home Help, Support, Care and Services Branch.

[124] Article 6.2, Title VIII of the 2010 NCC for the Home Help, Support, Care and Services Branch.

and to both full-time and part-time employees. In addition, employers undertake to ensure that, if necessary, following a career break of at least one year, women and men will be offered training to help them adapt to their previous or new job, or measures to help them return to work, so that they can resume their duties under the best possible conditions.

In order to promote equitable career development between women and men, the sector undertakes to avoid any negative impact on the career development of employees of companies who have taken parental leave (maternity, adoption, paternity, childcare, partial or total parental education leave), to identify the obstacles to career development for women and to promote the main levers that encourage career development for women. Indicators must take into account: the number of employees, by gender, who have benefited from preparation for a competitive examination and/or certifying diplomas, the percentage of women and men promoted from one year to the next by classification/professional category, the proportion of transfers away from home among the proposed transfers.

1.8.4 Means and Scope for Combating Gender Discrimination

Two original initiatives to combat gender discrimination have been taken by the social partners in the care sector. The first was to extend the scope of the measures to small structures with fewer than 50 employees, and the second was to set up an observatory in one of the branches.

1.8.4.1 Extending the Scope of Application to Companies With Fewer Than 50 Employees

Amendment 59 of 2023 to the NCC for the home help, support, care and services of 2010 extends the legal obligations in terms of gender equality applicable to structures with more than 50 employees to structures with fewer than 50 employees. This applies to the diagnosis prior to the implementation of a policy in favor of equality through an action plan. This assessment must be carried out at least over the past 3 years on all the indicators listed in the rider (access to employment, training, professional development and/or access to responsibilities, pay, work-life balance). For example, with regard to access to employment, the rider reiterates the principle of neutrality and exclusivity of criteria (skills, experience and qualifications) and, during the recruitment interview, the prohibition on seeking information not directly related to the job or work placement. The aim is to improve the gender balance of jobs in organizations with fewer than 50 employees. The actions suggested relate to neutrality in the drafting of job offers, the introduction of a code of good conduct or recruitment processes that respect the rules of gender equality, increasing the proportion of men in "highly feminized" sectors and increasing the proportion of women in sectors with a high proportion of men. The rider recommends taking as indicators the rate of recruitment by gender (fixed-term/permanent contracts, full-time/part-time), the number of employees who have attended a training course or aware-

ness-raising action on gender equality, and the number of women and men met during the final stage of the recruitment process before choosing the candidate.

As far as training is concerned, Rider 59 sets a target for organizations with fewer than 50 employees that at least 50% of employees should have benefited from job adaptation training after a break in employment of more than 6 months. The rider reiterates that the interview must be offered to all employees after a period of interruption (maternity leave, full-time or part-time parental leave, adoption leave, care-giver leave, period of part-time work after maternity or adoption leave, sabbatical leave, sick leave of more than 6 months, trade union mandate). To assess the rate of access to training by gender, the agreement requires companies to use at least two of the following three indicators: the number of men and women who have received training, the number of hours of training per scheme per gender and per sector, and the number of employees who have received training or job adaptation after a break in employment of more than six months, broken down by gender.

Rider 59 stresses that gender diversity depends on the opportunities offered for career development and access to responsibilities. To this end, the text requires companies with fewer than 50 employees to ensure that women and men are offered the same opportunities for internal mobility to higher-level jobs in line with the positions available within the structure (job titles without gender discrimination, support measures across the board at the end of periods of interruption, attention to work organization methods that may be factors in discrimination in the distribution of tasks, attention to the personal and/or family situation of employees and to flexible working hours, etc.). The rider reiterates that part-time work or working time arrangements must not be a hindrance to career development. In order to assess the rate of career development by gender, the addendum requires companies with fewer than 50 employees to calculate the indicator of the percentage of women and men on permanent contracts who have benefited from career development from one year to the next (change of sector, category, level), distinguishing between full-time and part-time employees.

1.8.4.2 The Creation of a Forward-Looking Observatory for Trades and Qualifications

The agreement of 12 June 2018 on the quality of life at work and professional equality in the NCC for private hospitals of 2002 sets up the prospective observatory or trades and qualifications in the private hospital branch (observatoire prospectif des métiers et des qualifications de la branche de l'hospitalisation privée) as a means of promoting professional equality, measuring the impact of actions implemented in companies and identifying good practices. The observatory has two functions: to assess the actions taken by companies in the light of the QWL indicators and to put forward proposals to guide the branch's policy in terms of methodology. Among the indicators, the industry agreement specifies: equal treatment of men and women; job diversity; reconciliation of personal and professional life; and respect for professional equality. The prospective observatory or trades and qualifications in

the private hospital branch will also collect gender-specific data, by sector of activity, relating to the following elements: the general percentage of women in the sector; the gender mix within the sector; the breakdown of employees and their average gross annual remuneration by remuneration bracket according to the jobs defined by the national collective agreement for private hospitals of 18 April 2002; the breakdown of employees by socio-professional category according to the nature and type of employment contract (permanent, fixed-term, subsidized contract, apprenticeship, etc.) and according to working hours (part-time, full-time, etc.); the breakdown of employees by professional category according to the nature and type of employment contract (permanent, fixed-term, subsidized contract, apprenticeship, etc.) and according to working hours (part-time, full-time, etc.) and according to working hours (full-time or part-time); the distribution of employees by age bracket; the distribution of employees in terms of access to vocational training (number of hours of training, nature of the training followed and nature of the beneficiary's employment contract and socio-professional category) as well as in terms of promotion. The observatory must draw up a three-yearly report which will be presented to the standing joint negotiating committee. The collective agreement for the sector of private individual employers and home-based employment stipulates that the social partners will rely on the Observatory of Family Jobs (Observatoire des emplois de la famille) to assess the gender mix of jobs in the sector and any inequalities between women and men in access to employment and continuing vocational training. Where appropriate, they should, as part of collective bargaining at branch level in the sector of individual employers and home employment, recommend measures to remedy the inequalities observed.

1.8.5 Bullying, Sexual Harassment, Violence and Gender

With two exceptions, harassment and violence are relatively little understood by NCCs in the care sector in general.

The agreement of 12 June 2018 on quality of life at work and professional equality in the NCC for private hospitals of 2002 devotes 2 articles to this. The legal obligations of the employer are recalled and the recommendations of the ANI of 20 March 2010 are repeated. The signatories of the 2018 agreement suggest that awareness-raising, communication, information and training initiatives be undertaken for prevention purposes. It is suggested that companies draw up a reference charter after consultation with the CSE, include a provision on this in the internal regulations, and put in place "an appropriate procedure for identifying, understanding and dealing with harassment and violence in the workplace", which could be based on discretion to protect the dignity and privacy of each individual, making information anonymous to parties not involved in the case, an investigation to follow up complaints, a mediation procedure, disciplinary action for false accusations, and external assistance including occupational health services.

Rider 59 of 2023 to the NCC for the home help, support, care and services branch of 2010 states that employers must prevent moral and sexual harassment likely to occur in the course of work, including in the homes of beneficiaries, by relying on a range of players. It recommends displaying the texts relating to the fight against moral and sexual harassment. In the event of a report, the employer must refer the matter to occupational medicine and take the necessary action by setting up an alert and investigation procedure, and take all appropriate sanctions in the event of proven harassment. The rider states that the employee will be offered support, such as psychological counselling through the platform set up by the industry.

1.9 Litigation or Legal Disputes Concerning "Employment Contracts" in the Care Sector and Discrimination Based on Sex

Working conditions in the care sector can be a subject of concern and debate, and conflicts can arise. However, as far as we know, there is very little case law in the area of sex discrimination and a study of the French press does not reveal any disputes in this area. progression.

This silence and lack of recourse to rights is consistent with the results of the survey conducted by the he Human Rights Defender (Défenseur des droits) on the perception of discrimination in the personal services sector.[125] The consequences of discrimination on any grounds (gender or origin) affect these people's professional lives and their health. 22% have decided to resign or negotiate a contractual termination for this reason (compared with 16% of the working population), 17% have been made redundant or had their contract not renewed (compared with 7%). From a health point of view, anger, fear, sadness and shame sometimes affect these people long after the event: almost 70% of people who have experienced discrimination feel that they went through a period when their mental health deteriorated (sadness, fatigue, depression, fear, feelings of isolation). It is therefore understandable that, compared with the working population as a whole, few care workers seek redress: 17% have gone to the occupational health service or GP, 12% have spoken to the trade union, 87% have alerted the Labour Inspectorate (compared with 13%), or have taken their case to court (3% compared with 9%).[126]

1.10 Wage Provisions in Legislation or Collective Agreements in the Care Professions

The principle of equal pay for men and women for equal work or work of equal value[127] has long been established in French law, dating back to a law passed in

[125] Défenseur des droits/OIT, *Défenseur des droits/OIT. Enquête: La perception des discriminations dans l'emploi – 16e baromètre »: édition consacrée au secteur des services à la personne 2022* (2022).

[126] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi.*

[127] The notion of "equal value" is defined in article L. 3221-3 of the French Labor Code.

1972. Although the pay gap has narrowed steadily over the last 25 years (from 22.1% in 1995 to 15.5% in 2021 for comparable working hours and jobs), significant differences remain due to the fact that women are more likely to work part-time, and to the gendered distribution of occupations and lower-paying jobs.[128]

The NCC for private hospitals of 2002 stipulates that companies shall ensure, for the same work or for work of equal value, equal pay for men and women, in accordance with the provisions of article L. 3221-2 of the Labor Code. When examining economic trends and the employment situation in the sector, in application of article L. 2242-3 of the Labor Code, any situations revealed to be in contradiction with this principle will require appropriate measures to be defined in order to put an end to them.[129] More generally, the[130] collective agreement incorporates the provisions of the French Labor Code on the principle of professional equality[131] and on collective bargaining at company level. These elements are taken up in the agreement of 12 June 2018 on the quality of life at work and professional equality, which requires companies to guarantee the absence of illegitimate disparities in pay, i.e. not based on clear and objective factors (qualifications, professional experience, position, level of responsibility, tasks entrusted, results) between women and men placed in equivalent situations. Where necessary, companies must take steps to remedy any inequalities observed.

In the 2021 NCC for individual employers and home based employment, the social partners stress their commitment to the principle of equal pay for men and women for the same work or work of equal value, as defined by the legal provisions.[132]

The signatories of the NCC for the home help, support, care and services of 2010 understand remuneration to mean the ordinary basic or minimum wage or salary and all benefits and accessories, in connection with the job held, and stipulate that the various elements making up remuneration are established according to the same standards for women and men. The NCC introduces clauses on the treatment of parental leave, with a view to avoiding unequal effects on professional or family life. Thus

> the parties reiterate that maternity, paternity and adoption leave is considered as actual working time for the purposes of: determining seniority rights; allocating profit-sharing; calculating paid leave. The social partners wish to neutralize the financial impact that parental leave may have on pay trends between men and women. In particular, they agree that during or at the end of the period of

[128] See *INSEE Focus* 292 (March 2023). Ph. Roussel, *Femmes et hommes, l'égalité en question* (Paris: INSEE, 2022).

[129] Article 78 of the NCC for private hospital of 2002.

[130] Articles 79 and 80 of the NCC for private hospital of 2002.

[131] Article L. 2223-57 of the French Labor Code.

[132] Article 12.1, Chapter 2, Part. II of the NCC for individual employers and home based employment of 2021.

suspension of the employment contract for maternity or adoption, employees shall benefit from the same general increases that may be granted within the structure to other employees in the same professional category.[133]

Rider 59 of the 2010 NCC for the home help, support, care and services also addresses equal pay in organizations with fewer than 50 employees. The partners invite them to draw up gender-disaggregated and anonymized pay reports based on the indicators listed in the agreement (basic annual salary, age, seniority in the job in the branch, classification under the agreement, branch, category (employee, TAM, executive), level and step, level of diploma, seniority in the job within the organization; working hours (full-time/part-time), absences due to family leave (maternity leave, parental leave, paternity leave, etc.), with the exception of parental leave, with the exception of leave for sick children.

1.11 Litigation or Disputes in the Media Concerning Pay in the Care Sector and Discrimination Based on Sex

There are very few high-profile cases of gender discrimination in the care sector. Whether in the nursing profession, the care assistant profession or the home help profession, the subjects that are repeatedly covered in most newspapers and media concern the training of care workers,[134] remuneration,[135]

[133] Article 3 Title VIII of the NCC for individual employers and home based employment of 2021.

[134] "Aides-soignants: les syndicats infirmiers contre la formation en deux ans," *Ouest France*, August 10, 2023, <https://www.ouest-france.fr/sante/les-infirmiers-contre-la-formation-en-deux-ans-33f83fa2-3793-11ee-a9e9-8ba2277a57c4> (Accessed December 13, 2023); "Santé: les syndicats infirmiers vent debout contre une formation raccourcie pour les aides-soignantes," *Sud-ouest*, September 18, 2023, <https://www.sudouest.fr/sante/hopital/sante-les-syndicats-infirmiers-vent-debout-contre-une-formation-raccourcie-pour-les-aides-soignantes-16698804.php> (Accessed December 13, 2023).

[135] "Hôpital: la rémunération de nuit des infirmiers et des aides-soignants sera "majorée de 25%", annonce Elisabeth Borne," *France info*, August 31, 2023, <https://www.franceinfo.fr/sante/sante-la-remuneration-de-nuit-des-soignants-sera-majoree-de-25-et-l-indemnite-de-travail-le-dimanche-augmentera-de-20-annonce-elisabeth-borne_6035879.html> (Accessed December 13, 2023); Hôpital: Élisabeth Borne annonce 1,1 milliard d'euros par an de revalorisations pour les soignants," *bfmtv,* August 31, 2023, <https://www.bfmtv.com/politique/gouvernement/hopital-elisabeth-borne-annonce-1-1-milliard-d-euros-par-an-de-revalorisations-pour-les-soignants_AN-202308310796.html> (Accessed December 13, 2023); "Revalorisation des soignants: "On veut être payés à hauteur de nos compétences et responsabilités", lance Thierry Amouroux, du Syndicat national des professionnels infirmiers," *France info*, 31 August 2023, <https://www.franceinfo.fr/sante/hopital/crise/revalorisation-des-soignants-on-veut-etre-payes-a-hauteur-de-nos-competences-et-responsabilites-lance-thierry-amouroux-du-syndicat-national-des-professionnels-infirmiers_6036011.html> (Accessed December 13, 2023); "Revalorisation des soignants: le secteur privé dénonce un traitement inégalitaire," *Sud-ouest*, September 1st, 2023, <https://www.sudouest.fr/sante/hopital/revalorisation-des-soignants-le-secteur-prive-denonce-un-traitement-inegalitaire-16472411.php> (Accessed December 13, 2023).

difficult working conditions,[136] leading employers in both the private and public sectors to seek to retain care workers[137] and to question the conditions of their retirement.[138]

In 2019-2020, the covid-19 epidemic caused an electroshock by highlighting the invisibilisation and lack of recognition of the care professions, which led carers to speak out more loudly.[139] This will lead to an increase in the salaries of care workers as part of the Ségur health package, the cost of which is estimated at 26,827 million euros in the private non-profit and for-profit sector and 16,500 million euros for public employers.[140] Nevertheless, this will not give rise to the fact that society has become partly aware of the paradox that exists between the essential and vital social usefulness of front-line jobs,[141] which include "care professions, the majority of which are occupied by women, and their particularly low levels of consideration and professional and salary recognition".[142]

The result is a lack of attractiveness in the care professions, leading to staff shortages and work overload. Caregivers see this as a lack of recognition or

[136] "TESTIMONIALS: "92 residents for four or five care assistants", Ehpad staff warn of "difficult" working conditions," *France info*, September 28, 2023, <https://france3-regions.franceinfo.fr/occitanie/herault/beziers/temoignages-92-residents-pour-quatre-ou-cinq-aide-soignants-le-personnel-d-un-ehpad-alertent-sur-des-conditions-de-travail-difficiles-2847467.html> (Accessed December 13, 2023).

[137] "Nearly one hospital nurse in two has left the hospital or changed profession after a ten-year career, Études et résultats," DREES 1277 (2023), <https://drees.solidarites-sante.gouv.fr/publications-communique-de-presse/etudes-et-resultats/pres-dune-infirmiere-hospitaliere-sur-deux> (Accessed December 13, 2023).

[138] "Réforme des retraites: "Neuf mois de travail en plus, est-ce que je tiendrai?", crainte une aide-soignante - Paris (75000), " *La montage*, August 31, 2023, <https://www.lamontagne.fr/paris-75000/actualites/reforme-des-retraites-neuf-mois-de-travail-en-plus-est-ce-que-je-tiendrai-craint-une-aide-soignante_14363625> (Accessed December 13, 2023). See also L. Chassoulier, Fr.-X. Devetter et al., *Investir dans le secteur du soin et du lien aux autres. Un enjeu d'égalité entre les hommes et les femmes*, Clersé-UMR 8019, Université de Lille, RRS-CGT, final report, January 2023, p. 142 which estimates that "64% of all (care assistants, nurses and home helpers) do not feel capable of doing this job until they retire (this is only the case for 42.8% of people in employment in the Working Conditions survey, DARES 2019) and it is even more true among the youngest in the sample (over 70% of under-30s)".

[139] For more on this, see: Chassoulier, Devetter et al., *Investir dans le secteur du soin*, 105 ff. which draws up the results of the consultation entitled "Mon travail le vaut bien" ("My job is worth it").

[140] Chassoulier, Devetter et al., *Investir dans le secteur du soin*, 56. The data for this work was taken from: INSEE, *Enquête sur l'emploi 2019*.

[141] "First confinement: 392,000 "front-line" workers, the majority of whom are women - INSEE Analyses Provence-Alpes-Côte d'Azur – 97," <https://www.insee.fr/fr/statistiques/5895960> (Accessed December 4, 2023).

[142] "First confinement: 392,000 "front-line" workers," 247.

even abandonment of the elderly, particularly in the for-profit sector, against a backdrop of a trend towards privatization[143] of care in EHPADs.[144]

1.12 Specific Provisions on Reconciling Work and Family Life in Legislation or Collective Agreements in the Care Sector

Neither legislation nor collective agreements refer to reconciling work and family life "for women workers" in the care sector in general or for each job in the care sector. Nor are there any court rulings on the subject. Collective agreements provide for work-life balance arrangements for night workers of both sexes (1.12.1). One agreement addresses the issue of reconciling work and family life in a global (societal) way, i.e. by placing work in a given territory with its constraints in terms of trade, transport, etc. (1.12.2).

1.12.1 Night Work and Family and Social Responsibilities

The NCC for private not-for-profit hospital and nursing establishments of 1951 (not extended) stipulates that measures may be taken by establishments and services to facilitate the coordination of night work by night workers with the exercise of family and social responsibilities. When night work is incompatible with the following imperative family obligations: looking after a child, caring for a dependent person, the employee may request to be assigned to a day shift, provided that a position compatible with the employee's professional qualifications is available. For the same reasons, an employee working during the day may refuse an offer of night work, without this refusal constituting misconduct or grounds for dismissal.

The 2012 NCC for personal services companies stipulates that, by virtue of the protection of social and family life,

> an employee working during the day may refuse an offer of night work without this refusal constituting misconduct or grounds for dismissal. For the same reasons, any night worker may ask to be assigned to a day shift because of compelling family obligations. The employer must respond within a maximum of one month to any request for a change of assignment from a night shift to a day shift. As stipulated by law, the NCC must provide for transport arrangements, which is a point of attention in the case of work carried out at the beneficiary's

[143] Chassoulier, Devetter et al., *Investir dans le secteur du soin*, 248. See also, M. El Khomri, *Plan de mobilisation nationale en faveur de l'attractivité des métiers du grand-âge 2020-2024*. Report to the Minister of Solidarity and Health (2019).

[144] Remember the Orpea Ehpad scandal revealed in Victor Castanet's book *Les fossoyeurs* (Paris: Fayard, 2022). More recently, the CGT denounced mistreatment in the Emera Ehpad group: "Le groupe d'Ehpad Emera dans la tourmente judiciaire, deux ans après le scandale Orpea," *Le Monde*, November 30, 2023 <https://www.lemonde.fr/societe/article/2023/11/28/le-groupe-d-ehpad-emera-dans-la-tourmente-deux-ans-apres-le-scandale-orpea_6202787_3224.html> (Accessed December 11, 2023).

home. In order to facilitate the transport of night workers, work schedules are organized in such a way as to enable employees who do not live at home or who do not have a motorized vehicle to use public transport. Exceptionally, and only with the employer's authorization, a taxi, the cost of which will be borne by the employer, may be requested by an employee who no longer has any means of transport to return home.

The NCC for home help, support, care and services of 2010 (extended) stipulates measures designed to make it easier for employees to combine night work with family and social responsibilities. Thus, in accordance with legal and regulatory provisions, when night work is incompatible with imperative family obligations (childcare, care of dependent persons), an employee working during the day may refuse an offer of night work without this refusal constituting misconduct or grounds for dismissal. Similarly, because of the pressing family obligations set out above, a night worker may request to be assigned to a day shift, provided that a position compatible with his or her professional qualifications is available. In order to enable each employee to reconcile family and professional life, a schedule is drawn up and given to each employee, indicating the weeks when he or she may be required to work at night. Rider 59 of 2023 on equality to the NCC of the home help, support, care and services branch of 2010 deals with working conditions and especially work-life balance. The signatories ask companies to take better account of workers' personal and family constraints, to study the organization of working hours for employees with particular personal or family responsibilities, and to study the introduction of schemes to contribute to childcare costs. To this end, the agreement recommends the following indicators: total number of employees likely to benefit from sick leave for children, by gender, number of days of sick leave granted, by gender, number of night workers broken down by profession, by working hours (full-time/part-time) and by gender.

1.12.2 The Societal Approach to Work-Life Balance

The agreement of 12 June 2018 on quality of life at work and professional equality in the NCC on private hospitals of 2002 includes very pragmatic clauses for reconciling work/family/personal life on the organization of work. They recommend that companies:

- Encourage the introduction of suitable meeting times, in particular to enable night workers to take part or to plan journeys in advance,
  - facilitate the transition to day work, where this is envisaged, by measures to adapt the position,
  - organize the work, in particular and as a minimum by respecting the notice periods for the management and modification of schedules,
- to improve working conditions and encourage employees working at night to combine their work with family responsibilities,
- to encourage and negotiate, through company agreements in companies with more than 50 employees, consideration of the impact of information

and communication technologies in the management of working time, and in particular the right to disconnect, in order to ensure that their use respects employees' personal lives and rest periods.
- Initiate discussions on the introduction of a time charter in companies with fewer than 50 employees or where company negotiations have failed.
- Intervene, negotiate, enter into agreements or contracts with the various local stakeholders who have an impact on the company's environment (public transport timetables, childcare, school timetables, social landlords, etc.).
- Encourage teleworking, within the framework of legal provisions and during the annual negotiations on the quality of life at work, as long as this is compatible with the employee's qualifications and the organization of his or her activity, while respecting the right to disconnect.
- Organise and innovate services and adaptations in-house or through intercompany pooling to facilitate this reconciliation (company crèches, assistance with health expenses, company concierge services, etc.).

1.13 Statistics or Databases Published in Your Country on Accidents at Work or Occupational Diseases in the Care Sector as a Whole or in Each of the Jobs in the Care Sector According to the Sex of the Workers.

After contacting CARSAT, we did not have confirmation of the existence or not of statistics or databases on work accidents or occupational illnesses resulting from the work of personnel in the care sector.

1.14 Statistics and Databases on the Proportion of Male and Female Workers in the Care Sector Workforce

Women's employment rates have risen sharply since 1975, making France one of the European countries with the highest rates in the 25-55 age group. However, this increase has been gradual over the generations and has not affected all women in the same way.[145]

At ages between 30 and 50, the activity rate for women has risen sharply over the generations. By the age of 40, it had risen from 69% for the generation born in 1945 to 86% for the generation born in 1975, an increase of 17 percentage points. However, this increase was not fully reflected in a rise in the full-time equivalent employment rate, due both to the rise in the unemployment rate and to the growth in part-time employment. At the same age and for the same generations, the employment rate rose by only 15 percentage points and the full-time equivalent employment rate by 13 percentage points. The increase in women's participation in the labor market has therefore partly taken the form of part-time employment.

[145] Henri Martin, "Après plusieurs décennies de forte progression, le taux d'emploi des femmes commence à stagner en France," *Population et Sociétés* 606 (2022).

These general trends conceal major disparities according to level of qualification. For women with the lowest levels of education, the increase in participation rates has mainly taken the form of part-time jobs, since full-time equivalent employment rates have risen very little. For the most highly educated, on the other hand, the rise in activity rates was almost entirely reflected in full-time jobs: their activity rate rose by 13 percentage points and the full-time equivalent employment rate by 15 percentage points (at age 40 between the 1945 and 1975 generations). Their full-time equivalent employment rate has also risen faster than their employment rate (15 points compared with 13 points), reflecting less recourse to part-time jobs.

Women's growing participation in the labor market has also been strongly determined by the number of dependent minor children in the household. The increase in activity and employment was small for women without dependent children, as activity rates were already high. It was moderate for women with just one dependent child, and marked for women with two or more dependent children. Nevertheless, the presence of many children continues to be a major determinant of employment. At the age of 40, for the generation born in 1975, the full-time equivalent employment rate is 70% for all women, but only 58% for women with three or more dependent children.

However, the latest available data shows that this increase in female employment is running out of steam. For women born after 1970, activity and employment rates are no longer increasing over the generations.

The gaps in activity and employment between women and men have therefore continued to narrow over the generations. However, the catching-up process, which was very rapid for the generations born between 1925 and 1970, is slowing considerably for the later generations. Whereas for the generations born before 1970 this was mainly due to an increase in the indicators for women, it is now entirely due to a reduction in the indicators for men.

Strong growth in activity and employment for men and women around age 60.

At ages close to 60, the activity and employment rates for men fell sharply for the generations born between 1925 and 1940. This decline was the result of regulatory changes in the pension system and the labor market: development of early retirement and gradual cessation of activity schemes, exemption from job-seeking for the oldest unemployed, introduction of the age of 60 for entitlement to retirement, etc. For women, the effect of these changes was counterbalanced by increasing participation in the labor market, with the result that activity rates stagnated at the same ages and for the same generations. For the generations born after 1940, the trend was completely reversed. These generations have been affected by the gradual phasing out of early retirement schemes: job-seeking exemption was abolished in 2012 and early retirement schemes disappeared in 2005. These generations have also been affected by the various reforms of the pension system: extension of the insurance period required for payment of a full-rate pension (1993 and 2003 reforms), raising of the two age limits of the pension system (2010 reform), with the legal age of entitlement rising from 60 to 62 and the age of cancellation of the discount from 65 to 67. The participation rate at age 59 has thus increased by 33 percentage points between

women born in 1925 and those born in 1955. For men of the same generation, the increase was 14 percentage points. Employment rates rose similarly, which shows that these reforms did indeed result in people staying in work for longer.

The increase in women's participation in the labor market is a contemporary development that is already well known and documented. So what do the most recent data tell us? Firstly, the increase is slowing down at the prime working ages (30-55). Secondly, for men, the trend already observed of a slow decline in participation in the labor market is continuing, so that today it is this decline that explains why activity and employment for men and women continue to converge. Lastly, these data show a strong increase in both labor force participation and employment at ages close to retirement. This observation, which applies to both men and women, can be explained both by the gradual phasing out of retirement schemes and by reforms to the pension system.

Statistical data: Summary of: ILO-WHO, *Gender pay gaps in the health and care sector. An analysis of the situation in the world in the era of COVID-19*, Study Report 2022.

The situation of women in the care and personal services sector is well known and studied by international institutions such as the ILO. According to the 2022 report, the sector is highly feminized worldwide—women account for around 67% of workers worldwide—and there is a significant degree of occupational segregation between women and men. Despite the high degree of feminization,[146] there are gender inequalities in the health and care sector, particularly in terms of pay.[147] According to this report, the first of its kind to provide a global analysis of the gender pay gap across the sector,

> women employees earn approximately 20% less than men in the health and care sector.[148] The narrowing of the gender pay gap after adjusting for concentration effects is explained by the fact that women are over-represented in the lower occupational categories (in terms of pay), where the gap is smaller. Men, on the other hand, are over-represented in the higher professional categories (in terms of pay) (doctors, for example), where the gender pay gap is greater.[149]

[146] ILO-WHO, *Gender pay gap in the health and care sector. An analysis of the global situation in the era of COVID-19,* Study Report (2022), 7, which states that "Women are over-represented in the health and care sector, where approximately 7 out of 10 jobs are held by women. "The body of evidence indicates that the high degree of feminization of the health and care sector is a key factor behind the lower pay of both women and men in the sector and contributes to the gender pay gap prevalent in the wider economy."

[147] See in particular M. Brynin and F. Perales, "Gender Wage Inequality: The De-gendering of the Occupational Structure," *European Sociological Review* 32, 1 (2016): 162–74; K. Leuze and S. Strauss, "Why do occupations dominated by women pay less? How 'female-typical' work tasks and working-time arrangements affect the gender wage gap among higher education graduates," *Erschienen in Work, Employment & Society* 30, 5 (2016): 802–82; F. Ochsenfeld, "Why Do Women's Fields of Study Pay Less? A Test of Devaluation, Human Capital, and Gender Role Theory," *European Sociological Review* 30, 4 (2014): 536–48; ILO, *Global Wage Report, 2018/19: What causes the gender pay gap* (Geneva, 2019).

[148] ILO-WHO, *Gender pay gap* (Report, 2022), 16.

[149] ILO-WHO, *Gender pay gap* (Report, 2022), 16.

According to the same report, "the gender pay gap in the health and care sector is largely unexplained by the factors determining wages in the labor market". Drawing on data from 54 countries, which account for around 40% of the world's employees, the report breaks down the gender pay gap in the health and care sector into two parts: that which can be explained by differences in the work attributes of women and men, and that which remains unexplained by these differences. The first part, which includes age, level of education, working time arrangements and institutional sectors, can explain a small part of the gender pay gap observed in the sector. However, most of the pay gap between women and men remains unexplained by the data available on professional attributes".

> Part of the unexplained gender pay gap can be attributed to the so-called "maternity pay gap" (a measure of the pay gap between mothers and women without children) and part can be attributed to the fact that the sector is highly feminized. In most economies, workers in highly feminized sectors are on average paid less than those in non-feminized sectors of the economy. Despite the increasing number of men who have joined the health and care sector in recent times, the high degree of feminization of the sector contributes to its undervaluation by society, with average pay being lower than in other sectors. This characteristic contributes significantly to the persistence of the overall gender pay gap in the economy as a whole.
> The gender pay gap in the health and care sector—expressed in its simplest form—is defined as the difference between the average wages of men and women in paid employment in the sector. This definition is in line with target 8.5 of UN Sustainable Development Goal 8 (Decent Work and Economic Growth), which aims to ensure "decent work and equal pay for work of equal value for all women and men" by 2030. One of the important measures of progress on this sustainable development goal is to equalize the "average hourly earnings of male and female employees, by occupation, age and disability status" (indicator 8.5.1) (UN, 2017). The general principle of equal pay for work of equal value is defined in the Preamble to the ILO Constitution and enshrined in the ILO's fundamental Conventions. Equal pay for men and women was enshrined as early as 1951 in the ILO Equal Remuneration Convention (no. 100), which promotes the principle of equal remuneration for men and women workers for work of equal value in all sectors of the economy. Today, 71 years after its ratification, this Convention is more relevant than ever, given the significant pay gaps that remain one of the underlying factors of gender inequality in the world.

This report is therefore in line with various global pacts and strategies, including the Global Strategy on Human Resources for Health to 2030 (WHO, 2016), The UN 2030 Agenda for Sustainable Development. The Five-Year Action Plan for Health Employment and Inclusive Economic Growth (2017-2021) (WHO, 2018), The ILO Global Commission on the Future of Work's2019 Working for a Better Future report and the ILO Centenary Declaration for the Future of Work 2019 It further addresses one of the key areas related to gender equity in the global health workforce (WHO, 2019).[150]

[150] ILO-WHO, *Gender pay gap* (Report, 2022),6–7.

In a large number of countries, the pay gap between women and men in the health and care sector is greater than in other sectors of the economy. This report shows that the difference between the gender pay gap in the health and care sector and that in other sectors is marginal. For example, in France the average hourly pay gap in the health and care sector is 14.1%, while in the rest of the economy it is estimated at 13.6%.[151]

COVID-19 has had an impact on employment and remuneration in the health and care sector:

> However, working conditions in this sector have deteriorated dramatically, particularly for workers on the front line of the fight against the pandemic (most of whom are women), whose risk of infection is also disproportionately high. While employment in the health and care sector had virtually recovered by December 2020 on average, this recovery lagged behind for certain types of workers in the sector, particularly women with low levels of education and in informal employment. The COVID-19 crisis disproportionately affected workers at the lower end of the wage scale, most of whom are women, so the average hourly wage (or monthly pay) of workers who remained in the sector appeared to have increased by the end of 2020. However, this is an artificial phenomenon and the fact is that the real total wage bill for the sector has fallen. Given the compositional effects in terms of the characteristics of health and personal care workers before and after the start of the pandemic, the gender pay gap appears to have narrowed only slightly between January 2019 and December 2020.

The world is facing a general shortage of healthcare and personal assistance workers.[152]

Conclusions/recommendations of the ILO-WHO report:

- Collect and analyze sector-specific pay data with sufficient frequency to enable timely assessment of working conditions for health and personal care workers, and in particular to monitor the gender pay gap in the sector.
- Investing in decent jobs in the health and care sector… would help make the sector more resilient and able to meet the growing global demand for health and personal care services fueled by ageing populations around the world (but particularly in high-income countries).
- To tackle the explained part of the gender pay gap, we need to reduce the "gender segregation" (both horizontal and vertical)[153] in employment in the health and care sector. This can be done in a number of ways: by attracting more men into the intermediate professional categories of the health and

[151] ILO-WHO, *Gender pay gap* (Report, 2022), 16.

[152] Following on from the ILO-WHO report, in France, see the Clersé-CGT report mentioned above.

[153] ILO-WHO, *Gender pay gap* (Report, 2022), 4: "Gender segregation in employment refers to the tendency for women to work in different occupations and sectors than men. The literature distinguishes two main types of segregation: horizontal and vertical. Both types are considered to contribute to gender inequality and the gender pay gap".

care sector; by offering training and equal opportunities for upward mobility for women in the health and care sector; and by raising awareness among young girls and women of careers in STEM disciplines (science, technology, engineering and mathematics).

1.15 Specific Provisions for Women on Health and Safety at Work in Legislation or Collective Agreements

Do the legislation or, where applicable, the collective agreements, for each of these professions in the care sector, include specific provisions for women in the area of health and safety at work? If so, please provide details.

The provisions of specific collective agreements on health and safety concern pregnant employees and are aimed either at reducing working hours (1.15.1) or switching from a night shift to a day shift without loss of pay (1.15.2) or parental leave (1.15.3).

1.15.1 Reducing Working Hours for Pregnant Women

Certain agreements, outside of any legal obligation, provide for measures to reduce the effective working hours of pregnant women. This is the case of the NCC for private not-for-profit hospital and nursing establishment (not extended) which states that "pregnant women, from the first day of the 3e month of pregnancy, will benefit from a reduction of 5/35 of their contractual working hours. This reduction will be spread over their working days". This is also the case for the NCC for the home help, support, care and services of 21 May 2010 (extended), which envisages "a reduction of 1 hour per day worked without loss of pay at the end of the 3e month of medically certified pregnancy, for full-time employees". This measure applies to part-time employees on a pro rata basis. Subject to agreement between the employee and her employer, this reduction may be accumulated and taken in the form of a half-day or full day's rest. The same NCC stipulates minimum daily and weekly rest periods, as well as the daily breaks provided for in the Labour Code. It specifies that the lunch break of at least 1/2 hour "may under no circumstances include travel time for work". As for the NCC of establishments and services fort the maladjusted and disabled persons, Title IV (not extended), it stipulates that pregnant women (working full-time or part-time) benefit from a 10% reduction in their working week.

In the agreement of 12 June 2018 on quality of life at work and professional equality in the NCC for private hospitals of 2002, the social partners and employers undertake to promote the improvement of working conditions for pregnant employees in companies by implementing: adaptation to the workstation and/or reorganization of working hours in conjunction with the occupational physician if the pregnant employee's state of health so requires, communication on the pregnant employee's right to benefit from a 10% reduction in daily working hours with continued remuneration from the end of the 2e month of pregnancy,

under the conditions set out in the national collective agreement for private hospitals of 18 April 2002. The same agreement includes clauses on breastfeeding, recalling the legal obligation[154] of employers with more than 100 employees to set up breastfeeding facilities in or near their establishments. In accordance with article L. 1225-30 of the French Labor Code, for a period of one year from the date of birth, an employee who is breastfeeding her child is entitled to one hour's breastfeeding time per day during working hours. Taking into account the specific time constraints in the professional field and to encourage the employee to breastfeed in the morning or evening, breastfeeding periods will be divided into one period of one hour or two periods of 30 minutes, which will be determined by agreement between the employee and the employer; failing agreement, this hour will be divided into two periods of 30 minutes, which will be placed in a way that generates three work sequences; these breastfeeding periods are paid.

1.15.2 Night Work and Pregnancy

The NCC for private hospitals of 2002 (extended) devotes a very long article to night work, the use of which is justified by the need to ensure continuity of service.[155] It should be emphasized that the agreement in this branch incorporates certain legal provisions as they stand (definitions, medical surveillance, right to refuse night work on the grounds of incompatibility with family responsibilities, break times, transport conditions, change of assignment for pregnant women) and in other respects has appropriated the possibility offered by the law of derogating *in peius*, going so far as to authorize certain aspects of night work to be organized at establishment level either by collective bargaining or, failing that, by referendum.

The NCC for private not-for-profit hospital and nursing establishment of 1951 (not extended) establishes a series of protections in various situations. For example, it recognizes the right of any employee who is medically pregnant or who has given birth to be assigned to a day job for the duration of her pregnancy and during the period of statutory postnatal leave, if she waives this, if she so requests. If the employer is unable to offer a day job, he must inform the employee or the company doctor, as the case may be, in writing of the reasons for not reassigning the employee. The employee's employment contract is then suspended until the start of her statutory maternity leave.

The 2012 NCC for personal services companies incorporates the legal provisions on the rights of pregnant women in relation to night work and adds, in view of the specific features of the sector and its work organization, that if the employer is unable to offer another job, it shall inform the employee and the occupational physician in writing of the reasons preventing the employee from being reclassified as a day worker. The employee's employment contract is then

[154] Article L. 1225-32 of the French Labor Code.

[155] Article 53 of the CCN Private commercial hospitalization of 2002.

suspended until the date of commencement of the statutory maternity leave and possibly during the additional period following the end of this leave in application of the above provisions. During this period, regardless of the employee's seniority, she will benefit from guaranteed remuneration consisting of a daily allowance paid by the social security system and additional remuneration payable by the employer, in accordance with the same terms and conditions as those set out in the inter-professional agreement of 10 December 1977 appended to the law on monthly pay of 19 January 1978.

1.15.3 Leave, Parenthood, Family Responsibilities and Gender

In the agreement of 12 June 2018 on the quality of life at work and professional equality in the NCC for private hospitals of 2002, the social partners ask companies in the branch to promote, particularly among men, paternity and childcare leave and the terms and conditions of the shared childcare benefit received during parental childcare leave.

1.16 Summary and Commentary of Court Decisions

Most often, disputes concerning carers relate to issues of discriminatory dismissal based on the health status of the care professional,[156] equal treatment of disabled workers,[157] equal pay resulting from changes to tasks,[158] undeclared work,[159] or refusal to allow practitioners with foreign qualifications to practize.[160]

1.17 Specific Provision on Termination of Contract Distinguishing Between Men and Women in Each of These Professions?

In France, there are no specific provisions on contract termination that differentiate between men and women in each profession. The only specific provisions concern the protection of pregnant women against dismissal under ordinary law. Article L.1225-4 of the French Labor Code establishes the principle that it is forbidden to terminate the employment contract of an employee who is medically certified to be pregnant during all the periods of suspension to which she is entitled in respect of maternity leave, whether or not she makes use of them, and in respect of paid leave taken immediately after maternity leave, as well as during

[156] CAA de Paris, 6e chambre, 17 january 2023, 21PA03731, Légifrance; CAA de Douai, 2e chambre, 28 november 2019, 18DA01045, Légifrance (Accessed November 15, 2023).

[157] CAA de Nantes, 3e chambre, 22 decmber 2017, 16NT01136, Légifrance (Accessed November 15, 2023).

[158] Cass. soc., 10 November 2009, 07-45.528, Publié au bulletin - Légifrance; CAA de Nantes, 3e chambre, 20 october 2017, 15NT03737, Légifrance (Accessed November 15, 2023).

[159] Cass. crim., 20 June 2017, 16-83.669, Légifrance (Accessed November 15, 2023).

[160] Conseil d'État, 5ème - 6ème chambres réunies, 31 march 2023, 461396, Légifrance (Accessed November 15, 2023).

the 10 weeks following the expiry of these periods. Under the French Labor Code, failure to comply with these provisions renders the dismissal null and void, giving the employee the option of requesting reinstatement or payment of damages.

1.18 Summary and Comments on Court Decisions

There has been no court ruling on this matter.

1.19 Specific Social Protection Provisions Distinguishing Between Men and Women in Each of These Professions

There are no specific social protection provisions that distinguish between men and women.

1.20 Legal Disputes Concerning the Granting of Social Benefits to Staff in the Care Sector Which Give Rise to Direct or Indirect Discrimination on the Grounds of Sex

To the best of our knowledge, there is no case law concerning the granting of benefits to staff working in the care sector that has given rise to direct or indirect discrimination on the grounds of sex.

1.21 Action by Equality Bodies

The Haut Conseil à l'Égalité entre les femmes et les hommes (High Council for Equality between Women and Men), the main institution for promoting gender equality, has not carried out any specific work relating to the rights of women care workers. On the other hand, the Conseil Économique Social et Environnemental (CESE), the Republic's third constitutional assembly, which participates in drawing up and assessing public policies, has carried out a number of studies and issued opinions on "The development of personal services" in 2007, and "Working at home with vulnerable people: linking professions" in 2020. In the field of research, the Institut de Recherches Économiques et Sociales (IRES), in association with the CGT trade union, carried out a study and published a report in January 2023 entitled "Investing in the care and support sector. Un enjeu d'égalité entre les hommes et les femmes".

In 2022, the Defender of Human Rights carried out a survey on "The perception of discrimination in employment in the personal services sector".[161] The health crisis of 2020 prompted this sectoral survey, as the pandemic highlighted the work of care professionals, so-called "front-line or essential" workers: home help employees. Working in or near people's homes, these professionals are sub-

[161] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi.* The results of this survey are corroborated by recent research published by Chasoulier, Lemière and Silvera, *Investir dans le secteur du soin*, 172 ff.

ject to difficult working conditions, under-valuing of their jobs, unequal treatment and discriminatory harassment in the exercise of their professions. These conditions are poorly documented by institutions, as noted by the Defender of Human Rights, and by research.

Nearly a third of female personal services workers feel that they have witnessed discrimination or discriminatory harassment at work at least once, slightly less than the working population (41%). They say they observe such discrimination in their day-to-day work (61% compared with 53% of the working population). The types of discrimination cited were: different working hours or time slots (33%), patients considered more difficult (22%) or the number of hours worked per week (22%).[162]

As in the general working population, almost a quarter of employees in the personal services sector (23%) say they have already experienced discrimination or discriminatory harassment in the course of their job search or career. Nearly a third say they have experienced this on several occasions.[163]

The forms of discrimination considered to be most widespread are those linked to gender identity (52%), sexual orientation (50%), being a woman (35%) and economic insecurity (33%). This discrimination most often manifests itself when looking for a job. Family situation is also a major factor in exposure: people who are not in a couple report more discrimination than those in a couple and living in the same accommodation (28% versus 20%). Among employees with one or two children, those who are separated and mainly or exclusively responsible for looking after them report almost twice as much discrimination as those who have alternating custody or do not mainly look after them.[164] Nearly one in two employees born abroad have experienced discrimination or harassment, compared with one in five of those born in France.[165]

As in other sectors, personal services reveal a close relationship between working conditions, social insecurity and discrimination, which points to systemic discrimination, particularly in the female-dominated care professions. Such discrimination is sometimes difficult to identify, and in any case has not, to our knowledge, given rise to any court decision.[166] However, when it comes to access to employment, discrimination is widespread (33% when recruiting), particularly when it comes from private employers who are not trained in recruitment methods and ask questions that may infringe the law. However, it is more in their day-to-day work that employees claim to be victims of discrimination (28%): 31% say that this discrimination relates to the choice of working hours, 22% to the number of hours allocated, 20% to hav-

[162] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[163] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[164] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[165] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[166] These decisions are generally very rare; when they do exist, it's in sectors such as construction and public works.

ing more "difficult" patients, 14% to being forced to do undeclared work or to work in remote locations.[167]

These activities, which are not recognized as qualified, are often "in contact with dirt or filth" and in the service of people, are a breeding ground for sexist injunctions, sexual harassment and/or outright sexual assaults. 40% of employees have been confronted with stigmatizing remarks, and 25% with illegal requests during an interview for a job or promotion. The Ombudsman's survey found that employers had unlawful expectations, mainly in the form of incentives or pressure to change a candidate's appearance (hairstyle, make-up, etc.), to give up or postpone a planned pregnancy, or to gain or lose weight.

The aforementioned 2022 survey by the French Human Rights Ombudsman highlights the extent of sexist behavior, harassment and sexual assault, "an alarming finding" in the words of the Human Rights Ombudsman. The home as a workplace increases the risk of reproduction of social, racial and patriarchal domination, a legacy of the domesticity of the 19th century, of the imaginary image of the little maid, of prejudices about the sexual availability of the employee: 1/3 of female workers have been subjected to embarrassing remarks about their dress or appearance, 20% have received sexual remarks, writings or images in the course of their work and 8% have been pressured in their job to perform a sexual act. It was found that women working in personal assistance were overexposed to sexist and sexual violence compared to the working population as a whole: 1/5 of them had been subjected to light physical contact (compared to 18% of the working population as a whole), 1/6 had had their breasts, buttocks, sex or upper thighs touched at work (compared to 12%) and 8% had been forcibly kissed on the mouth.[168]

The perpetrators of discrimination are varied: company management (40%), line managers (37%), work colleagues (28%) or users/patients (18%).[169]

In addition, the guide produced by the Defender of Human Rights (Défenseur des droits) and the Conseil supérieur à l'égalité professionnelle (High Council for Professional Equality) highlighted the under-valuing of jobs involving a high proportion of women. However,

> the right to non-discrimination, which enshrines the principle of "equal pay for work of comparable value", requires the implementation of a proactive policy to raise the status of personal services jobs and, more broadly, female-dominated jobs, in terms of income, working conditions, social and legal protection, training and recognition in terms of status.[170]

More generally, the value of care professions is highlighted in studies by a number of bodies and institutions promoting professional equality and combat-

[167] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[168] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[169] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi*.

[170] Défenseur des droits, *Guide pour une évaluation non discriminante dans les emplois à dominance féminine* (2013).

ing discrimination. The same findings are confirmed by the very recent Clersé-CGT report.[171] The second part of this report is based on a "Mon travail le vaut bien" ("My job is worth it") consultation[172] carried out among fifteen care and support professions, giving professionals the opportunity to talk about their perceptions and experiences at work.

In any case, the carers interviewed (nurses, care assistants) are generally "proud"[173] of their profession, but would like to see the adoption of a number of measures that they consider to be effective in promoting gender equality at work. By way of illustration, these include encouraging companies / administrations / local authorities / hospital establishments to evaluate their actions in favor of professional equality on an annual basis.

1.22 Compliance with International and European Obligations on Non-Discrimination on the Grounds of Sex in the Healthcare Sector

When it comes to promoting gender equality and combating discrimination, French law was first influenced by international human rights law. But the most decisive influence has been that of European Union law. The sources of non-discrimination law are thus numerous.

1.22.1 International Human Rights Law on Discrimination and Equality

The first is the 1948 Universal Declaration of Human Rights. Then, in chronological order, ILO Convention no. 100 of 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified by France in 1952. *Self-executing,* its acceptance into French law was slow, however, because it clashed with the French conception of equality law. The first provisions were incorporated into the Criminal Code by the Act of 1st July 1972.[174] But article 416 of the Penal Code did not define the concept of discrimination. It merely provided for sanctions against any person who refused to supply a good or service, refused to hire someone or dismissed someone on the grounds of their origin. This trend was accentuated in 1975, when other forms of discrimination based on sex or family status were criminalized, etc.[175]

In the 1980s, France ratified ILO Convention no. 111 concerning Discrimination in Respect of Employment and Occupation[176] and ILO Convention no. 156 concern-

[171] Chasoulier, Lemière and Silvera, *Investir dans le secteur du soin*, 172 ff.

[172] Chasoulier, Lemière and Silvera, *Investir dans le secteur du soin*, 105 ff.

[173] See in particular Chasoulier, Lemière and Silvera, *Investir dans le secteur du soin*.

[174] Law no. 72-cent 46 of 1st July 1972 on combating racism.

[175] The new Penal Code, which came into force in 1994, provides a definition of the concept.

[176] ILO Convention no. 111 of 25 June 1958 ratified on 15 April 1981, OJ 17 April; Publication Decree no. 82-726 of 17 August 1982, OJ 22 August; came into force on 28 May 1982. A. Perulli, "Du travail personnel," *RDT* (2023): 532, for whom "protection against discrimination extends to the entire employment relationship".

ing Workers with Family Responsibilities.[177] It has also ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[178]

It was not until 1982, therefore, that French labor law began to take discrimination more widely into consideration. Article L. 122-45 of the Labor Code (now art. L. 1132-1) was gradually amended and supplemented to become the hard core of anti-discrimination legislation in employment relationships. The nullity of discriminatory provisions and acts has gradually become the sanction that ensures the effectiveness of this legislation.

The 1951 European Convention for the Protection of Human Rights and Fundamental Freedoms was ratified in 1974.[179] It obliges States Parties to recognize the rights and freedoms it enshrines "for everyone within their jurisdiction", whether a foreigner or a national, and whether or not a national of one of the signatory States. Article 14 stipulates that the enjoyment of the rights and freedoms recognized in this Convention

> shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

In addition, the 1961 Social Charter of the Council of Europe[180] was revised in 1996 and signed by France on 3 May 1996.[181]

1.22.2 European Union Law on Discrimination and Equality

Two provisions were enshrined in primary law: the prohibition of discrimination on grounds of nationality[182] and the prohibition of discrimination between male and female workers as regards pay.[183] These prohibitions of principle form part of the foundations of the Community.[184]

[177] ILO Convention 156 concerning Workers with Family Responsibilities of 23 June 1981, ratified by France on 16 March 1989. However, as with ILO Convention no. 189 on domestic workers, 2011, France has not ratified ILO Convention no. 183 on maternity protection, 2000, which does, however, make it possible to implement gender equality in the workplace.

[178] UN Convention of 18 December 1979; Approval Act no. 83-561 of 1 July 1983, OJ 2 July; Publication Decree no. 83-193 of 12 March 1984, OJ 20 March, entry into force 13 January 1984.

[179] Ratification Act no. 73-1227 of 31 December 1973, OJ 3 January 1974; Publication Decree no. 74-360 of 3 May 1974, OJ 4 May.

[180] Approval Act of 23 December 1972; Publication Decree of 4 Oct. 1974, OJ 9 October; entry into force on 8 April 1973.

[181] Entered into force on 1 July 1999, published in the Official Journal on 12 February 2000.

[182] Article 6 of the Treaty on European Union and Article 48 of the EEC Treaty.

[183] EC Treaty, art. 141 [formerly art. 119 EEC Treaty], but also Council Directive 75/117 EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women; Directive 76/207 EEC of 9 February 1976 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 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.

[184] For Article 119, see recital 12 of the G. Defrenne v SA de navigation aérienne Sabena aff. 43/75 *ECJ* 8 April 1976 *ECR* 455 ff. On ECJ case law on equal treatment between men and

The articles of the Treaty were supplemented by directives. Article 119 only referred to equal pay for male and female workers "for equal work". Faced with the difficulties associated with the scope of this concept, which was more restrictive than that referred to in ILO Convention 100, and with the conflicts it gave rise to, a Community social action program was drawn up concerning, in particular, equality between men and women.[185] An initial directive based on Article 100 of the Treaty extended the scope of equal pay to the concept of "equal value": this was Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.[186] A second directive, 76/207/EEC of 9 February 1976, based on Article 235 of the Treaty, 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, announced directives on social security. One concerned statutory social security schemes,[187] the other occupational social security schemes.[188]

Since the Maastricht Treaty, directives have been adopted either on the basis of Article 118a[189] or on the basis of the Agreement on Social Policy, itself annexed to the Maastricht Treaty.[190] In 1997, Directive 97/80/EC on proof in cases of discrimination based on sex summarized the case law of the ECJ in this area.

These various provisions resulting from the Treaty or secondary legislation have been constructively interpreted by the Court of Justice of the European Communities (ECJ).[191] Since its judgment of 17 December 1970 (*Internationale Handelsgesellschaft*), the Court has stated that fundamental rights form part of the general principles of law whose observance it is the Court's task to ensure.[192]

women, see M. Darmon and J.-G. Huglo, "L'égalité de traitement entre les hommes et les femmes dans la jurisprudence de la *CJCE:* un univers en expansion," *RTD eur.* (1992): 1.

185 OJEC, no C 13, 12 Feb 1974, p. 1.

186 OJEC, no. L 45, 19 Feb. 1975.

187 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.

188 Directive no. 86/378/EEC of 24 July 1986.

189 Directive 92/85 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.

190 Directive no. 96/34 on parental leave resulting from the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

191 In particular by using the concept of indirect discrimination. For example, for discrimination on the grounds of sex, Directive 76/207 art. 2 par. 1; for discrimination on the grounds of nationality: Regulation 1612/68 art. 7 and Sotgiu ruling *CJCE* 12 February 1974 aff. 152-73 *Rec. CJCE* 164. See also J.-Ph. Lhernould, "Les discriminations indirectes fondées sur le sexe et la Cour de cassation," *RJS* 11 (2012). Chron. 731; M. Miné, "Mise en œuvre des obligations des entreprises pour l'égalité professionnelle entre les femmes et les hommes," *RDT* (2013): 109.

192 See a later example, the Defrenne III judgment of 15 June 1978, paragraph 26, Case 149/77 [1978] ECR 1365.

As Marie-Thérèse Lanquetin points out,

> the strength of Community law lies first and foremost in its primacy over national law. But even beyond the transposition of Community principles and standards, the national legal order is required to contribute to the implementation of Community law, since transposition itself is insufficient to satisfy the requirements of full application.[193]

Moreover, in the case law of the CJEU, the two conceptions of equality, based on generality and differentiation, are not in opposition, but are combined. Emphasis is placed on the link between the principle of non-discrimination and the fundamental principle of equality. For the Court,

> the prohibition of discrimination is merely the specific expression of the general principle of equality which forms part of the fundamental principles of Community law; the principle requires that comparable situations must not be treated differently unless a difference is objectively justified.[194]

Parallel developments in European Union law and national non-discrimination law are giving rise to tensions. This sometimes takes the form of formal notices issued by the European Commission criticizing France for failing to transpose directives correctly. For example, during the parliamentary debates leading up to the adoption of the Act of 27 May 2008 containing various provisions adapting to Community law, reservations were expressed in the Senate. The bill's rapporteur felt that several provisions of the anti-discrimination directives were difficult to reconcile with certain fundamental rights principles of French law and entailed a risk of communitarianism.

This tension has continued in the jurisprudence.[195] For example, the national construction around the principle of "equal pay for equal work" may have seemed to weaken the fight against certain forms of discrimination, such as discrimination between men and women in terms of pay. Pursuing its construction around the national principle of equality, the Court of Cassation has even affirmed the existence of a principle of equal treatment in labour law, which has not been effective in combating discrimination.[196]

In French law, the fight against discrimination began in the criminal field, but the number of cases was and remains low, as Evelyne Serverin already noted in 1994.[197] Until recently, there was very little litigation relating to discrimination before the civil courts, particularly in relation to equal pay for men and women.

[193] M.-Th. Lanquetin, "Discrimination," *Rép. Dalloz* (January 2010) (update 2023: 28).

[194] ECJ, 19 October 1977, Rückdeschel, case 117/76, ECR 1753.

[195] R. Hernu, *Principe d'égalité et principe de non-discrimination dans la jurisprudence de la Cour de justice des Communautés européennes* (Paris: LGDJ, 2003; Bibliothèque de droit public 232).

[196] Cass. soc., 10 June 2008, no. 06-46.000.

[197] E. Serverin, "L'application des sanctions pénales en droit du travail: un traitement judiciaire marginal," *Dr. soc.* (1994): 654.

The shift in the burden of proof has changed the outlook. The issue of proof is not simply a procedural rule, but a substantive one. As a result, there has been an increase in civil litigation and a corresponding stagnation in criminal litigation.[198]

The real issue is the existence and mobilization of the players themselves. Associations and trade unions[199] deal with some discrimination, but not all. In France, the Haute autorité de lutte contre les discriminations et pour l'égalité (Halde), created in 2004,[200] plays an important role. This independent administrative authority has succeeded in raising the profile of the fight against discrimination and has led to a significant increase in the number of appeals based on the Anti-Discrimination Act of 16 November 2001.[201] Between 2005 and 2010, the number of complaints registered by the Halde rose steadily, from 1,410 to 12,467 over this period.[202]

The Act of 16 November 2001, which transposed Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, was not enough to convince victims of discrimination to lodge complaints; the HALDE has helped considerably in this respect, both by providing information on all forms of discrimination and by the assistance it provides to victims. In 2011, the HALDE's remit was incorporated into the Office of the Defender of Rights.[203] Since 11 December 2016, the role of this administrative body has been to direct to the competent authorities any person reporting a whistleblowing incident under the conditions laid down by law and to monitor the rights and freedoms of that person (protection of whistleblowers). More specifically, in the fight against discrimination, the Human Rights Defender has considerable resources at his disposal. Anyone who believes they have been the victim of discrimination may submit a complaint in writing to the Human Rights Defender, specifying the facts relied on in support of their claim and providing all relevant details.[204] In addition to the person who considers him/herself wronged or his/her beneficiaries, the Defender of Human Rights (Défenseur des droits) may be approached by political authorities (deputies, senators, French representatives

[198] M. Plet et Y. Fromont, "Discrimination: quelle mise en œuvre devant les juges du fond?" *RDT* (2012) Controverse: 463.

[199] Articles L. 1134-2 and L. 2132-3 of the French Labor Code.

[200] Law no. 2004-1486 of 30 December 2004 creating the haute autorité de lutte contre les discriminations et pour l'égalité, *JORF* no. 304 of 31 December 2004, *D.*, 2005: 134, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000423967>.

[201] Law no. 2001-1066 of 16 November 2001 on combating discrimination, *JORF* no. 267 of 17 November 2001: 18311, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000588617>.

[202] V. E. Molinie, *Annual Activity Report 2010, Halde*, April 2011, <https://www.vie-publique.fr/rapports-publics>.

[203] The Défenseur des droits is an independent administrative authority, created by the constitutional amendment of 23 July 2008 <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000019237256> and established by organic law no. 2011-333 of 29 March 2011; D. no. 2011-904 of 29 July 2011, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000023781167>.

[204] However, the Human Rights Defender is not a party to the proceedings: Cass. soc. 2 June 2010, no. 08-40.628, no. 1158 FP-P+B+R. Cass. QPC, 2 February 2011, no. 10-20.415.

in the European Parliament) as well as by any association that has been duly registered for at least 5 years at the date of the facts, and whose articles of association propose to combat discrimination or assist victims of discrimination.[205] In addition, the Human Rights Defender may also take action on his own initiative in cases of direct or indirect discrimination of which he is aware, or may be approached by the beneficiaries of the person whose rights and freedoms are in question. To this end, the Defender of Rights has a service for reporting and assisting victims of discrimination on any grounds and in any field, including those committed in employment relations, called the anti-discrimination platform.

International texts are much more inclusive than national texts, and the lists of discriminatory grounds are not exhaustive and/or use particularly encompassing criteria ("any other opinion", "any other situation").[206] Some lists clearly highlight criteria in formal terms, as is the case with Convention no. 111 of the International Labour Organization (ILO), which adds to the first list of grounds set out in its Article 1 a), including "race, color, sex, religion, political opinion, national extraction or social origin", "any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, which may be specified".[207] In contrast, the lists of discriminatory grounds in domestic law are systematically exhaustive and do not formally show any hierarchy between the criteria.

2. Mapping Discrimination Against Care Workers on Grounds of Origin

2.1 Brief Overview of National Legislation to Combat Discrimination Based on Racial or Ethnic Origin, Religion or Belief, in the Field of Employment or Occupation

The legal list[208] of criteria that may not be used to justify a decision under penalty of criminal sanctions[209] or nullity of the decision in question includes race, ethnic origin and religion.

[205] Article L. 1134-2 of the French Labor Code.

[206] This is the case with article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063776>) and article 2 of the Universal Declaration of Human Rights of 10 December 1948 (<http://www.un.org/fr/universal-declaration-human-rights/>).

[207] Convention no. 111 concerning discrimination (employment and occupation) of 25 June 1958 (<http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111>), ratified by France on 28 May 1981 (<http://www.ilo.org/dyn/normlex/fr/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256>): Law no. 81-357 of 15 April 1981 authorizing the approval of International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, *JORF* of 17 April 1981, p. 1087 and Decree no. 82-726 of 17 August 1982 publishing International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, adopted in Geneva on 25 June 1958, *JORF* of 22 August 1982, p. 2630.

[208] Article L. 1132-1 and article L. 1134-4 of the French Labor Code.

[209] Articles 225-1 to 225-4 of the French Criminal Code.

Some of the grounds for discrimination are protected at the highest level by the 1958 Constitution (race, origin, religion and sex) and by the Preamble to the 1946 Constitution (trade union action or membership in paragraph 6, and even health in paragraph 11). These criteria are also found in European and international conventions and in French legislation, along with many other grounds.

According to article 1st of the 1789 Declaration of the Rights of Man and of the Citizen, "Men are born and remain free and equal in rights". This article sets out a precondition for State intervention, a postulate rather than an objective to be achieved.[210] This position is confirmed by the wording of Article 1 of the Constitution of 4 October 1958, which states that it is the State that "ensures the equality of all citizens before the law, regardless of their origin, race or religion".

Article 1st of the 1958 Constitution, as amended by the constitutional revision of 4 August 1995[211] states: "France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law without distinction of origin, race or religion. It respects all beliefs". This article is a transposition of the vision of equality introduced by article 6 of the 1789 Declaration of the Rights of Man and of the Citizen, under which the law

> must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, are equally eligible for all public dignities, positions and jobs, according to their ability, and without any distinction other than that of their virtues and talents.

For Professor Guy Carcassonne, it follows from these texts that nothing that constitutes the identity of individuals can be considered as "virtues" or "talents" and form the basis for a difference in treatment.[212]

While French law sets out an exhaustive list of prohibited grounds for discrimination, Convention no. 111 of the International Labour Organization (ILO), ratified by France, adds to the first list of grounds set out in Article 1 a), which includes "race, color, sex, religion, political opinion, national extraction or social origin", "any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment", "sex, religion, political opinion, national extraction or social origin", "any other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, which may

[210] Marie, Peyronnet, "La diversité: étude en droit du travail," PhD diss. (Université de Bordeaux, 2018), 40.

[211] Constitutional Act no. 95-880 extending the scope of the referendum, instituting a single ordinary parliamentary session, amending the system of parliamentary inviolability and repealing the provisions relating to the Community and the transitional provisions, *JORF* of 5 August 1995: 11744, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000188958&dateTexte=20180719>. The content of Article 1 was placed at the beginning of Article 2 prior to this amendment.

[212] Guy, Carcassonne, *La Constitution* (Paris: Seuil, 2005), 43.

be specified".[213] International labor law, like international human rights law, is thus characterized by simply enumerative lists of grounds.

Race or origin are systematically among the first prohibited criteria cited in the list drawn up under French law. Other criteria also appearing in the list may be associated with it: "ethnic origin", "color" or "membership of a national minority" and, more indirectly, "place of residence", "surname", "language" and, more recently, "bank account". Several of these variations relating to origin can be found in all the texts.

The principle of non-discrimination does not protect certain groups of people, but each individual against arbitrary decisions based on a ground considered by the law to be a priori prejudicial to the principle of equality and unjustified. In this respect, the principle of non-discrimination cannot be considered as a categorical rule, because the grounds are not categories and cannot be used to establish any categorical advantage; on the contrary, they have been designed to eliminate a disadvantage. Belonging to a category is the reason, not the other way round. Any individual identified by the ground may rely on the principle of non-discrimination in the event of differential treatment based on that ground.

The criterion of religious discrimination has been the subject of much debate and clarification in recent years.[214] Article L. 1132-1 of the French Labor Code prohibits all discrimination based on employees' religious beliefs. The modern French State, founded on the separation of Church and State and on the cardinal principle of secularism, does not recognize any religion: it is not, in principle,

[213] Convention no. 111 concerning discrimination (employment and occupation) of 25 June 1958 (<http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111>), ratified by France on 28 May 1981 (<http://www.ilo.org/dyn/normlex/fr/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256>): Law no. 81-357 of 15 April 1981 authorizing the approval of International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, *JORF* of 17 April 1981: 1087 and Decree no. 82-726 of 17 August 1982 publishing International Labor Convention no. 111 concerning discrimination in respect of employment and occupation, adopted in Geneva on 25 June 1958, *JORF* of 22 August 1982: 2630.

[214] See in particular: *CJEU* (14 March 2017), Bougnaoui and ADDH v Micropole SA, Aff. C-188/15 (<http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-188/15>): *Dalloz actualité* (20 March 2017), obs. M. Peyronnet; *Lexbase hebdo*, ed. soc. no. 692 (23 March 2017), obs. Ch. Radé; *AJDA* (2017): 551; *AJDA* (2017): 1106, chron. E. Broussy, H. Cassagnabère, C. Gänser and P. Bonneville; *D.* (2017): 947, note J. Mouly; *Dr. soc.* (2017): 450, study Y. Pagnerre; *RDT* (2017): 422, obs. P. Adam; *Constitutions* (2017): 249, chron. A.-M. Le Pourhiet; *RTD eur.* (2017): 229, study by S. Robin-Olivier; *Rev. UE* (2017): 342, study by G. Gonzalez, and *CJEU* (14 March 2017), Samira Achbita v/ G4S Secure Solutions NV, aff. C-157/15 (<http://curia.europa.eu/juris/liste.jsf?language=fr&num=C-157/15>): *Dalloz actualité* (16 March 2017), obs. M. Peyronnet; *Lexbase hebdo*, ed. soc. no. 692, (23 March 2017), obs. Ch. Radé; *AJDA* (2017): 551; *AJDA* (2017): 1106, chron. E. Broussy, H. Cassagnabère, C. Gänser and P. Bonneville; *D.* (2017): 947, note J. Mouly; *Dr. soc.* (2017): 450, study Y. Pagnerre; *RDT* (2017) 422, obs. P. Adam; *Constitutions* (2017): 249, chron. A.-M. Le Pourhiet; *RTD eur.* (2017): 229, study by S. Robin-Olivier; *Rev. UE*, 2017, p. 342, study by G. Gonzalez; *JS Lamy* 430-1 (2017), obs. H. Tissandier; *Sem. soc. Lamy* 1762 (2017): 3, obs. G. Calvès: *Sem. soc. Lamy* 1762 (2017): 6, obs. S. Laulom: *JCP S* (2017): 1105, obs. B. Bossu.

up to the legislator, the judges[215] and even less to employers to determine what does or does not fall within the scope of religion and, more broadly, of beliefs or convictions that may be the subject of individual protection.[216]

French law regularly adds to the legal list of prohibited grounds for discrimination. Among the grounds that may have an impact on or be associated with a person's origin is that of place of residence, which was added in 2014.[217] It was introduced into the law to take account of the situation of people living in the "suburbs", most of whom have an immigrant background. However, while the first victims are those who do not have the "right" facial features, the people who live alongside them in certain large-city suburbs may also be excluded from employment by virtue of living in these areas. In this sense, place of residence is a criterion that makes it possible to capture a social exclusion that is universal in nature, even if it is particularly significant for people of foreign origin.

Article 7 of the EC Treaty (now, after amendment, Article 12 EC) generally prohibits any discrimination on grounds of nationality; Article 48 of the EC Treaty (now, after amendment, Article 39 EC) applies the fundamental principle of non-discrimination and provides in paragraph 2 that the free movement of workers within the Community implies the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration[218] and other conditions of work. Article 7 of Regulation No 1612-68 of 15 October 1968 on freedom of movement for workers within the Community provides that any clause in a collective or individual agreement or other collective regulation which lays down or authorizes discriminatory conditions in respect of workers who are nationals of other Member States, in particular as regards pay, shall be null and void. These texts, which are directly applicable in the legal order of any Member State, confer on the persons concerned individual rights which the national courts must safeguard and which take precedence over any national rules

[215] Cour de Paris, 4 December 1912, *D.* 2 (1914): 213, ruling on article 901 of the Civil Code in the case of spiritualism, considered that: "all religious beliefs are essentially respectable, provided they are sincere and in good faith, and it is not for civil judges, whatever their personal opinions or beliefs, to mock, criticize or condemn them", quoted in id.

[216] The protection of Article 9 of the European Convention on Human Rights has, for example, been granted to atheism (Commission EDH, 6 July 1994, Union des Athées contre la France, Req. no 14635/89, <http://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-47477&filename=CEDH.pdf>) or to veganism (CEDH, 12 Feb. 1993, *W. v. The United Kingdom*, Req. no. 18187/91, <http://hudoc.echr.coe.int/fre?i=001-1503>. For more illustrations, such as animism and pacifism: Council of Europe/European Court of Human Rights, *Guide to Article 9 of the European Convention on Human Rights, Freedom of thought, conscience and religion* (31 May 2018), 10, < https://www.echr.coe.int/Documents/Guide_Art_9_FRA.pdf>.

[217] Article 15 of Law no. 2014-173 of 21 February 2014 on programming for the city and urban cohesion, *JORF* of 22 February 2014: 3138, <https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=F8DC50C5BF37D6D660DB18F837C6F86B.tpdila20v_2?cidTexte=JORFTEXT000028636804&idArticle=LEGIARTI000028638791&dateTexte=20160625&categorieLien=id#LEGIARTI000028638791>.

[218] Cass. soc., 10 December 2002, no. 00-42.158.

which conflict with them. The Charter of Fundamental Rights of the European Union prohibits "any discrimination based on any ground such as race, color, ethnic or social origin, genetic features, language, religion or belief…".[219] Paragraph 2 of Article 21 of the same Charter stipulates that "within the scope of application of the Treaties and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited" between Community citizens. Although French law does not include nationality as a prohibited criterion for discrimination, EU law applies to nationals of the Member States.

Prohibition of discrimination and equal access to employment. Generally speaking, the prohibition of discrimination is one of several constitutional provisions. The first concerns the right to obtain a job, as set out in paragraph 5 of the Preamble to the 1946 Constitution, which is accompanied by the right for everyone not to "suffer prejudice in their work or employment on account of their origins, opinions or beliefs". But in order not to be discriminated against in one's job, it is still necessary to have had access to it. The second provision on this point is Article 6 of the DHR, cited above. Admittedly, this provision refers explicitly to public posts, which are the responsibility of the State, but the new paragraph of Article 1st of the Constitution argues for a broader understanding of this provision. It should be remembered, however, that nationality is not a criterion for discrimination under French law, which means that certain jobs are closed to nationals of non-EU countries.[220]

Prohibition of discrimination and equal conditions of employment. Despite legislation and public policies, inequalities in access to employment are still very significant and the reduction of certain inequalities, such as those between men and women, is stagnating in most OECD countries.[221] Several studies, including the benchmark TeO "Trajectoires et Origines" survey carried out by INED in 2008,[222] have demonstrated the persistence of inequalities in access to the labor market linked to origin. In 2016, a survey—on a smaller scale—carried out by France Stratégie confirmed that

> gaps in the labor market linked to gender, migratory origin and place of residence remain considerable in France: women, people of immigrant background and residents of certain disadvantaged neighborhoods experience difficulties in accessing employment and poorer quality integration into the labor market, in terms of both employment contracts and wages.[223]

[219] Article 21, paragraph 1 of the Charter of Fundamental Rights of the European Union, Nice, 7 December 2000.

[220] On the conditions of access to the civil service and the private sector, in this case jobs closed to foreigners: see question 2.

[221] OECD, *Report 2017: Achieving Gender Equality: The Hard Fight*, 23 February 2018, <http://www.oecd.org/fr/publications/atteindre-l-egalite-femmes-hommes-9789264203426-fr.htm>.

[222] C. Beauchemin, Ch. Hamel, P. Simon and Fr. Heran, *Trajectoires et origines: enquête sur la diversité des populations en France* (Paris: Ined éditions, 2016; Grandes enquêtes).

[223] C. Bruneau, Cl. Dherbecourt, J. Flamand and Ch. Gilles, "Marché du travail: un long chemin vers l'égalité," *France Stratégie* (2016), <http://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/na-42-marche-du-travail-18-02-2016.pdf>.

In 2020, the work of the French Human Rights Ombudsman[224] showed that, in France, real or supposed origin was the second most common criterion for discrimination after gender: 11% of individuals stated that they had experienced one or more instances of discrimination because of their origin or the color of their skin over the last five years.

Provisions on non-discrimination and the employment rights of foreign nationals. In application of the principle of non-discrimination, labor regulations apply in their entirety to foreign workers in terms of access to employment, performance of the employment contract and termination of the contract. Article 1132-1 of the Labor Code explains this in the following terms: "No person may be excluded from a recruitment procedure or from access to an internship or period of in-company training, and no employee may be penalized, dismissed or subjected to any direct or indirect discriminatory measure, in particular with regard to remuneration, profit-sharing measures or the distribution of shares, training, redeployment, assignment, qualification, classification, professional promotion, transfer or renewal of contract on the grounds of [...] his or her origin) origin,[225] ability to express oneself in a language other than French, actual or supposed membership or non-membership of an ethnic group, nation or so-called race, religious beliefs, place of residence or bank account [...]. Discrimination on any of these grounds is punishable under criminal law (articles 225-1 to 225-4 of the Criminal Code).[226] Any person who believes that he or she has

[224] Défenseur des droits, *Rapport - Discrimination et origines : le besoin urgent d'agir*, juin 2020, <https://www.defenseurdesdroits.fr/rapport-discriminations-et-origines-lurgence-dagir-280>.

[225] It should be noted that there is a legal obstacle to the hiring of foreigners in France. On jobs closed to foreigners and legal restrictions on foreigners working in France, see below.

[226] Article 225-1 of the French Criminal Code (Article 225-1 Amended by Law no. 2022-401 of 21 March 2022 - article 9). Any distinction made between natural persons on the basis of their origin, sex, family status, pregnancy, physical appearance, particular vulnerability resulting from their economic situation, whether apparent or known to the perpetrator, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, morals, sexual orientation, gender identity, age or political opinions, shall constitute discrimination, their trade union activities, their status as a whistleblower, facilitator or person in a relationship with a whistleblower within the meaning, respectively, of I of Article 6 and 1) and 2) of Article 6-1 of Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernization of economic life, their ability to express themselves in a language other than French, their actual or supposed membership or non-membership of a specific ethnic group, Nation, alleged race or religion". "Discrimination also constitutes any distinction made between legal persons on the basis of origin, sex, family status, pregnancy, physical appearance, particular vulnerability resulting from the economic situation, apparent or known to the perpetrator, surname, place of residence, state of health, loss of autonomy, disability, genetic characteristics, morals, sexual orientation, gender identity, age, political opinions, trade union activities, the status of whistleblower, facilitator or person in a relationship with a whistleblower, within the meaning, respectively, of I of Article 6 and 1) and 2) of Article 6-1 of the aforementioned Act 2016-1691 of 9 December 2016, the ability to express oneself in a language other than French, the actual or assumed membership or non-membership of a specific ethnic group, nation, alleged race or religion of the members or certain members of these legal entities".

been the victim of direct or indirect discrimination in these areas may bring the matter before a court based on facts from which it may be presumed that such discrimination exists. In the light of these facts, it is up to the defendant to prove that the measure in question is justified by objective factors unrelated to any discrimination. There is relatively little case law to provide an overview here. In a decision of 17 December 2019, the Conseil des prud'hommes de Paris recognized the existence of systemic racial discrimination in a company operating in the building and public works sector: it was found that a pyramid system of occupational assignment on the basis of origin had been put in place on a Paris construction site: claimants employed as laborers were assigned to the most arduous manual tasks, while supervisory staff of North African origin were responsible for monitoring the proper performance of the work on behalf of the employer.[227] In a decision of 18 January 2012, the Cour de cassation ruled that it was racial discrimination for the deputy manager to inform the employee that she could not hire her immediately because the management had told her that it "did not trust North African women", so that she could not be recruited until a fortnight later when the manager was away on holiday.[228] In another decision on 10 November 2009, the French Supreme Court ruled against a company for racial discrimination when it asked an employee to change his first name from Mohammed to Laurent.[229]

2.2 Overview of Legislation on the Rights and Duties of "Foreign Nationals": Nationals of Non-EU Countries (Entry and Work Conditions, Conditions for Family Members Entering the Country, etc.)

2.2.1 Entry and Work Conditions

In France, immigration law came into being with the Ordinance of 2 November 1945. Under the aegis of the Ministry of Labor, the State created the National Immigration Office (Office national de l'immigration -ONI), which was responsible for the "recruitment" and "introduction" of migrant workers needed to rebuild the country.[230] The ordinance set out the conditions for the entry of foreign nationals (starting with the requirement for workers to have a work contract or permit), listed the various residence permits, set out the penalties for illegal residence (including for helpers), laid down the rules for deportation and provided for the possibility of acquiring French nationality.

[227] Conseil des prud'hommes de Paris du 17 décembre 2019, *Revue de droit du travail* (2020), obs. Guiomard: 137. *Droit ouv* (2020), obs. Isidro: 227 and Poulain: 232.

[228] Cass. soc. 18 January 2012, *Dalloz Actu*, 26 January 2012, obs. Siro.

[229] Cass. soc. 10 November 2009, *RDT* (2010), obs. Aubert-Montpeyssen: 169.

[230] On the history of immigration law from 1945 to 2000, see J. Barou, *Europe, terre d'immigration. Flux migratoires et intégrations* (Grenoble, PUG, 2001); M. Blanc-Chaléard, *Histoire de l'immigration* (Paris: La Découverte, 2001); I. Daugareilh et F. Vennat, *Migrations internationales et marché du travail* (Lyon: Chronique sociale, 2004).

The reception of refugees in France is governed by the law of 25 July 1952 on the right of asylum, which sets out the conditions for applying the Geneva Convention (27 July 1951) ratified by France.

In 1974, President Giscard d'Estaing decided to suspend labor immigration. However, family reunification and applications for asylum continued to be the gateways to France. Since then, immigration has become a central issue in public debate and in political promises and programs in France. Both left-wing and right-wing governments are converging on tougher conditions for entering and staying in France.

This law was first codified in two stages the order of 24 November 2004 created the Code for the entry and residence of foreign nationals and the right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile -Ceseda) and brought together the provisions on immigration and asylum. The Ceseda repealed and replaced Order no. 45-2659 of 2 November 1945 on the conditions of entry and residence of foreign nationals in France. It came into force on 1st March 2005. The regulatory part was published on 15 November 2006. A new codification came into force on 1st May 2021. Legislators are legislating in droves, at the risk of "overloading": the press reports that no fewer than 29 laws were passed between 1980 and 2022. A law is passed every 17 months, and the last one to be adopted in December 2023 is the subject of an appeal for unconstitutionality.

With regard to the employment of non-EU foreign nationals in France, the main legal source is the combined provisions of Law no. 2018-778 of 10 September 2018 for controlled immigration, an effective right of asylum and successful integration, Decree no. 2020-1734 and Order no. 2020-1733 of 16 December 2020 amending the regulatory part of the Ceseda (code governing the entry and residence of foreign nationals and the right of asyl – Ceseda), the Labor Code [231] and the Social Security.[232] This right is characterized by a number of reasons for entry and residence, each corresponding to a specific legal regime (students, refugees, stateless persons, employees, seconded workers).

With regard to access to employment for foreign nationals, Article L. 5221-1 of the Labor Code establishes the principle that foreign nationals must hold an official document (passports and visas) and a work permit.[233] To this end, the system of residence and work permits for non-EU workers is set out in Articles L. 313-7-6 and L. 313-20-4 ff. of the Ceseda. Two general observations should be made. Firstly, French law compartmentalizes the legal regimes for residence, which has repercussions on the conditions for access to employment. Secondly,

[231] See article L. 5221-2 of the French Labor Code on work permits and article L. 1242-2 ff. on fixed-term contracts.

[232] Article L. 412-8 of the French Social Security Code.

[233] The seat of the question is in the Act of 7 March 2016 on the rights of foreign nationals in France: art. L. 422-10 to 14 of the Ceseda. To this must be added the reform of the regulations relating to work permits: Decree no. 2021-360 of 31 March 2021 relating to the employment of a foreign employee, JO 1st April 2022 (amending the Labor Code, article R. 5121-1 ff.) and Order of 27 April 2021 issued in application of article R. 431-1 Ceseda.

French law applies the general rule of priority to national/Community employment based on the opposability of the employment situation in the profession and in a given region, which restricts access to the labor market to foreigners and consequently to obtaining a work permit (2.2.1.1). In addition, even before the Second World War, France had a set of regulations prohibiting foreigners from certain jobs. These regulations were partly reformed under pressure from Community law and cannot therefore be applied to nationals of Member States. However, they continue to apply to third-country nationals (2.2.1.2).

2.2.1.1 Work Permit

We are going to present the implementation of the principle of work authorization according to the foreign national's residence permit (2.2.1.1.1) and the conditions for obtaining said authorization, which is issued by the Prefect (2.2.1.1.2). The relevant legal provisions apply subject to bilateral agreements providing for more favorable arrangements.

2.2.1.1.1 Implementation of the Work Permit Requirement

Pursuant to article R. 5221-1 of the Labor Code, in order to carry out paid employment in France, the following persons must hold a work permit when employed in accordance with the provisions of this code:

1. Foreign national who is not a national of a Member State of the European Union, another State party to the European Economic Area or the Swiss Confederation.
2. Foreign national who is a national of a Member State of the European Union during the period of application of the transitional measures relating to the free movement of workers. A foreign national authorized to reside in France may not engage in paid employment in France without first obtaining the work permit referred to in 2) of article L. 5221-2 of the Labor Code.

The application for a work permit is made by the employer. However, if it concerns an employee temporarily seconded by a company not established in France, it is made by the principal established in France, in the cases provided for in 1) and 2) of article L. 1262-1, or by the user company in the case provided for in article L. 1262-2. The request may also be made by a person authorized to do so by a written mandate from the employer or the company. All new employment contracts are subject to an application for a work permit.

The work permit may be limited to certain professional activities or geographical areas. Authorization issued in mainland France confers rights only in mainland France. In order to examine the application for authorization to work, the administrative authority may exchange all information and documents relating to this application with the bodies involved in the public employment service mentioned in article L. 5311-2, with the bodies managing a social protection scheme, with the establishment mentioned in article L. 767-1 of the Social Se-

curity Code and with the paid leave funds provided for in article L. 3141-32 (article L. 5221-7 of the Labor Code).

This authorization is granted automatically to the following persons:

A work permit is automatically granted to foreign nationals authorized to reside in France for the purpose of concluding a fixed-term apprenticeship or professional training contract. This authorization is automatically granted to unaccompanied foreign minors in the care of the child welfare authority, subject to presentation of an apprenticeship or professional training contract. The work permit may be withdrawn if the foreign national has not been issued with a medical certificate within three months of it being issued (art. L.5221-5 of the Labor Code).

There are a number of exceptions to this condition:

1. Foreign nationals entering France to work in an employed capacity for a period of three months or less in a field included on a list established by decree.
2. Foreign practitioners holding a diploma, certificate or other evidence of formal qualifications allowing them to practize in the country in which the diploma, certificate or evidence of formal qualifications was obtained, on presentation of the decision by the Minister for Health to assign them to a health establishment, as provided for in articles L. 411-2 and L. 4221-12 of the Public Health Code, as well as, on a transitional basis, the doctors, dental surgeons, midwives and pharmacists mentioned in article 83 of law no. 2006-1640 of 21 December 2006 on the financing of social security for 2007, on presentation of the decision by the Minister of Health to assign them to a health establishment, as provided for in the same article 83.

By virtue of Article R. 5221-2 of the French Labor Code, the work permit provided for in Article R. 5221-1 is not required:

1. Nationals of Member States of the European Union, of other States party to the Agreement on the European Economic Area and of the Swiss Confederation, under the conditions laid down in Articles L. 233-1 and L. 233-4 of the Ceseda (Code on the Entry and Residence of Foreigners and the Right of Asylum), and members of their families holding a residence permit bearing the words "family member of a Union citizen", in application of Article L. 233-5 of the same Code.
2. An employee seconded under the conditions set out in articles L. 1262-1 and L. 1262-2 of the same code and working on a regular and habitual basis for an employer established in the territory of a Member State of the European Union, another State party to the Agreement on the European Economic Area or the Swiss Confederation.
3. The holder of the resident's card referred to in article L. 414-10 of the Ceseda.
4. The holder of a temporary or multi-annual residence permit bearing the wording "private and family life", issued in application of articles L. 423-1, L. 423-2, L. 423-7, L. 423-13 ff.; L. 425-9; L. 426-5, L. 433-4, L. 433-5 and L. 433-6 of the same code or a long-stay visa valid as a residence permit mentioned in 6) and 15) of article R. 431-16 of the same code.

5. The holder of a temporary residence permit bearing the wording "private and family life", issued in application of article L. 426-12 of the same code from the first day of the second year following issue, or in application of article L. 426-13 provided that they have been residing in France for at least one year.
6. The holder of a multi-annual residence permit bearing the wording "talent passport" issued in application of articles L. 421-9, L. 421-11, L. 421-13, L. 421-14, L. 421-15, L. 421-20 and L. 421-21 of the same code or a long-stay visa valid as a residence permit mentioned in 10) of article R. 431-16 of the same code.
7. The holder of a multi-annual residence permit bearing the wording "talent (family) passport" issued in application of Articles L. 421-22 and L. 421-23 of the same Code or of a long-stay visa valid as a residence permit mentioned in 10) of Article R. 431-16 of the same Code.
8. The holder of a multi-annual residence permit bearing the words "salarié détaché - detached employee - ICT" or " salarié détaché - detached employee" mobile ICT" issued in application of articles L. 421-26 and L.421-27 of the same code respectively, or of a long-stay visa valid as a residence permit mentioned in 11) of article R. 431-16 of the same code.
9. The holder of a residence permit bearing the words "salarié détaché- detached employee ICT (family)" or "salarié détaché- detached employee- mobile ICT (family)", issued in application of articles L. 421-28 and L. 421-29 of the same code respectively, or of a long-stay visa valid as a residence permit mentioned in 11) of article R. 431-16 of the same code.
10. The holder of a temporary residence permit bearing the wording "ICT trainee (family)" issued in application of article L. 421-32 of the same code or a long-stay visa valid as a residence permit mentioned in 12) of article R. 431-16 of the same code.
11. The holder of a temporary or multi-annual residence permit bearing the wording "student" or "student-mobility program", as well as, when admitted to another Member State of the European Union, the holder of the mobility notification, issued in application of articles L. 422-1, L. 422-2, L. 422-5, L. 422-6 and L. 433-4 of the same code or the long-stay visa valid as a residence permit bearing the wording "student" or "student-mobility program" mentioned in 13) of article R. 431-16 of the same code, for a secondary salaried professional activity, up to a limit of 60% of the annual working time (964 hours).
12. The holder of a temporary or multi-annual "student" residence permit covered by articles L. 422-1, L. 422-2, L. 422-5, L. 422-6 and L. 433-4 of the same code or the long-stay visa valid as a residence permit bearing the word "student" or "student-mobility program" mentioned in 13) of article R. 431-16 of the same code who, as part of their course of study, has signed an apprenticeship contract validated by the relevant department.
13. The holder of a temporary residence permit for "seeking employment or setting up a business" issued in application of articles L. 422-10 and L. 422-14

of the same code, or a long-stay visa valid as a residence permit bearing the same wording.
14. The holder of a multi-annual residence permit bearing the words "beneficiary of subsidiary protection" or "family member of a beneficiary of subsidiary protection".
15. The holder of a multi-annual residence permit bearing the words "beneficiary of stateless status" or "family member of a beneficiary of stateless status".
16. The holder of a temporary residence permit or a temporary residence document bearing the words "authorizes its holder to work".
17. The holder of a visa valid for more than three months as referred to in 4) of article R. 431-16 of the same code.
18. Foreign nationals who have entered France to engage in paid employment for a period of three months or less.
19. A foreign practitioner meeting the conditions mentioned in 2) of Article L. 5221-2-1.
20. An employee who is a national of a Member State of the European Union, during the period of application of the transitional measures.
21. Personal services and domestic employees during the stay in France of their private employers.

2.2.1.1.2 Conditions for Obtaining a Work Permit

Under article R.5221-20 of the French Labor Code, the conditions for obtaining a work permit relate both to the job itself and to the employer.

- Regarding the proposed job:

a) Either the job is on the list of occupations in short supply provided for in Article L. 421-4 of the Ceseda and drawn up by a joint order of the Minister for Employment and the Minister for Immigration;
b) Or the vacancy for this job has been previously published for a period of three weeks with the organizations contributing to the public employment service and it has not been possible to satisfy it with any application meeting the characteristics of the job offered;

- With regard to the employer:

a) It complies with the social security reporting obligations associated with its status or activity;
b) He has not been convicted of any criminal offence relating to illegal employment or failure to comply with general health and safety rules, and the authorities have not established any serious shortcomings on his part in these areas;
c) It has not been subject to an administrative penalty imposed for failure to comply with its obligations regarding the secondment of foreign nationals not authorized to work;
d) The employer, user or host company and the employee satisfy the regulatory conditions for carrying out the activity in question, where such conditions are required;

e) The remuneration offered complies with the provisions of this code on the minimum growth wage or the minimum remuneration provided for by the collective agreement applicable to the employer or host company and is at least equal to 1e times and a half the minimum wage (R>2,518.42 euros).
f) If the foreign national holds a residence permit bearing the wording "student" or "student-mobility program" and has completed his or her course of study in France, or if he or she holds a residence permit bearing the wording "seeking employment or setting up a business", the job offered is consistent with the qualifications and experience acquired in France or abroad.

- Foreign nationals who have been granted refugee status are issued with a ten-year residence permit.[234] Once they have applied for a resident's card, and while awaiting the issue of this card, refugees have the right to exercise the profession of their choice under the conditions set out in article L. 414-10.[235]
- Foreign nationals who have been granted subsidiary protection are issued with a multi-annual residence permit for a maximum period of four years.[236] They have the right to exercise the profession of their choice. A multi-annual residence card bearing the words "family member of a beneficiary of subsidiary protection", identical to the card issued to the main beneficiary, is issued to family members.[237]
- Foreign nationals who have been granted stateless status are issued with a multi-annual residence permit bearing the words "beneficiary of stateless status" for a maximum period of four years. This card is issued when the foreign national is first admitted to the country.[238] A multi-annual residence permit bearing the words "family member of a person with stateless status" is issued to family members.[239] Foreign nationals who have been recognized as stateless may apply for family reunification under the same conditions as foreign nationals who have been granted refugee status.[240]
  They may take up the profession of their choice.

2.2.1.2 Jobs Closed to Foreigners

According to a survey published in 2019 by the Inequalities Observatory (Observatoire des inégalités), five million jobs remain closed to non-European foreigners, i.e. 1 job in 5.[241] It should be noted that nurses are among

[234] Article L424-1 of the Ceseda.
[235] Article L424-2 of the Ceseda.
[236] Article L424-9 of the Ceseda.
[237] Article L424-11 of the Ceseda.
[238] Article L424-18 of the Ceseda.
[239] Article L424-19 of the Ceseda.
[240] Article L. 582-5 of the Ceseda.
[241] Observatoire des inégalités, *Rapport sur les inégalités en France* (2019).

the professions where only French qualifications are allowed (nurses outside hospitals).[242]

Law no. 2017-86 of 27 January 2017 on equality and citizenship contains five articles devoted to "jobs subject to a nationality condition". For example, one article extends the exemption from the nationality requirement to holders of the French state diploma of dental surgeon, in the same way as holders of the diploma of doctor of dental surgery (art. 197 amending article L. 4111-1 of the Public Health Code).

In the healthcare professions (doctors, dental surgeons and midwives),[243] the nationality requirement has been abolished for holders of a French diploma or equivalent issued by an EU Member State. A complex system of exceptional authorizations also exists for foreign doctors and French doctors with foreign qualifications.

With regard to the (French) diploma requirement, the preamble to the national collective agreement BAD 2020, Title 2 on jobs, states that: "…certain jobs require the employee to hold a specific diploma in the regulated professions and cannot be filled by unqualified staff". The same article lists the diplomas or professional qualifications recognized or accepted as equivalent. The *final* article of the preamble states that

> All French social work qualifications and diplomas may be replaced by an equivalent European qualification or diploma in accordance with the provisions of articles L. 461-1 to L. 461-4 of the of social action and families Code. The candidate must have the language skills required to practise the profession in France.

2.2.2 Overview of French Legislation on the Rights and Duties of Non-EU Foreign Nationals Forms of Employment and Application of Employment Legislation to Foreign Nationals in All Sectors of Activity (no Specific Provisions for Workers in the Care Sector)

In the performance of their employment contracts, foreign workers are subject to the same rules as French workers in terms of working hours, overtime, public holidays, remuneration, application of collective agreements, profit-sharing and supplementary pensions. The same applies to collective bargaining

[242] GISTI, "Listes des emplois fermés aux étrangers en 2022," <https://www.gisti.org/article4925> (Accessed December 12, 2023). See the list in the appendix to the Goldberg Report on the proposed law to abolish nationality requirements restricting foreign workers' access to certain liberal or private professions (AN Doc. no. 2594, 9 June 2010). See also the report drawn up by the Inequalities Observatory (Observatoire des inégalités) in September 2011: "Five million jobs remain closed to non-European foreigners," <http://www.inegalites.fr/spip.php?page=article&id_article=1480&id_groupe=17&id_mot=112&id_rubrique=97> (Accessed December 12, 2023).

[243] The nationality requirement is maintained for pharmacists and veterinary surgeons. To practize these professions, you must be French or a national of an EU or EEA Member State or the beneficiary of a reciprocal agreement.

law.[244] The following section describes how this principle of equality is applied to various aspects of the employment relationship and social risk cover.

- Temporary work and residence in France.

Temporary work regulations apply to foreign workers. Since the law of 20 November 2007, a temporary employment contract may be submitted in support of an application to enter France by a foreign worker who is a first-time immigrant.[245]

- Part-time work.

The regulations governing part-time work apply to foreign nationals without restriction. With regard to working hours, any change in the distribution of working hours between the days of the week or the weeks of the month must be notified to the employee, subject to a notice period.[246] Failure to comply with this notice period will result in the part-time contract being reclassified as a full-time contract, even if the employee is a foreign student holding a temporary residence permit. In order to avoid this requalification, the employer may not invoke the argument that, as a foreign student may not carry out a salaried activity on an ancillary basis in excess of 964 hours per year, the employer's failure to comply with the notice period may not result in the employment contract being requalified. Since it was found that the working hours varied constantly and that the agreed working hours were frequently exceeded, without the employer proving compliance with the contractual notice period, it must be considered that, given the proven uncertainty of his working hours, the foreign employee was obliged to remain permanently at the employer's disposal.[247]

- Salary rights.

The legal minimum wage (SMIC) is set by decree and applies to all workers regardless of their administrative status (legal or illegal in the case of foreign workers).[248]

- Vocational training rights.

The principle of equal treatment of nationals and foreigners applies in the area of vocational training. The right to training is linked to the status of employee. Foreign nationals, once they have been authorized to work, can therefore benefit from this right, which applies to all workers.[249]

[244] Article L. 2261-22 of the French Labor Code.

[245] Article L. 5221-4 of the French Labor Code.

[246] Articles L. 3123-11, L. 3123-24 and L. 3123-31 of the French Labor Code.

[247] Cass. soc., 27 March 2019, no. 16-28.774, no. 535 FS - P + B.

[248] See I. Daugareilh, G. Santoro and H. Traoré, *Conditions de travail et d'emploi des travailleurs du care en France,* WP2 report for the European CARE4CARE project (2024), 56–7.

[249] Article L. 6111-1 ff. of the French Labor Code.

- Right to leave to acquire nationality.

All employees are entitled to half a day's unpaid leave, with justification, to enable them to attend their French citizenship ceremony. This leave cannot be refused by the employer if it is requested by the employee.[250]

- Elections to the Conseils des prud'hommes (industrial tribunal).

Foreign workers are eligible to vote for the appointment of labor tribunal councilors. However, they are not eligible; only workers of French nationality are eligible.[251] As this is a judicial activity, it falls within the sphere of the State's sovereign power and is therefore closed to any person of foreign nationality.

- Exercising trade union functions and non-renewal of work permit.

A foreign employee delegate, who is notified by the employer that his employment contract can no longer continue due to the non-renewal of his provisional work permit, is "outside the scope" of article L. 2421-3 of the Labor Code relating to the dismissal of employee delegates (the employer therefore does not have to comply with the special dismissal procedure: authorization from the labor inspector, etc.).[252]

- Social protection rights of foreign workers.

Social security law is a state-based right subject to the principle of territoriality for liability and entitlement to benefits, operating on the principle of equality and non-discrimination.[253] Access to social protection for foreign workers from outside the EU is generally conditional on residence in France, legal residence and, in the case of non-contributory social security benefits, nationality and length of service. Foreign nationals must therefore have regular and stable residence in order to be affiliated to a social security scheme and receive social security benefits.

- Subject to the general scheme.

Traditionally, the provisions of Articles L. 8252-1 and L. 8252-2 of the French Labor Code treat foreign employees "from the date of their recruitment" as if they were duly hired employees with regard to the employer's obligations.

Legally resident foreign workers are subject to the general scheme under the same conditions as nationals. To qualify for benefits, foreign nationals must be resident in France, subject to more favorable international agreements.

The required insurance periods must have been completed in France, unless bilateral agreements provide for the aggregation of periods completed in France

[250] Article L. 3142-75 of the French Labor Code.

[251] Articles L. 1441-1 and L. 1441-16 of the Labor Code.

[252] Cass. soc., 10 Oct. 1990, no. 88-43.683, no. 3762 P.

[253] See I. Daugareilh, G. Santoro and H. Traoré, *Conditions de travail et d'emploi des travailleurs du care en France, WP2 report for the European CARE4CARE project (2024).*

and in the country of origin. In any event, if the foreign worker fulfils the conditions required for the award of a benefit, refusal to award this benefit on the basis of the insured person's nationality alone is not justified under the European Convention on Human Rights.[254]

Thus, the employee benefits from the application of the provisions relating to pre- and post-natal employment bans and breastfeeding, the provisions relating to working hours: working time, rest and holidays, the taking into account of seniority in the company, training rights, payment of salary and related benefits and various indemnities in the event of termination of the employment relationship.

- Entitlement to family benefits.

In principle, foreign nationals are entitled to family benefits, but under different conditions depending on whether or not the family is resident in France. Other conditions relate to residence in France of the recipient and the child; the condition of effective and permanent responsibility for the child; the condition of lawful residence and the condition relating to the entry into France of the foreign child. However, workers temporarily seconded to France to work and their dependents are not entitled to French family benefits.[255]

This last condition was referred to the Human rights Defender. In its Deliberation no. 2007-247 of 1st October 2007 on the origin/regulation of public services, the administrative authority considered that

> the claimant, of Algerian nationality and legally resident in France with a ten-year residence permit, has been refused payment of family benefits for his three children who entered the country outside the family reunification procedure. Following the example of all the national and international courts, the High Authority considers this refusal to be discriminatory under the provisions of the European Convention on Human Rights.[256]
>
> It therefore recommends that the competent Minister
>
> amend Article L 512-2 of the Social Security Code and delete Article D 512-2 of the same Code, and asks to be informed of the action taken within four months. The HALDE also asks to be heard in the appeal before the Social Security Court.[257]

- Right to unemployment.

The right to register as a jobseeker is only available to foreign nationals under certain specific conditions, in this case when the foreign national holds a resi-

[254] Cass. soc., 14 Jan. 1999, no. 97-12.487, no. 119 P + B + R; Cass. soc., 13 July 2000, no. 99-11.358; Cass. soc., 31 Jan. 2002, no. 00-18.365, no. 461 FS - P.

[255] Article L. 512-1 of the French Social Security Code.

[256] Défenseur des droits (Halde), Deliberation no. 2007-247 of 1st October 2007 on the origin / Regulation of public services.

[257] Défenseur des droits (Halde), Deliberation no. 2007-247 of 1st October 2007.

dence permit eligible for unemployment benefits.[258] Foreign nationals may be registered as jobseekers with Pôle emploi, which checks[259] that they hold one of the residence permits provided for in Article R. 5221-47 of the Labor Code.[260] The Conseil d'État had also ruled that a foreigner who is not authorized to work cannot be regarded as a job seeker and therefore cannot legally be registered on

[258] Article R. 5221-48 of the French Labor Code.

[259] Article L. 5411-4 of the French Labor Code.

[260] This concerns: 1) The resident card [...] or the resident card bearing the words "long-term EU resident card" issued under 6) of Article L. 411-1 of this Code; 2) A temporary or multi-annual residence permit bearing the wording "private and family life", [...], or a long-stay visa valid as a residence permit [...]; 3) A temporary residence permit bearing the wording "private and family life", [...] authorizing the holder to work from the second year following issue, or in application of article L. 426-13 of this code authorizing the holder to work provided they have been resident in France for at least one year; 4) The residence permit bearing the wording "talent passport" [...] or the residence permit bearing the wording "talent passport (family)" [...], as well as the long-stay visa valid as a residence permit corresponding to these reasons for residence; 5) A residence permit bearing the words "seconded employee ICT (family)" or "seconded mobile employee ICT (family)", [...], or a long-stay visa valid as a residence permit [...], provided that the holder has acquired entitlement to unemployment benefit; 6) A temporary residence permit bearing the wording "ICT trainee (family)" [...], or a long-stay visa valid as a residence permit [...], if the holder has acquired entitlement to unemployment benefit; 7) A multi-annual residence permit bearing the word "employee" [...]; 8) The temporary residence permit bearing the wording "employee", [...] or the long-stay visa valid as a residence permit mentioned in 7) of article R. 431-16 of the same code, accompanied by the work permit; 9) The residence permit issued under article L. 233-4 of the same code to a national of a European Union Member State subject to transitional measures under its accession treaty, or the residence permit bearing the words "family member of a Union citizen", under article L. 233-5 of the same code; 10) The temporary residence permit bearing the wording "temporary worker", issued in application of article L. 421-3 of the same code or the long-stay visa valid as a residence permit mentioned in 8) of article R. 431-16 of the same code, when the employment contract, concluded with an employer established in France, has been terminated before its term, by the employer, for a reason attributable to him or for force majeure; 11) The holder of a temporary residence permit for "seeking employment or setting up a business" issued in application of article L. 422-10 or L. 422-14 of the same code or the long-stay visa valid as a residence permit bearing the same reference, mentioned in 14) of article R. 431-16 of the same code; 12) The temporary or multi-annual residence permit bearing the wording "student" or "student-mobility program", [...] as well as the long-stay visa valid as a residence permit bearing the wording "student" or "student-mobility program" mentioned in 13) of article R. 431-16 of the same code, benefiting from a work permit in application of 1) of II of article R 5221-3 of the present code, when their employment contract, in connection with their university course, has been terminated at the initiative of their employer or due to force majeure; 13) A multi-annual residence permit bearing the words "beneficiary of subsidiary protection" or "family member of a beneficiary of subsidiary protection", [...]; 14) A multi-annual residence permit bearing the words "beneficiary of stateless status" or "family member of a beneficiary of stateless status", [...]; 15) A temporary residence permit bearing the words "authorizes its holder to work"; 16) The provisional residence permit issued under article L. 425-4 of the same code; 17) A receipt for the first application for a residence permit bearing the words "authorizes the holder to work"; 18) A receipt for the renewal of a residence permit bearing the words "authorizes the holder to work"; 19) A certificate of favorable decision bearing the words "authorizes the holder to work"; 20) An extension certificate bearing the words "authorizes the holder to work".

the list of job seekers.[261] This principle found its first expression in the French Labor Code in 1992,[262] in the provisions that now appear in article R. 5411-3, which state that "foreign workers must provide proof that their situation is lawful with regard to the provisions regulating the exercise of salaried professional activities by foreigners". Law no. 93-1027 of 24 August 1993 relating to immigration control and the conditions of entry, reception and residence of foreigners in France, known as the Pasqua Law, is the source of the current article L. 5411-4 of the Labor Code, under which the National Employment Agency, now Pôle emploi, is required to check the validity of residence and work permits when a foreigner is registered on the list of jobseekers. This authorizes Pôle emploi to access the files of government departments in order to carry out the necessary checks.[263] The Constitutional Council found no breach of the principle of equality between nationals and foreigners and no infringement of privacy.[264]

It was a decree dated 11 May 2007[265] that restricted registration on the jobseekers list to holders of certain residence permits, through provisions that had no real connection with the main purpose of the decree, which was to modify the work permit system. Article R. 5221-47 of the Labor Code states that foreign workers must meet the conditions for registration set out in the section of the Labor Code dealing with jobseekers. Article R. 5221-48 gives a fairly long list of the residence permits required for this purpose, updated in line with reforms to the law on foreign nationals, the overall consistency of which is not self-evident.[266] This list now includes the temporary or multi-annual "student" or "student-mobility program" residence permit (or long-stay visa valid as a residence permit), with work authorization for salaried employment exceeding 964 h/year, if the employment contract, related to the student's university course, has been terminated at the employer's initiative or due to force majeure. In two recent decisions dated 1 March 2023, the Conseil d'État confirmed this rule, ruling that the fact that foreign nationals holding "student" (except in the cases mentioned above) and "entrepreneur/professional" residence permits are unable to register with Pôle emploi is not contrary to the principles of equality and non-discrimination guaranteed by article 14 of the European Convention on

[261] CE, 9 septembre 1996, M. S., no. 134139, C inédit au recueil Lebon.

[262] Decree no. 92-117 of 5 February 1992 on jobseekers and replacement income, and amending the Labor Code.

[263] Conclusions of A. Skzyerbak, *Public Reporter, CE, 1ère and 4e chambre réunies, session of 1st March 2023*, regarding a controversy on the legality of article R. 5221-48 of the Labor Code which identifies, among the documents authorizing a foreigner to work in France, those that allow registration on the list of jobseekers.

[264] Decision 93-325 DC of 13 August 1993, <https://www.conseil-constitutionnel.fr/decision/1993/93325DC.htm> (Accessed December 12, 2023).

[265] Decree no. 2007-801 of 11 May 2007 relating to work permits issued to foreign nationals, to the special contribution due in the event of employment of a foreign national without a work permit and amending the Labour Code.

[266] Conclusions of A. Skzyerbak, *Public Reporter.*

Human Rights, Article 1 of Protocol no. 12 to that Convention, Article 1 of the First Additional Protocol to that Convention, and ILO Convention no. 97.[267]

If the residence permit is not renewed, the holder loses the right to unemployment benefit. In principle, when the residence permit expires, payment of benefits ceases unless the foreign national can provide proof that a receipt has been issued and sent to Pôle emploi. By way of derogation, there may be continuity of the right to reside and work for certain residence permits: between the expiry date of the residence permit, or the four-year multi-annual residence permit, and the decision taken by the administration on the application to renew the permit, the foreign national may prove that he/she is legally resident by presenting the expired permit, for a period of three months from the expiry date. During this period, they retain all their social rights and the right to work.[268] Only the general four-year multi-annual residence permit is affected by this presumption of continuity of the right to residence. Other multi-annual residence permits with a shorter period of validity (in particular those for students or for private and family life) are not, nor are temporary residence permits.

2.3 Brief Commentary on the Presence of Migrant Populations (EU And Non-EU Nationals) in Employment in France

The following comments and information are taken from INSEE surveys published in 2023.

The immigrant population in France will be larger in number and as a percentage of the total population in 2022 (10.3%) than in 1946 (5.0%), 1975 (7.4%), 2010 (8.5%) or 2018 (9.3%).[269] Between the mid-1940s and the mid-1970s, immigration flows were predominantly male, filling the labor needs arising from post-war reconstruction and the post-war boom. In 1974, with the economic situation in a downturn, labor immigration was curbed and family immigration developed. Since then, the proportion of women in immigration flows has tended to increase, whether through family reunification or not. In 2022, 51% of immigrants were women, compared with 44% in 1975 and 45% in 1946. However, although women are still in the majority among new immigrants, their share has been falling in recent years (by 3 points in 2021 compared with the period 2006-2014).

In 2014, according to the employment survey, one in ten people aged between 15 and 64 living in mainland France was an immigrant. Half of working foreigners arrived in France before 1998. The working immigrants who have been in France the longest are from southern Europe (Spain, Italy, Portugal): 75% arrived before 1998. Immigrants from the Maghreb are equally likely to have arrived before and after 1998. By contrast, immigrants from other African countries arrived more

[267] CE, 1st March 2023, no. 456329; CE, 1st March 2023, no. 459364.

[268] Article L. 433-3 of the Ceseda.

[269] INSEE, *Chiffres clés*, 10 July 2023.

recently: 60% after 1998. Immigration has become more feminized; women account for 58% of working-age immigrants who have arrived since 2007: in 2014, they are even more numerous, with 62% arriving before the age of 15, mainly for family reasons, compared with 28% of men who emigrate for work. Since 1998, the proportion of women declaring that they came to study has almost equaled that of men. The most common reasons for arriving in France are family reunification (61%), work (18%), study (11%) and international protection (5%). The level of education of immigrants has risen over the last thirty years: 33% of those who arrived after 1998 have a higher education qualification, compared with 21% of those who arrived before that date. At the time of their first job in France, 85% of immigrants who arrived at the age of 15 or over were employees (58%) or manual workers (27%). Only 7% were managers and 5% in intermediate occupations. 36% of immigrants felt they were overqualified for their first job in France in relation to their level of education, experience and skills. This feeling persisted over time, with 33% still considering themselves overqualified in their current job. This is the case for only 17% of non-immigrants.

In 2017, 35 of the 87 occupations (or professional families) had as many immigrants as in total employment, or even more. Most of these "immigrant" occupations are in the service sector (64%), but there are also occupations in construction (19%) and industry (17%).

Domestic help is the occupation that makes the most use of immigrant labour: 39% of jobs in this occupation are held by immigrants, almost four times the proportion of immigrants in total employment in France. The podium is completed by security guards and unskilled construction workers, who employ 28% and 27% of immigrants respectively.

According to a 2019 survey on the care sector, 86% of nurses are women and 2.1% are immigrants; 88% of care assistants are women and 9.6% are immigrants; 94% of home helps are women and 19% are immigrants.

Unlike the American, Canadian, Brazilian, Irish and British censuses, and in accordance with the legal framework in force in France, the French census does not include any self-declaration of membership of an "ethno-racial" group.[270] The issue of ethnic statistics in France is highly controversial. For some, ethnic statistics run the risk of undermining republican universalism, locking people into identity categories and essentializing them, constantly referring them back to their origins, or even racializing them. Instead of "helping to combat discrimination in this way, we would be reinforcing community allegiances".[271] For others, it is a knowledge tool that is essential for measuring the extent of discrimination and social issues; "racial discrimination is not soluble in social inequality, it adds to it".[272]

[270] S. Le Minez, *INSEE Panorama d'une pratique ancienne, encadrée et évolutive.* Direction des Statistiques démographiques et sociales, 31 July 2020.

[271] *Le Minez,* INSEE Panorama.

[272] *Le Minez,* INSEE Panorama.

The above-mentioned ethnic statistics are strictly regulated in France. Law no. 78-17 of 6 January 1978 on data processing, data files and individual liberties begins by stating, in Article 6, that the collection and processing of so-called "sensitive" data is prohibited in France, in particular data relating to the actual or supposed racial or ethnic origin of individuals:

> It is prohibited to process personal data revealing the alleged racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership of a natural person or to process genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning the sex life or sexual orientation of a natural person.[273]

In the same article, however, the law specifies that there are exceptions to this prohibition. These are set out in the conditions provided for in II of Article 9 of the RGPD (EU) 2016/679 regulation of 27 April 2016. This authorizes processing "for scientific or historical research purposes, or for statistical purposes" (in accordance with Article 89(1)). INSEE's work on sensitive data falls fully within the scope of this law and the 1951 Statistics Act. The Institute is not obliged to obtain the consent of individuals or to invoke the public interest, unlike other derogations which must be justified by the public interest (cf. the procedures set out in II of article 31 and article 32 of the law relating to data processing, files and freedoms). Furthermore, an important decision by the Constitutional Council in 2007 specifies what information relating to origins may be collected. Without going back over the entire history of the debate, it should be remembered that the subject of ethnic statistics gave rise to heated exchanges at the time of the discussion of the law of 20 November 2007 on immigration control, integration and asylum. At the time, the government wanted to add a new derogation for "studies measuring the diversity of origins" to the list of existing derogations allowing the collection of "sensitive" data, thereby amending the 1978 Act. This provision was rejected by the Council on the grounds that it was a "cavalier législatif" (i.e. an article of law unrelated to the more general purpose of the text of the law—see the Constitutional Council's decision of 15 November 2007). Nevertheless, the Constitutional Council subsequently felt the need to clarify its opinion on this issue, and in fact went back to the drawing board twice to explain its position, as the constitutional notebooks accompanying this decision show.

It is under this legal framework that public statistics surveys are authorized, including questions on the country of birth and nationality (at birth and at the time of the survey) of respondents, but also of people living in the same household and of the respondents' relatives. These questions are asked in particular in the Employment survey, which is the most important in terms of the number of people surveyed—over 100,000 every quarter. Information on parents was introduced for the first time in 1999 in the census-based Family survey. It has been included in the Training and Professional Qualifications survey since 2003, in

[273] See the latest version of the 1978 Act, June 2019, for compliance with the RGPD.

the Employment survey, which has been carried out continuously since 2005, in the Housing surveys since 2006 and in other official statistics surveys, such as the Générations surveys carried out by Cereq since 2001. These surveys provide information on the descendants of immigrants (people born in France who have at least one immigrant parent). This is a major development in official statistics in the field of ethnic statistics, which are based on objective data without perception bias. Thanks to this, we now know how many descendants of immigrants there are in France compared with other European countries, France being an old country of immigration[274] This information also makes it possible to study inequalities or "statistical discrimination" on the labor market of immigrants and their descendants according to their different origins (cf. for example, a study on differences in employment rates from 2010 or a more recent one from 2019 on inequalities in employment and pay, or another study on integration after leaving the education system based on the Cereq Générations surveys). In addition to all these sources, there is of course a major survey by INED and INSEE on the diversity of populations in France, the Trajectoires et Origines (TeO) survey. As part of a set of questions on the various dimensions of origins and belonging, it also includes questions on feelings of belonging. These include: the link with the country of origin, the country of birth and the nationality of the parents at birth, religion, languages, self-image and the way others see them. This survey is authorized by the Constitutional Council and was recognized as being in the public interest by the CNIL in 2008. However, we have few or no statistics on migrants in the care sector. Those that do exist relate to doctors and nurses; none that we are aware of relate to care assistants and home helps.

2.4 Brief Commentary on The Presence of Migrant Populations (EU and Non-EU Nationals) in the Care Sector in France

From the outset, as some authors have observed, jobs are compartmentalized, male and female employees do not do the same jobs, nor do they receive the same professional recognition, and the same is true for people's origins. Some employers keep workers from immigrant backgrounds out of the limelight,[275] or confine them to arduous jobs,[276] or restrict,[277] as well as young peo-

[274] See the reference work: *Immigrés et descendants d'immigrés (Immigrants and descendants of immigrants)*, INSEE Références (2012), <https://www.insee.fr/fr/statistiques/4238373?sommaire=4238781> and the latest update of the main data.

[275] V. CA, Paris, 11e ch. Cor., 17 October 2003, Assoc. du restaurant du Bal du Moulin Rouge, *Dr. ouv* (July 2004), obs. M. Miné.

[276] For example, "in Île-de-France, 69% of employees of cleaning companies and 66% of people employed by households are immigrants": J. Perrin-Haynes, "L'activité des immigrés en 2007," *Cellule Statistiques et études sur l'immigration, INSEE Première* 1212, 31 October, 2008 <https://www.insee.fr/fr/statistiques/1280640#titre-bloc-15> (February 2, 2026).

[277] Cass. soc., 15 December 2011, Airbus opération v. L., Fédération CGT de la Métallurgie et a., no. 10-15.873, *Dr. ouv.* 769 (August 2012), obs. V. Pontif.

ple,[278] access to stable jobs and confine them to temporary employment. Jobs are colored, aged and gendered.[279]

As a reminder, in the INSEE Enquête Emploi 2019 survey,[280] we have the following figures concerning the place of migrants in the care professions selected for our research, i.e. nurses, care assistants and home helpers:

- Among nurses (public and private sectors combined): 86% are women and 2.1% are immigrants.
- Among care assistants: 88% are women and 9.6% are immigrants.
- Among home helps (auxiliaires de vie): 94% are women and 19% are immigrants. It is in this occupation that we see an over-representation of workers of foreign origin, well above the proportion of foreigners in the population (10% in 2022). However, for all three trades combined, the average percentage of foreigners is 10%, as the 2019 ILO report will also note. According to this report, "Caring for others, The future of decent work", the proportion of workers of foreign origin in health and social work in France would be 10%, whereas in the private sector as a whole the foreign population would be 12%.[281]

2.5 Statistics or Databases Published in France on Foreigners Working in Each of the Professions in the Care Sector

The characteristics of the care worker labor market[282] show that this is a sector with a high female employment rate. Overall, according to an ILO survey carried out in 2019, foreign workers in France account for 10% of workers in the health and social work sector, compared with 12% in the workforce as a whole, as indicated above.[283]

On the other hand, as mentioned above, foreign nationals are over-represented among home helps.[284] As a reminder, around 249,000 people work in the home help sector as employees of associations (153,000) or for-profit private companies (96800).[285] Of these, 14.5% were foreign-born, compared with 5.5% of the employed population in 2015 and 19% in 2019. These figures are confirmed by

[278] "The rate of insecure employment among 15-24 year olds rose from 17.2% in 1982 to 51.6% in 2014. "For young people with few qualifications, insecure employment has become an airlock into employment, in which some remain trapped for a large number of years": Observatoire des inégalités, "L'évolution de la précarité de l'emploi selon l'âge", 7 October 2016.

[279] Peyronnet, "La diversité: étude en droit du travail," 195.

[280] L. Chassoulier et al. *Investir dans le secteur du soin et du lien aux autres*.

[281] ILO, *Caring for others. The future of decent work* (Geneva: ILO, 2019), 223, Figure 4.15.

[282] See report by I. Daugareilh, G. Santoro and H. Traoré, *Les conditions de travail et d'emploi des travailleurs du Care en France* (WP2, 2024), 22 ff.

[283] ILO, *Caring for others*, 223. Figures based on ILO calculations using microdata from labour force and household surveys: Figure 4.15. Proportion of workers of foreign origin in health and social work.

[284] Kulanthaivelu et Thierus, "Les salariés des services à la personne".

[285] Source: URSSAF Caisse nationale, 2021 annual report based on APE code 8810A.

an ILO study which estimates that "migrant workers are generally employed in occupations that require the fewest qualifications".[286]

2.6 Description of Available Statistics or Databases

The above statistics do not distinguish between different categories of migrants.

2.7 Published Statistics or Databases on National, EU or Third Country Care Workers, Distinguishing on the Basis of Race, Ethnic Origin, Religion or Language

We are not aware of any statistics or data on the participation of care workers on the basis of race, technicality, religion or language.

2.8 Describe the Statistics or Databases You Have Found, i.e. Summarise and Comment on the Data Found on the Participation of Workers in the Care Sector on the Basis of Race or Ethnicity, Religion and Language

We are not aware of any statistics or data on the participation of care workers on the basis of race, technicality, religion or language.

2.9 Disputes or Mediatised Conflicts Concerning the Race or Ethnic Origin, Religion or Language of Staff Employed in the Care Sector

We are not aware of any such disputes or conflicts.

2.10 Statistics or Databases Published in France on Formal and Informal Employment Rates in the Care Sector

We have not had access to such statistics, if they exist.

2.11 Description and Commentary on Statistics or Databases on the Participation of Migrant Workers in the Care Sector in the Formal or Informal Economy

We are not aware of any statistics or databases concerning the participation of migrant workers in the care sector, whether in the formal or informal economy.

2.12 Statistics or Databases Published in France on the Possible Presence of "Undocumented" or "Irregular" Immigrants (Without Authorisation to Reside or Work in Your Country) Likely to Be Employed in the Care Sector

Unlike the criterion relating to gender, origin is both more difficult to capture and can only concern a limited number of people. A person's origin can be very complicated to determine and, furthermore, the collection of this type of data is

[286] ILO, *Caring for People*; on nurses, 194 ff.

only authorized under the conditions already described above.[287] For example, it has been observed that there are a large number of reports on equality between women and men and that its progress is measured year after year, whereas there are strong reservations about ethnic origin. The lack of data on the ethnic composition of French society means that it is impossible to shed light on the true extent of the discrimination experienced by these people, who therefore have no means of effectively challenging the public authorities.

2.13 Measures Taken in France to Facilitate Migrants' Access to Work, Particularly in the Care Sector Existence of Staff Shortages in the Care Sector in France.

Foreign nationals can work in the French civil service. However, depending on their nationality, the conditions of access and the status (civil servant or contract employee) to which they are entitled vary.

- Conditions of access for foreign workers to the civil service.
  Under French law,

> access to the "corps, cadres d'emplois and emplois" is open, under the conditions laid down in this code, to nationals of: 1) a Member State of the European Union; 2) a State party to the Agreement on the European Economic Area; 3) the Principality of Andorra; 4) a State for which an agreement or convention in force has so provided.[288]

Foreign nationals from a European country can thus gain access to the French civil service by competitive examination, secondment or contract.

- Access by competition.

Nationals of EU Member States may take a competition for access to the French civil service under the same general conditions applicable to nationals[289] in application of European Community law prohibiting discrimination based on nationality within the Community.

In order to meet the nationality requirement, non-EU nationals must have obtained French nationality no later than the date of the 1re competition test. However, some posts are open to all candidates without any nationality requirement. These include university professors, lecturers and hospital doctors.

In addition to the nationality requirement, diplomas, training or experience in another European country may be accepted as equivalent to the diploma, training or experience required to take the competition. Competitive examinations usually require a certain level of diploma. This level of diploma is specified in the

[287] Peyronnet, "La diversité: étude en droit du travail," 216.

[288] Article L. 321-2-1) of the General Civil Service Code.

[289] Decree no. 2020-311 of 22 March 2010 on the recruitment of European nationals in the civil service; Circular of 15 April 2011 on the recruitment and reception of European Economic Area nationals in the French civil service.

specific regulations and generally applies to all the rules governing recruitment, promotion, pay, etc. for all civil servants who are members of the same body or job category in each body or job category (brevet, Certificat d'aptitude professionnelle, Brevet d'études professionnelles, baccalauréat, master's degree, etc.).

In the case of a competitive examination or specific recruitment for a regulated profession, i.e. professions whose practice is subject to authorization by a competent authority and the possession of a diploma or specific training (social worker, nurse, care assistant, etc.), you must have the relevant diploma.

The Human rights Defender (Défenseur des droits) has not questioned the principle of requiring foreign nationals to have a diploma in order to enter certain professions. In fact, the High Authority for the Promotion of Equality and the Fight against Discrimination considers that

> the requirement to hold a diploma issued in France, in a Member State of the European Union, or an equivalent diploma, is objectively justified and that it constitutes a guarantee of the level of training. The initial condition of holding a French diploma has been extended to include diplomas issued in Member States in application of European directives since the 1970s. These directives, which were incorporated into Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, established common training standards, a necessary condition for the mutual recognition of diplomas between Member States. There is no such harmonization of training in non-EU countries.[290]

The Defender of Rights therefore considers it justified to introduce knowledge assessment procedures for professionals holding diplomas issued outside the European Union, in the absence of a bilateral agreement. Moreover, these procedures must allow access to the profession, in particular by taking into account professional experience in France, so as not to have a discriminatory effect.[291] In this respect, Decree no. 2007-196 of 13 February 2007 on the equivalence of diplomas required to take part in competitions for access to civil service bodies and employment frameworks goes in this direction, as it provides for procedures for the examination, by commissions, of diplomas issued outside the European Union and of skills acquired.[292] If there is a prior examination of diplomas, the date taken into account is that of the 1re meeting of the selection board responsible for choosing the candidates, unless otherwise specified in the special regulations, defined as all the rules applicable in terms of recruitment, promotion, remuneration, etc., to all civil servants who are members of the same body or employment framework to which the candidate belongs.

[290] Défenseur des droits (Halde), Deliberation no. 2009-139 of 30 March 2009: Employment, nationality.

[291] Défenseur des droits (Halde), Deliberation no. 2005-36 of 27 February 2005.

[292] Decree no. 2007-196 of 13 February 2007 on the equivalence of diplomas required to take part in civil service competitions.

It should be noted, however, that under French law, basic civil service social workers such as auxiliaires de vie sociale, also known as home helps, are recruited without competition by local authorities or municipal social action centers. They come under the local civil service.

In any event, the so-called sovereignty posts,[293] defined as posts in a sovereign sector (justice, home affairs, budget, defense, foreign affairs, etc.) and determined according to the nature of the duties and responsibilities performed, are only accessible to French nationals. As a result, foreign nationals from the European Union

> do not have access to posts and may not under any circumstances be given functions whose duties cannot be separated from the exercise of sovereignty or involve direct or indirect participation in the exercise of the prerogatives of public authority by the State or other public authorities.[294]

In its opinion issued on 1st December 2008 on jobs closed to foreigners, the Advisory Committee of the Human Rights Defender emphasized that

> the closure of millions of jobs to third-country nationals and the resulting discrimination in recruitment for hundreds of thousands of other jobs go a long way to explaining why INSEE statistics [...] show that non-European foreigners in France are twice as likely to be victims of unemployment and insecure employment as French and European nationals. As a result, unemployment and job insecurity are very high in working-class neighborhoods, where most non-European foreigners are concentrated. The Advisory Committee would like to see the abolition of any distinction between workers who belong to the European Union and those who do not.[295]

In accordance with Article 39 of the Treaty establishing the European Community, freedom of movement implies the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work. In addition to freedom of movement for workers, Community law guarantees equal access to employment for nationals and Community nationals. In the public sector, equal access to employment for nationals and nationals of Member States becomes the rule, with

[293] Article 5 *bis* of Law no. 83-634 of 13 July 1983 on the rights and obligations of civil servants specifies that public posts "whose remit is either separable from the exercise of sovereignty, or does not involve any direct or indirect participation in the exercise of prerogatives of public authority by the State or other public bodies" are open to nationals of other European Union Member States. A circular issued by the Prime Minister on 19 September 2005 and by the Minister for the Civil Service on 20 September 2005 clarified these provisions, based on an opinion issued by the Conseil d'État on 31 January 2002 and on the case law of the Court of Justice of the European Union.

[294] Article L. 321-2-2) of the General Civil Service Code.

[295] Défenseur des droits (Halde), Deliberation no. 2009-139 of 30 March 2009: Employment, nationality.

the exception of jobs linked to national sovereignty or the exercise of prerogatives of public authority by nationals.

According to the Court of Justice of the European Communities, the exception to the principle of equal access to employment between nationals and Community nationals is to be interpreted strictly, there is no need to distinguish between the public and private sectors, and the focus must be on the nature of the employment.

While Community law allows Member States to reserve for their own nationals jobs related to national sovereignty or the exercise of public authority, Community law does not prevent Member States from recognising the right of non-EU nationals to equal access to employment on their territory. In addition, since the Treaty of Amsterdam, asylum and immigration issues fall within the remit of the European institutions and are no longer solely a matter for cooperation between Member States. Thus, the Council extended the equal treatment in employment enjoyed by Community nationals to their family members who are third-country nationals, by Directive 2004/38 of 29 April 2004 (Articles 23 and 24).

Community law also provides for the right to equal access to employment for long-term non-EU residents. However, Member States retain some room for manoeuvre in this area and may derogate from this principle under the conditions set out in the above-mentioned directive. Directive 2003/109/EC of 25 November 2003 confers this right on third-country nationals who are long-term residents, defined as persons who have resided legally and continuously in the territory of a Member State for five years (article 11).

However, this directive allows Member States to

> maintain restrictions on access to employment or to activities as self-employed persons where, in accordance with [their] national legislation or Community law in force, such activities are reserved to its nationals or to citizens of the European Union or of the European Economic Area (Article 11-3(a)).

The French State has incorporated provisions harmonizing long-term resident status into the Code on the Entry and Residence of Foreigners and the Right of Asylum, but has not transposed the principle of equal treatment between nationals and residents who are nationals of third countries in terms of access to employment. The Council notes, however, that despite the expiry of the deadline for transposing these two directives in 2006, the principle of equal access to employment has not been transposed into national law for family members and long-term residents.

Ultimately, in the opinion of the Defender of Rights, there is no reason to call into question the reservation for nationals of jobs, in both the public and private sectors, involving the exercise of national sovereignty or prerogatives of public power. However, the Human Rights Defender states that "with the exception of jobs linked to the exercise of national sovereignty or prerogatives of public power, the principle of restricting access to certain jobs on the basis of nationality is not justified".[296]

[296] Défenseur des droits (Halde), Deliberation no. 2009-139 of 30 March 2009, 6 p.

- Access by secondment.

With the exception of sovereignty posts,[297] non-EU nationals have access to the civil service bodies and job categories[298] that correspond to the functions they previously held, particularly in another European country. When European nationals are seconded, they are paid by their French host administration.[299] To this end, they benefit from the social protection and pension schemes applicable to the positions they hold in this administration.

- Access by contract.

Foreign nationals from the European Union can be recruited under contract (CDD or CDI) as members of the French civil service.

Non-EU foreign nationals can be recruited under contract (fixed-term or open-ended contract) as civil servants in the French civil service. There is no nationality requirement to be recruited as a contract employee in the three civil services. However, foreign nationals must hold a valid residence permit. There is also a diploma requirement, as most competitive examinations to become a civil servant require a certain level of qualifications. As a candidate under contract, it may be required that the foreign national hold the diploma that would be required of a civil servant to occupy the same post.

In addition, in the care sector, the jobs of care assistant and nurse are regulated professions, i.e. professions that can only be practised with the authorization of a competent authority and the possession of a specific diploma or training,[300] and applicants for employment must have the corresponding diploma. Like nationals, foreign nationals holding a foreign diploma must apply for their diploma to be recognized for access to the healthcare professions.

- Conditions of access to the private healthcare sector.

For access to the healthcare professions, the nationality requirement has been abolished for holders of a French diploma or equivalent issued by an EU Member State. A complex system of exceptional authorizations also exists for foreign doctors and French doctors with foreign qualifications. In addition to the diploma requirement, the general rules on physical fitness and experience apply equally to national and foreign applicants. However, as far as the employer is concerned, discrimination on the grounds of ethnic origin in particular is prohibited.

[297] Article L. 321-2-2) of the General Civil Service Code.

[298] Article L. 411-1 to L. 411-9 of the General Civil Service Code: A group of civil servants subject to the same set of rules, known as special status, laid down by decree, and who occupy the same jobs.

[299] Article L. 513-16 of the General Civil Service Code.

[300] See Référentiel des compétences *op. cit*, in report Daugareilh, Santoro, et Traoré, *Les conditions de travail et d'emploi,* Part 1.

In addition, to facilitate access for migrants legally resident in France, exemptions from the work permit requirement have been granted for occupations in short supply. The sectors of activity identified as experiencing recruitment difficulties are listed by job family at national level. This is the case for nurses and care assistants in the care sector in France. Under French law,

> In accordance with article L. 414-13, when the foreign national's application concerns a profession and a geographical area characterized by recruitment difficulties, the residence permits provided for in articles L. 421-1 and L. 421-3 are issued without reference to the employment situation.[301]

The list of occupations in short supply is set out in the Order of 1st April 2021 relating to the issue, without opposition to the employment situation, of work permits to foreigners who are not nationals of a Member State of the European Union, another State party to the European Economic Area or the Swiss Confederation. According to the aforementioned decree, "the employment situation or the absence of a prior search for candidates already present on the labor market cannot be invoked against an application for a work permit submitted by a foreigner who is not a national of a Member State of the European Union, another State party to the European Economic Area or the Swiss Confederation wishing to work in a profession in one of the professional families and a geographical area characterized by recruitment difficulties…".[302] According to the most recent data available, the occupations most in demand in certain regions of France include those dedicated to the care sector, such as care assistants,[303] nurses[304] and home helps and household assistants.[305]

France has also signed bilateral agreements with certain countries on the management of migratory flows.[306] These agreements allow foreign workers from

[301] Article L. 421-4 of the Ceseda. This provision appears in a sub-section entitled "Common provisions" applicable to TDS for professional reasons. Similarly, students at the end of their studies who wish to work in France are, under certain conditions, issued with a temporary residence permit for a period of six months, renewable once, at the end of which they may obtain a residence permit as an employee without having to prove that they are in employment. Foreign students must have obtained a diploma at least equivalent to a Master's degree, or one that appears on a list established by decree, from a nationally accredited higher education establishment. They must also have an employment contract, either open-ended or fixed-term, in line with their training and with pay above a threshold determined by decree and adjusted, where appropriate, according to the level of the diploma concerned.

[302] Article 1st of the Order of 1st April 2021.

[303] V0Z60: Corsica; Grand Est; Hauts-de-France; Occitanie; Pays de la Loire.

[304] V1Z80: Bourgogne-Franche-Comté; Grand Est; Hauts-de-France; Ile de France; Normandie; Occitanie.

[305] T2A60: Centre-Val de Loire; Occitanie; Pays de la Loire.

[306] See the official website of the Ministry of the Interior: Bilateral agreements relating to professional mobility / Bilateral agreements / Europe and International - General Directorate for Foreigners in France - Ministry of the Interior (interieur.gouv.fr) and Légifrance, <https://www.immigration.interieur.gouv.fr/Immigration/Les-accords-bilateraux/Les-accords-bilateraux-relatifs-a-la-mobilite-professionnelle> (Accessed December 5, 2023).

the signatory countries to enter, reside and work in France in certain sectors of activity, without any restrictions on their employment status. The sectors thus opened up generally take account of the shortage occupations referred to in the aforementioned decree. This is the case, for example, with bilateral agreements on professional immigration between France and non-EU countries, particularly African countries. Similarly, some bilateral agreements include lists of short-staffed occupations that differ from those provided for under ordinary law (list annexed to the Order of 1st April 2021, ex. Order of 18 January 2008).

More concretely, there are two types of agreement: those for the concerted management of migratory flows (7 of which have been signed between France and African countries) and those relating solely to professional migration (3 in number) (it should be noted that this can be broader than just short-staffed occupations).

Agreements on the concerted management of migration flows (AGC)	Agreements relating solely to professional migration
• Benin: 16 trades listed: Article 16 of the agreement of 28 November 2007 • Burkina: 64 trades listed in appendix II of the agreement of 10 January 2009 (annual quota: 500) • Cape Verde: 44 trades listed in Annex II to the agreement of 24 November 2008 (annual quota: 500) • Democratic Republic of Congo: 15 trades listed: article 223 of the agreement of 25 October 2007 • Gabon: 9 trades listed: appendix I to the agreement of 5 July 2007 • Senegal: 108 trades listed in Annex IV of the agreement of 23 September 2006 (annual quota: 1,000) • Tunisia: 79 trades listed in Annex I to the agreement of 28 April 2008 (annual quota: 3,500)	• Mauritius: agreement of 23 September 2008 (with list of professions) • Russia: agreement of 27 November 2009 (mainly concerns young professionals and skilled workers) • Georgia: agreement of 12 November 2013 (with list of professions)

When the Immigration Bill was being examined at the end of 2023, there were heated debates and differences of opinion about whether it was appropriate, or even necessary, to create a "short-staffed occupations" residence permit. The plan was to facilitate the regularization of undocumented workers by granting them a residence permit to combat labor shortages in recognized shortage sectors, including the care sector. But the right-wing opposition managed to get a majority to remove this measure from the bill.

2.14 Equal Rights for Migrants With Residence and Work Permits in the Care Sector

The 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which came into force on 1st July 2003, guarantees the international protection of migrant workers. The text aims to promote the rights of migrant workers in all countries and throughout the migration process of foreign workers and members of their families, and recognizes the rights of all migrant workers, including those in an irregular situation. To this end, and over and above strictly professional rights, foreign workers and their families enjoy human rights, including freedom of movement, freedom of thought, opinion, religion and conscience, freedom of expression, protection against arbitrary administrative action, enjoyment of the same rights as nationals before the courts, the right to the same treatment as nationals as regards working and employment conditions and remuneration; the same applies to social protection guarantees and the education of children. Like several European countries, France has not yet ratified this Convention.[307] One of the reasons for this is that the Convention makes no distinction between legal and illegal aliens. French law makes a distinction between these two situations, even though it should be emphasized from the outset that undocumented migrants enjoy certain employment rights and social protection[308] (see question 24 below), which is partly called into question by the new immigration law.

Legally resident foreign workers enjoy equal social rights with nationals, which is in line with France's international commitments to the ILO. French law also complies with ILO Convention no. 118 on Equality of Treatment in Social Security of 28 June 1962 and Convention no. 97 on Migration for Employment (Revised) of 1949.[309] However, Convention no. 143 on Migrant Workers (Supplementary Provisions) of 1975 has not been ratified by France.

In terms of European Union law, in 2015 France transposed Directive 2011/98/EU of 13 December 2011 on equal treatment for nationals and non-EU workers as regards working conditions and social security.[310]

In addition, France has signed bilateral social security agreements that deal exclusively with the right to social protection for migrants, and other bilateral agreements or treaties which, even if they do not deal specifically with social

[307] Ratification of the International Convention on the Protection of the Rights of All Migrant Workers. Written question no. 13901 to the Minister for Europe and Foreign Affairs - 15e legislature, on the Senate website, published on 27 February 2020, <https://www.senat.fr/questions/base/2020/qSEQ200113901.html> (Accessed December 15, 2023).

[308] Articles L. 8252-1 to L. 8252-4 of the French Labor Code.

[309] While excluding an important part - Annex II of the said Convention relating to the recruitment, placement and conditions of work of migrant workers recruited under arrangements for collective migration made under government supervision

[310] Law no. 2015-925 of 29 July 2015 on the reform of the right of asylum, JORF no. 0174 of 30 July 2015; Law no. 2015-993 of 17 August 2015 adapting criminal procedure to European Union law.

protection, may contain provisions guaranteeing equal treatment as regards social benefits.[311]

2.15 Reference to Migrant or Foreigner Status in "Labor" Legislation or, Where Applicable, Collective Agreements in France in Each of the Professions in the Care Sector

Some collective agreements applicable to the care sector refer to the status of foreign workers of the person working in the professions covered by these agreements. Originally, these provisions were designed to enable workers from the French overseas territories to travel to the French overseas territories during their holidays. For example, the collective agreement for the home help sector states: "In accordance with the legal and regulatory provisions and in order to allow workers from the overseas departments and territories working in mainland France and vice versa, as well as foreign workers whose country of origin is outside Europe, to go to this department or country, they are granted, at their request, every other year, the possibility of adding to their paid holidays the days of reduced working hours as well as a period of unpaid absence and the fifth week of paid holidays".[312] This request must be made at least 3 months before the start date of the leave. The total duration of this period of absence may not exceed 60 consecutive calendar days. A written certificate specifying the authorized duration of their absence is issued to the employees concerned at the time of departure. In the same spirit, other collective agreements in the healthcare sector do not specifically mention foreign workers. This is the case with the national collective agreement for private commercial hospital establishments, which states that "… Staff from overseas departments and territories working in mainland France may accumulate paid leave over 2 years".[313]

To a different extent, the national collective agreement for private employers and home employment stipulates that

> if the employee is of foreign nationality, outside the European Union, the private employer shall also check with the relevant department of the prefecture of the place of work whether the employee holds a valid authorization to work in France.[314]

[311] See in particular the establishment agreements with the Central African Republic, Gabon, Mali, Senegal and Togo; declaration of principle of 19 March 1962 relating to economic and financial cooperation between France and Algeria, part of the "Evian Agreement".

[312] Part IV, Chapter V, Leave - Workers from French overseas departments and territories and foreign workers, article 24-2 of the NCC for home help, support, care and services.

[313] Article 58.2 of the NCC for private hospitals 2002: Titre IV, chapitre 1: report des congés. In the same vein, see article 09.03.2 NCC for private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951.

[314] Article 42-2 paragraph 2 of the NCC for individual employers and home-based employment 2021, chapter: recruitment and employment contract (formalities linked to recruitment: declaration of the employee's employment).

2.16 Summary and Comments on Court Decisions

To our knowledge, there has been no court ruling on this subject.

2.17 Specific Mention in Legislation on Foreigners or Immigration in France (for Example, on Residence or Work Permits, Family Reunification, Permit Renewal, etc.) of Professions in the Care Sector? Summary and Commentary of Court Decisions

French legislation on immigration to France includes a special system for care professions, which are among the so-called short-staffed professions for which it is not necessary to examine the employment situation as part of the work permit procedure (see above).

2.18 Rights of Migrants Holding Residence Permits and Authorisation to Work in the Care Sector (in Each of These Professions) Equal Rights With Other Workers in Other Production Sectors

Migrants holding residence and work permits in the healthcare sector, as in any other sector, enjoy equal rights with other workers, as specified above in question 14.

2.19 Summary and Commentary of Court Decisions on Indirect Discrimination Concerning Irregular Migrant Workers

French case law has highlighted the concepts of indirect discrimination, discrimination by association and discrimination without the requirement of comparison. These correspond to cases where people suffer multiple forms of discrimination, but where the prejudicial situation cannot be precisely proven due to the absence of comparable situations that would make it possible to establish the more favorable treatment of other people at work. In this way, the Cour de cassation and the CJEU, often by taking into account the structural dimension of indirect discrimination, get around the difficulties of comparability by looking at the real effect of the apparently neutral rule or decision which is applied unfavorably to a minority of more vulnerable employees.

In the case of a Cape Verdean domestic worker in an irregular situation who was dismissed without compensation and without recourse after nine years of loyal service, the High Court focused on the brutal and abusive nature of this decision, which is often experienced by these undocumented workers of African origin.[315] The judges approved the classification of indirect discrimination, which, without saying so, characterizes multiple discrimination:

> "The existence of discrimination does not necessarily imply a comparison with the situation of other employees; having noted that the exploitation by Mr X…

[315] Cass. soc., 3 Nov. 2011, no. 10-20.765.

> and Ms Y… of Ms Z…'s status as a foreigner, illegally present on French territory, did not necessarily imply a comparison with the situation of other employees; having noted that the exploitation by Mr X… and Ms Y… of Ms Z…'s status as a foreigner did not necessarily imply a comparison with the situation of other employees.

Who was in France illegally and not entitled to any claims, had resulted in the "employee" being denied her legal and contractual rights and in a totally disadvantageous situation compared with domestic employees who were covered by employment legislation, the Court of Appeal, which deduced from this that Mrs Z. had suffered clear indirect discrimination on the grounds of her origin, legally justified its decision on this count…". The observations made by the lower courts on the context in which multiple discrimination arises show that the one-off disregard for the protection of employment law is linked to an abuse of rights regularly suffered by people working illegally.[316]

2.20 Provisions in Collective Agreements Favouring the Integration of Migrant Workers in the Care Sector on the Basis of their Language, Religion, Particular Difficulties in Visiting their Families in Their Country of Origin, Ethnic Origin, etc.

Of the six collective agreements studied, only three include provisions to promote the integration of foreign workers. The NCC for private hospitals of 18 April 2002 stipulates in article 42 of title IV: Employment contract; chapter 1st: Recruitment formalities—Hiring that

> All open-ended contracts shall be formalized for the person concerned by a written and signed employment contract, drawn up in French and given to the latter within a maximum of 8 working days. If the employee is a foreigner, a translation of the contract will be drawn up, at his request, in his language of origin.

The NCC for the home help, support, care and services of 21 May 2010 stipulates in Article 24.2 "Workers from French overseas departments and territories and foreign workers" relating to the employer's obligation under Title IV on individual employment relations; Chapter V. Events occurring in the employment relationship that

> In accordance with the legal and regulatory provisions and in order to allow workers from the French overseas departments and territories working in mainland France and vice versa, as well as foreign workers whose country of origin is outside Europe, to go to this department or country, they are granted, at their request, 1 year out of 2, the possibility of adding to their paid holidays the days of reduced working hours as well as a period of unpaid absence and the 5th week of paid holidays. This request must be made at least 3 months before

[316] Cass. soc., 3 Nov. 2011, no. 10-20.765. See also M. Mercat-Bruns, "Le jeu des discriminations multiples," *RDT* 4 (2013): 254–57.

the start date of the leave. The total duration of this period of absence may not exceed 60 consecutive calendar days. A written certificate specifying the authorised duration of their absence shall be issued to the employees concerned at the time of departure.

The NCC for personal services companies of 20 September 2012 stipulates in its Article 5 entitled "Priority audiences in the branch" of Part 3: Employment and career development policy; Chapter II. Continuing vocational training that

The social partners define two main categories of priority audiences within the professional branch as part of the implementation of the various continuing vocational training schemes (training plan, professionalization period and individual right to training). It is specified that these groups are given priority with regard to the actions that are themselves given priority in this agreement.
- 1ère priority: in order to reduce inequalities in access to training and qualifications, the social partners have designated the following as major priority groups in the sector: unqualified workers, young people and older workers, irrespective of the size of the company.
- 2nd priority: the social partners also consider employees in middle management and executives to be priority groups, in order to promote the development of their skills in the light of changes in the professions in which they work.
For these groups, the social partners recognize the following objectives as national priorities: 1) for unskilled workers, young people and older workers (referred to above): to facilitate access for these employees to continuing vocational training by developing the literacy approach, the fight against illiteracy, and initiation and improvement in the French language.

The NCC for private not-for-profit hospital, care, cure and nursing establishments of 31 October 1951, the national collective bargaining agreement for establishments and services for maladjusted and disabled people of 15 March 1966 and the NCC for individual employers and home-based employment of 15 March 2021 do not contain any provisions to promote the integration of foreign workers.[317]

[317] However, the social partners have decided to have the collective agreement for the individual employers and home-help sector translated into several languages (English, Spanish, Arabic and Portuguese) to give foreign employees a better understanding of the provisions of the agreement that apply to them. In addition, to meet the challenges facing the sector - which will need to recruit almost 800,000 employees between now and 2030 to replace those retiring and to meet the needs of an ageing population in terms of additional manpower - the FEPEM and the social partners have launched Lab Migration, a laboratory for experimentation and innovation on migration in the private-sector employer sector. This new initiative is a response to the need for human resources (home helps, childminders, domestic assistants, etc.) to be filled throughout France. It is a way of attracting immigrant populations to the homecare sector, and securing recruitment for individual employers. The trial began in Marseille. Launched in March 2022, it came to fruition on 18 October 2022 with the signing of a protocol of intent bringing together all the players involved in the project. A second trial in the Ile-de-France region is also under way.

2.21 Mediated Conflicts Between Migrant Workers in the Care Sector and Care Recipients in Terms of Non-Discrimination on the Basis of Ethnicity, Religion or Nationality

We have no knowledge of this type of conflict.

2.22 Statistics or Databases Published in France on the Wages of Migrant Workers in the Care Sector

To our knowledge, there is no specific study on the wages of migrant workers in the care sector. The only statistics that come close to this topic are to be found in an INSEE study from 2023, which provides a general analysis of the wages of immigrants and immigrant descendants: INSEE, *Immigrés et descendants d'immigrés*, 2023.

2.23 Description of Statistics or Databases on Job Classification and Wages of Migrant Workers in the Care Sector

To our knowledge, there are no statistics or databases on the job classification and wages of migrant workers in the care sector.

2.24 Rights of Irregular Migrants (Without Residence or Work Permits) With Regard to Employment in the Care Sector in France

First of all, it should be emphasized that in France, foreign nationals who are illegally resident and working enjoy identical rights, regardless of the sector of activity or profession in which they are employed. There is therefore nothing specific on this point for workers in the Care sector. Secondly, it should be pointed out that the concept of undocumented migrants refers to people of foreign nationality residing in France without a residence permit, including European Union citizens (and assimilated persons) residing in France without the right to reside there. Although EU nationals and people of equivalent status are not required to have a residence permit, they may not have the right to stay in France and may therefore be in an irregular situation. Although the term "undocumented" is usually used for people from third countries, there is a common set of rights for undocumented EU nationals and undocumented third-country nationals. However, EU nationals enjoy rights by virtue of their European citizenship.

For a long time, it was an offence for a foreign national to enter and/or reside in France illegally (without a visa or residence permit). The Act of 31 December 2012 abolished the offence of illegal residence in order to comply with EU law. Instead, however, it created the offence of remaining in the country illegally, which arises when the person fails to comply with a removal order or when it has not been possible to enforce the order despite being placed in detention or assigned to a residence permit.[318] Evading or attempting to evade the enforce-

[318] Evading the enforcement of a removal order is punishable by 3 years' imprisonment. Assisting unauthorized entry, movement or residence is a criminal offence, except for family members

ment of a removal order is punishable by 3 years' imprisonment.[319] In order to combat illegal employment, the law has amended the amount of the administrative fine imposed on any employer who employs a foreign worker who is not authorised to work in France, as well as a foreign worker in possession of a work permit, in a professional category, profession or geographical area other than those mentioned on his or her work permit. The new amount of this fine will be no more than 5,000 times the hourly rate of the guaranteed minimum (MG = 4.15 euros since 1-1-2024), i.e. a maximum of 20,750 euros in 2024 and increased in the event of repeated offences up to a maximum of 15,000 times this rate, i.e. a maximum of 62,250 euros in 2024.[320] The fine is applied as many times as there are foreign workers concerned. This fine is in addition to the administrative penalties already in place and the criminal penalties also amended by the new Immigration Act.[321]

Finally, foreign workers without a residence or work permit enjoy both human rights (2.24.1) and rights resulting from their professional activity (2.24.2). Undocumented workers do not have a right to regularization, but they may have recourse to the applicable law (2.24.3).

2.24.1 Personal Rights

2.24.1.1 Right of Association and Trade Union Rights

The French law of 1st July 1901 on the right of association does not lay down any nationality or residency requirements for membership of an association or for setting one up. There is therefore nothing to prevent an illegal foreign national from being a member of an association, including a founder member, a member of a trade union, or even holding a trade union office (trade union delegate, staff delegate). The only restriction in French law concerns the position of employee representative (conseiller prud'homal), which is only open to people of French nationality.

2.24.1.2 Right to Health and Social Benefits

In most cases, an impoverished person living in France is entitled to health cover even if he or she is not in employment and/or does not have a residence

and persons who act without any direct or indirect consideration: "when the act in question has not given rise to any direct or indirect consideration and has consisted of providing legal, linguistic or social advice or support, or any assistance provided for exclusively humanitarian purposes". Article L.823-1 of the Ceseda.

[319] Article L. 824-9 of the Ceseda.

[320] Pending publication of the decree setting out the conditions of application, see article 34 of law no. 2024-42 of 26 January 2024 amending article L. 8253-1 of the French Labor Code.

[321] Article 34 of law no. 2024-42 of 26 January 2024 amending articles L. 8254-2 and L. 8256-2 of the French Labor Code.

permit. Unlike French nationals, who are covered exclusively by health insurance, foreign nationals may be covered by 3 different schemes, each exclusive of the other. Depending on whether they are legally resident in France or not, and how long they have been in the country, people who have been in France for a long time are covered either by:

- Health insurance (possibly with supplementary cover) if they have a legal right of residence, with a few exceptions. Only people who are legally resident (since the law of 24 August 1993) in the sense strictly defined by the Social Security Code can benefit from health insurance. An exhaustive list of residence permits was set out in the decree of 10 March 2017. In addition, a period of 3 uninterrupted months' presence in France (with or without a visa, with or without a residence permit) is required, subject to exceptions (in particular by virtue of bilateral agreements). Exceptions to these conditions of regularity and/or length of residence are accidents at work and occupational illnesses (see below).
- State medical aid (AME) for illegal residents on low incomes. Under immigration law, AME is a benefit for foreign nationals residing illegally.

AME is granted under two conditions:

1. You must be on French territory in conditions that are not purely occasional and that present a minimum of stability (Council of State opinion of 8 January 1981). This therefore excludes people passing through France without any plans to settle, including some who have come to France for medical treatment.
2. You must be residing in France illegally for more than 3 consecutive months.

These conditions therefore exclude from AME people who are legally resident within the meaning of immigration law. As a result, a person who is legally resident but does not hold one of the documents entitling them to health insurance is excluded from all health cover, as they are not eligible for either health insurance or the AME/DSUV[322] (Conseil d'État decision of 31 December 2021).

Foreign nationals who are in France illegally and who do not meet the conditions for AME (resources above the ceiling, illegal status for less than 3 months) may, under certain conditions, receive (one-off) financial coverage only for "urgent care" provided by a public or private hospital participating in the public service and "whose absence would jeopardize the prognosis of life or could lead to a serious and lasting deterioration in the state of health".

The AME is a means-tested entitlement (x<9719 euros over the last 12 months, i.e. an average of 810 euros/month for a single person). Entitlement is for one year. The first application for AME must be made in person at the counter of the local health insurance center, which poses problems of time and accessibility (a single location for the department). Retroactive coverage is limited to

[322] Urgent and life-saving care.

90 days. The care covered is the same as for insured persons with social security, with the exception of exhaustively listed treatments (PMA, spa treatments, etc.). Cover therefore includes consultations with a doctor in a town doctor's surgery, procedures carried out in a hospital (public or private) and any resulting prescriptions, pharmaceutical costs, laboratory tests, dental care, paramedical procedures, abortions, etc. However, from 1st January 2021, during the first 9 months of the AME, certain hospital treatments (services or procedures) relating to non-severe pathologies will not be covered. Coverage is at 100% of the social security rate.

The urgent and vital care scheme (DSUV) applies to illegal residents who are ineligible for the AME because they have recently arrived in France or are above the income threshold. This scheme provides funding for care, the absence of which could lead to a serious and lasting deterioration in health. The DSUV must be applied for by the hospital in the case of care provided to foreign nationals residing in France who have no other means of covering their healthcare costs (no right to health insurance, no right to the AME, no private insurance). This is one-off funding from the State, subsidiary and retroactive (1 year), to ensure that hospitals are not left alone with an irrecoverable debt when they have provided essential emergency care to people with no health insurance.[323] According to the law, this means "all care the absence of which could lead to a serious and lasting deterioration in the state of health", which goes beyond a vital emergency. Beneficiaries may therefore be people who are in France illegally, but who have been there for less than 3 months, or asylum seekers during the first 3 months of their presence in France.

Finally, there are health care and prevention centers that are accessible without health insurance, including maternal and child protection centers. There are also health care access points (PASS) in public or private hospitals providing a public service, specialized public health services and centers run by NGOs or the Red Cross.

Voluntary termination of pregnancy is also subject to separate protection.

2.24.1.3 Direct Debit Rights

French law recognizes the validity of the principle of declaring a postal address.[324] People who declare a personal address (with a third party or an accommodation facility) to the public authorities and social organizations are not required to produce supporting documents (apart from exceptions such as obtaining a residence permit). This principle of declaring one's address is valid for access to all social rights—including AME—and in particular prohibits paying bodies and tax authorities from requiring proof of address. If a person considers that they do not have an address where they can receive their mail,

[323] Article L. 254-1 of the French Social Action and Family Code.

[324] Article R. 113-8 of the Relations between the public and the administration Code.

because they do not feel that they are living there on a stable basis, they can apply for administrative domiciliation. This is a matter of right (with the CCAS, CIAS) for foreigners in an irregular situation if they are applying for the AME, legal aid or the exercise of their civil rights.

2.24.1.4 Right to a Bank Account

Anyone residing in France who does not already have a bank account is entitled to open an account with the bank of their choice. There is a right to an account. There is no legal requirement that a person must be legally resident in France in order to have access to a bank account. Such a requirement would be illegal.[325]

2.24.2 Rights Attached to the Exercise of a Professional Activity

2.24.2.1 The Principle of Prohibiting the Recruitment or Continued Employment of a Foreigner in an Irregular Situation

Article L. 8251-1 of the French Labor Code establishes the principle of prohibiting the employment of foreigners without a work permit in the usual terms of a public policy provision: "No one may, directly or indirectly, hire, retain in his service or employ for any period whatsoever a foreigner who does not hold a permit authorizing him to work in France". This provision applies in all its rigor, including in the case of a pregnant woman, whose legal protection prohibiting or limiting dismissal cannot take precedence over the public policy provision.[326] Consequently, it is also forbidden to enter into a contract for the provision of services with "an employer who uses the services of a foreigner not authorized to work" (article L. 8251-2 of the Labor Code).

As a work permit under French law is valid only for a given profession and region,

> it is also forbidden for any person to employ or retain in his service a foreigner in a professional category, profession or geographical area other than those mentioned, where applicable, on the permit provided for in the first paragraph (Article L. 8251-1 para. 2 of the French Labor Code).

2.24.2.2 The Effects of the Principle of the Relative Nullity of the Employment Contract of an Illegal Foreign National

If a foreign national is recruited without a work permit, the contract is null and void. However, this is a relative nullity that only has effect for the future. For this reason, a foreign employee employed in breach of the provisions on work

[325] TA Paris 16 March 2005, no. 050280519; Halde, deliberation no. 2006-245, 6 November 2006.
[326] Cass. soc. 15 March 2017, no. 15-27928 P., *Dr. soc.* (2017): 566, obs. Mouly.

permits is treated, from the date of his or her recruitment, as if he or she were a legally employed employee with regard to the employer's obligations defined by the Labor Code on the following subjects (art. L. 8252-1 of the Labor Code):

1. The prohibition on prenatal and postnatal employment and the conditions relating to breastfeeding, set out in Articles L. 1225-29 to L. 1225-33 of the French Labor Code.
2. The application of legal and contractual provisions relating to working hours, rest periods and holidays.
3. The application of legal provisions relating to health and safety at work.
4. Taking into account seniority in the company.

However, the rules on dismissal do not apply to the termination of an employment contract by a foreign employee on the grounds of irregularity of employment.[327] While the irregularity of a foreign worker's situation constitutes a real and serious cause justifying the termination of the employment contract, excluding the application of the provisions relating to dismissal and the award of damages, it does not in itself constitute serious misconduct. If the employer wishes to refer to serious misconduct other than the illegal residence status, it must make express reference to this in the letter of dismissal.[328] Similarly, a foreign worker who is not in possession of a residence permit authorizing him to work as an employee in France is not treated in the same way as a regularly employed employee with regard to the rules governing the transfer of employment contracts, i.e. the continuation of the employment contract by the purchaser of the company.[329]

Under Article L. 8252-2 of the French Labor Code, a foreign employee is entitled to the following benefits for the period of unlawful employment:

1. Payment of salary and related benefits, in accordance with the provisions of the law, collective bargaining agreements and contractual provisions applicable to his employment, less any sums previously received in respect of the period in question. In the absence of proof to the contrary, the sums due to the employee correspond to an employment relationship presumed to have lasted three months. The employee may provide proof by any means of the work carried out; where applicable, the employer shall bear all the costs of sending the unpaid remuneration to the country to which the employee has left voluntarily or has been deported. The sums thus due to the undocumented foreign national are paid by the employer within thirty days of the offence being detected. If the foreign national is placed under administrative detention or under house arrest or is no longer on national territory, these sums are deposited within the same period with a body designated for this purpose, and

[327] Cass. soc. 13 November 2008, *D.* (2009), AJ 3016.

[328] Cass. soc., 13 November 2022, no. 21-12 125 B; Cass. soc., 4 July 2012, *Droit ouv* (2012): 736, obs. Bonnechère.

[329] Cass. soc. 17 April 2019, no. 18-15321 P, *Droit ouv* (2019): 625, obs. Mouly.

then paid back to the foreign national. If the employer fails to meet its obligations, the body will recover the sums due on behalf of the foreign national.

2. In the event of termination of the employment relationship, to a fixed indemnity equal to three months' salary, unless application of the rules set out in articles L. 1234-5, L. 1234-9, L. 1243-4 and L. 1243-8 or the corresponding contractual stipulations lead to a more favorable solution. The Labor Court hearing the case may make an interim order for payment of the lump-sum compensation provided for in 2).

If the foreign national has been employed illegally as a result of undeclared work (failure to comply with the obligation to hire beforehand, failure to issue a pay slip or mention of a lower number of hours on the pay slip, willful failure to declare wages and contributions to URSSAF), he or she will benefit either from the provisions of article L. 8223-1 of the French Labor Code, which entitles him or her to a lump-sum payment of 6 months' salary, or from the rights mentioned above, whichever is more favorable.

Notwithstanding the benefit of these rights, foreign workers without a work permit may apply to the courts for additional compensation if they are able to establish the existence of a loss that has not been compensated under these provisions.

A foreign employee employed without a work permit benefits from the legal provisions relating to the protection of wage claims relating to insurance and wage privileges for the sums due to him in application. Like all employees, they are among the super-privileged creditors in the event of the company's safeguarding, reorganization or compulsory liquidation proceedings.

Without prejudice to any legal proceedings that may be brought against them, employers who have employed a foreign worker without a work permit shall pay a special contribution for each foreign worker without a work permit. The amount of this special contribution is determined under conditions laid down by decree in the Conseil d'Etat. The Office français de l'immigration et de l'intégration is responsible for establishing and paying this contribution. It is collected by the State.

Representative trade union organizations may take legal action on behalf of foreign employees to enable them to recover their aforementioned rights without having to prove that they have a mandate from the person concerned, provided that the latter has not declared his or her opposition. The person concerned may always intervene in the proceedings brought by the union.

Any person who, directly or through an intermediary, recruits, keeps in their service or employs for any period whatsoever a foreigner who does not hold a permit authorizing him/her to work as an employee in France, in breach of the provisions of the first paragraph of article L. 8251-1, is punishable by five years' imprisonment and a fine of 15,000 euros. The fine is applied as many times as there are foreign nationals concerned. This does not apply to an employer who, on the basis of a fraudulent document or one fraudulently presented by a foreign national in employment, without the intention of participating in the fraud and

without knowledge of the fraud, makes a declaration to the social security bodies, makes a single declaration of employment and checks with the relevant local authorities the document authorizing the foreign national to work in France.

2.24.2.3 Right to Strike

The right to strike is a constitutionally protected right of all workers, regardless of their administrative status. However, undocumented workers who take part in collective action run the following risks:

- His administrative situation legally places him as the perpetrator or accomplice of an offence against the right of residence and not as a victim enjoying legal protection (except in cases of exploitation or trafficking in human beings).[330]
- By revealing their administrative situation, they expose themselves to penalties under immigration law.[331]
- By denouncing its working and employment conditions, it is jeopardizing its presence in the country.

In France, undocumented workers, like all workers, have the right to strike; regularization being a lawful reason for strike action and occupation a means of exercising this right.

The right to strike, a right for everyone. The right to strike is enshrined and protected by the French Constitution and by the courts of all jurisdictions, which recognize it as a fundamental right.[332] Any restrictions on this right must be provided for by law and "justified and proportionate" to a legitimate aim.[333] No text makes the right to strike conditional on legal residence. Restrictions based on the national origin of workers cannot be introduced by law, as they would infringe the right not to be discriminated against under Article 14 of the ECHR".[334] Finally, according to the Constitutional Court, "while the legislature may adopt specific provisions for foreigners, it must respect the fundamental rights and

[330] I. Daugareilh, "La pénalisation du travail irrégulier en droit européen," in *La légalité de la lutte contre l'immigration irrégulière par l'Union européenne*, édité par Laurence Dubin (Bruxelles: Bruylant, 2012), 265–88.

[331] The penalty will be the withdrawal of the residence permit for foreign nationals in possession of a legal residence permit who work without a work permit (article L.313-5 al.2 of the Ceseda).

[332] Constitutional Council, no. 79-105 DC of 254 July 1979, Grandes décisions du Conseil constitutionnel, no. 19. Conseil d'État Ass. 7 July 1950, Grands arrêts de la jurisprudence administrative, no. 65. Soc. Cass. of 5 March 1953, Grands arrêts du droit du travail, no. 186.

[333] French Constitutional Court, no. 2007-556 DC, 16 August 2007; CE 27 October 2010, no. 343966, *AJDA* (2010): 2026.

[334] According to the terms of the ECHR judgment of 16 December 1996, Gayguzuz v/Austria, no. 17371/90. See I. Daugareilh, "La convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et la protection sociale," *Revue Trimestrielle de Droit européen* 1 (2001): 123–37.

freedoms of constitutional value recognized for all those residing in the territory of the Republic",[335] which includes the right to strike.

The right to strike is therefore one of the rights available to foreign workers, regardless of their administrative status. All that is required is that the action be concerted or collective.

Regularization, a hybrid professional and political demand. The right to strike must be exercised in support of professional demands. This is the legal definition of a strike under French law, and provides legal protection against any sanction. The Court of Cassation has interpreted the concept of industrial action broadly. The legality of movements led by undocumented workers seeking regularization is based on the following elements: 1) By addressing the public authorities (which could be assimilated to a political demand) and their employer, undocumented workers seek to obtain the issue of a work contract or a promise of employment and the payment of the employer's lump-sum contribution. 2) The aim of the application for regularization is to gain access to the right to equal treatment with other employees. Taking these factors into account, the Court of Cassation has accepted that a strike may have professional demands that go beyond the employer and are in fact directed at the government, "the employer's ability to satisfy the employees' demands being irrelevant to the legitimacy of the strike".[336]

2.24.3 The Right to Regularization Through Work

There is no right to regularization in France. Foreign workers in an irregular situation therefore have no right to regularization. However, the CESEDA sets out and organizes provisions governing the conditions under which foreign nationals can have their administrative situation regularized.

In France, there is a history of collective regularizations of undocumented workers linked to the right to strike and trade union rights. In the 1980s, for example, undocumented workers in the clothing sector who were union members and organized within the CFDT forced the government to regularize their situation. In 1991, rejected asylum seekers who were members of the CFDT, CFTC and CGT forced the trade unions to take a stand in favor of their regularization. In March 1996, at the time of the occupation of the churches of Saint Ambroise and Saint Bernard in Paris, the movement of undocumented migrants was supported by several trade unions (CGT, CNT, FSU, SUD, etc.).

The right of assembly and the right of expression are enshrined in the ECHR (articles 10 and 11). The right to be supported by or belong to a trade union is protected by ILO Conventions 87 and 98, which specify that these rights may

[335] Const. 13 August 1993, no. 93-325.

[336] Cass. soc. 15 February 2006, Bull. civ. V, no. 65; Soc. cass. 23 October 2007, RTM, no. 06-17802, *Droit ouv* (2007): 579. See also CA Paris, Pôle 06, chamber 1, 12 April 2010, no. 09/22358 quoted by S. Slama, "Travailleurs sans papiers: un droit de grève 'bridé'," *Droit ouv* 750 (2011).

not be discriminated against and must be accessible to all workers. And the French law of 1st July 1901 on the right of association lays down no condition of nationality or residency to be a member of an association or to set one up. There is therefore nothing to prevent an illegal foreign national from being a member of an association, including a founder member, a member of a trade union, or even holding a trade union office (trade union delegate, staff delegate). The only restriction in French law concerns the position of labor tribunal councilor, as described above.

Nor is there anything to prevent undocumented migrants from expressing themselves freely—provided, of course, that they respect the limitations on this right (prohibition of incitement to racial hatred, no defamation, etc.)—and by any means that are not disproportionate. Being an active member of a collective, association or trade union is a right that is not linked to a residence permit.

In addition to trade unions and groups often set up as part of collective action, various associations speak out on behalf of undocumented migrants: Amnesty International, la Cimade, Comité contre l'esclavage moderne, Fasti, Ligue des droits de l'homme, le mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), Médecins du monde, etc.

Under French law, regularization on the grounds of work has certain characteristics that do not make it an easy option. It is governed by the Valls circular of 28 November 2012, which was ultimately revised in 2018.[337] It falls within the discretionary power of the competent administrative authority (the Préfet). The Conseil d'État does not consider the circular to be a source of law; they are "merely general guidelines intended to enlighten prefects […] without depriving them of their discretion".[338] French law on regularization is therefore complex, vague and subject to varying interpretations by the prefectures. Individual applications are examined on a case-by-case basis and take a relatively long time to process. This is why, by resorting to strike action, undocumented workers are seeking a collective solution.

The circular requires foreign workers to have been resident and working in France for a minimum period of time. The application must include an employment contract or a promise to take on the job, as well as an undertaking by the employer to pay the tax to the French Office for Immigration and Integration. To demonstrate the reality and duration of the professional activity, pay slips (or universal employment cheques for domestic workers) may be submitted, including if they have been drawn up retrospectively by the employer, or any other means of proof of the activity, including, where applicable, a certificate from the employer. If these elements are met, the administrative authority may issue

[337] Circular no. NOR INTK1229185C of 28 November 2012 on the conditions for examining applications for residence lodged by illegal foreign nationals under the provisions of the Ceseda.

[338] Conseil d'État, 4 February 2015, no. 383267, 383268, Recueil *Lebon, AJDA* (2015): 191, Chron. L. Lessi and L. Dutheillet de Lamothe, *Dalloz* (2016): 336. B. Bourgeois-Machureau, *RFDA* (2015): 471.

either a temporary residence permit marked "employee" or "temporary worker".[339] Under this procedure, the employment situation[340] cannot be invoked.

The circular provides for special cases: foreign nationals who have been participating for 12 months in social and solidarity economy activities supported by a State-approved organization, foreign nationals working on a temporary basis or foreign nationals with a series of short-term contracts such as home workers, provided they meet the same conditions of length of residence and length of service. The circular excludes seasonal foreign workers.

Exceptional admission on the basis of employment therefore concerns workers who are already employed or who are going to become employed. Neither the law nor the circular require undocumented workers to have been employed, but to have actually worked for a certain length of time. Moreover, the range of possible proof ranges from pay slips to employment cheques to bank transfers.

However, what the law and the circular do not provide for is regularization for the purpose of self-employment. This means that undocumented foreign platform workers are doubly disadvantaged by immigration law and platform law. The legal presumption that platform workers are independent prevents them from exercising their right to exceptional regularisation through work.

The use of aliases both to work in traditional companies and with platforms creates a dependency on others that can give rise to a debt that leads to abuse and waivers of rights. Shouldn't compliance with the duty of care imposed on parent companies and principals by the French law of 27 March 2017 in respect of their activities abroad be required on national territory so as not to allow these situations of relocation,[341] which enable social dumping to be practised by playing on the vulnerability of workers because of their origin and their ultra insecure administrative status, to be outlawed?

2.25 Summary and Commentary of Court Decisions

To our knowledge, no legal action has been taken on this issue. However, one case received media coverage during the debate on the immigration bill. A Beninese nurse's aide in a nursing home threatened with deportation was offered a residence permit.[342]

[339] If the promise of employment is an employment contract either for more than 12 months or for a shorter period (at least 6 months).

[340] This is one of the criteria for an administrative work permit under article R.5221-20 of the Labor Code, which forms the basis of France's economic immigration policy.

[341] See E. Terray, "Le travail des étrangers en situation irrégulière ou la délocalisation sur place," in *Sans papiers: l'archaïsme fatal*, sous la direction de E. Balibar, M. Chemillier-Gendreau, J. Costa Lascoux, et E. Terray (Paris: La Découverte, 1999), 9.

[342] "Une Béninoise, aide-soignante en Ehpad et menacée d'expulsion, se voit proposé un titre de séjour," *Le Figaro*, November 27, 2020 <https://www.lefigaro.fr/flash-actu/une-beninoise-aide-soignante-en-ehpad-et-menacee-d-expulsion-se-voit-proposer-un-titre-de-sejour-20201127> (Accessed February 6, 2026); "Immigration: "C'est le projet de

2.26 Measures Adopted By the State During the COVID 19 Pandemic to Enable "Undocumented" Foreign Staff to Obtain a Residence or Work Permit on a Permanent or Exceptional Basis

The only measure taken by the French government in relation to essential workers who have enabled the country and French society to maintain essential services was the so-called Shiappa circular of 14 September 2020, which accelerated and facilitated the naturalization process for the foreign workers concerned. But these were only workers whose residence and work status were legal.

2.27 Measures Taken by the State After the COVID 19 Pandemic to Enable "Undocumented" Foreign Staff Employed "in the Care Sector" to Obtain a Residence or Work Permit

No measures have been taken concerning undocumented workers in any sector. The only so-called essential undocumented workers to have obtained temporary regularization are the workers at the Frichti meal delivery platform following their strike in June 2020.

2.28 Reports or Studies by Bodies Promoting Equal Treatment or Combating Racial, Ethnic or Religious Discrimination in France on the Rights of Migrant Workers in the Care Sector

Only one survey was carried out in 2022 jointly by the Defender of Rights and the ILO on discrimination in the care sector (see conclusion). With regard to the prohibited ground linked to the national origin of workers, the results of the survey provide the following information:[343]

- The multidimensional and systemic nature of the discrimination suffered, which is interwoven and cumulative with other forms of professional inequality, hostile attitudes in employment and relationships of domination specific to this sector of activity.
- The lasting effects of discrimination on victims (professional, emotional, psychological and social).

Certain grounds for discrimination are identified more often by women working in the sector: physical appearance (58% think that people are often discriminated against because of their physical appearance, compared with 49% of the working population), origin or skin color (56%, compared with 53%). Other criteria are associated with origin: nationality (45%), difficulty speaking French

loi de la honte", juge Sophie Binet," *France info*, December 11, 2023, <https://www.msn.com/fr-fr/actualite/france/immigration-c-est-le-projet-de-loi-de-la-honte-juge-sophie-binet/ar-AA1ljvVO?ocid=msedgntp&pc=LCTS&cvid=ef274e2cabfc4f7cb929d4eed72ee96c&ei=44> (Accessed December 13, 2023).

[343] Défenseur des droits/OIT, Enquête: La perception des discriminations dans l'emploi – 16e baromètre »: édition consacrée au secteur des services à la personne 2022.

(41%) and religion (40%). The other forms of discrimination considered to be widespread are those linked to gender identity (52%), sexual orientation (50%), being a woman (35%) and economic insecurity (33%). These forms of discrimination are most often encountered when looking for a job.

The criterion of foreign origin is the one most often invoked in cases of discrimination in recruitment.[344] The following are examples of decisions by the High Authority against Discrimination (Haute Autorité de lutte contre les discriminations)-HALDE-.

- Halde Deliberation no. 2008-83 of 28 April 2008 Origin – Education – Access to training – Recommendation.

"The High Authority was informed of a refusal to register for the competitive entrance examination for training as a nursing auxiliary based on the failure to take into account residence permit application receipts. The legitimate aim of this requirement may be to ensure that applicants remain in France on a long-term basis. However, people who have been granted refugee status are automatically entitled to a residence permit, and the refusal to grant them one must therefore be considered unjustified and discriminatory. The HALDE recommends that the conditions for entry to the nursing auxiliary competitive examination be adapted".

> Indirect discrimination occurs when an apparently neutral provision, criterion or practice is liable to place natural or legal persons at a particular disadvantage because of a prohibited criterion, in this case nationality or origin, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The requirement to present a valid identity document when registering for a competition in order to register an application is an apparently neutral provision. However, the rule laid down by A excluding residence permit application receipts is likely to disadvantage non-Community nationals in this situation who, by assumption, are obliged to apply for a residence permit and receive a receipt while waiting for their application to be processed. Until the administration's decision, these people are excluded from any possibility of taking the competitive entrance examination for training as a care assistant at A. This situation therefore constitutes indirect discrimination on the grounds of national origin in terms of access to training. It is therefore necessary to assess the objectives pursued by this measure and the means implemented to achieve them.
>
> Thus,
>
> the HALDE Council asked its Chair to bring this decision to the attention of the Minister of Health, Youth, Sports and Community Life, the Minister of the

[344] Défenseur des droits, *Rapport annuel d'activité* (2016), 96, <https://www.defenseurdesdroits.fr/sites/default/files/2023-10/ddd_rapport-annuel-2016_20170220.pdf>. The criterion of foreign origin accounts for 20% of referrals to the Défenseur des droits on issues of discrimination in recruitment.

Budget, Public Accounts and the Civil Service and the Minister of Immigration, Integration, National Identity and Mutually-Supportive Development, so that they may establish a general rule on the recognition of residence permits for access to training and competitive examinations.

- Halde Deliberation no. 2009-139 of 30 March 2009: Employment – nationality.

  In light of the report of the Advisory Committee on closed jobs, the Council notes that, with the exception of jobs linked to the exercise of national sovereignty or prerogatives of public power, the principle of restricting access to certain jobs on the basis of nationality is not justified. It recommends the removal of this restriction in principle and reserves the right to carry out a detailed study of the relevance of maintaining the nationality condition for each job.

However, according to the deliberations of the Human Rights Defender (Halde, 2009),

> Restrictions on access to employment for foreigners are at two levels: the requirement to hold a French diploma or one issued by a Member State of the European Union, and the nationality requirement. The principle of the diploma requirement for foreign nationals to access certain professions should not be called into question. The HALDE Council considers that the requirement to hold a diploma issued in France, in a Member State of the European Union, or an equivalent diploma, is objectively justified and that it constitutes a guarantee of the level of training.
>
> The initial requirement to hold a French diploma has been extended to include diplomas issued in Member States in application of European directives since the 1970s. These directives, which were incorporated into Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, established common training standards, a necessary condition for the mutual recognition of diplomas between Member States.
>
> There is no such harmonization of training with non-EU countries. Accordingly, the Board believes that the existence of knowledge assessment procedures for professionals holding diplomas issued outside the European Union is justified in the absence of a bilateral agreement. Moreover, as the AMF previously pointed out in deliberation no. 2005-36 of 27 February 2005, these procedures must allow access to the profession, in particular by taking into account professional experience in France, so as not to have a discriminatory effect. In this respect, decree no. 2007-196 of 13 February 2007 on the equivalence of diplomas required to take part in competitions for access to civil service bodies and employment frameworks is consistent with this, as it provides for procedures for the examination, by commissions, of diplomas issued outside the European Union and of skills acquired.
>
> On the other hand, the nationality requirement does not enjoy the same legitimacy. According to the March 2000 report by the Groupe d'étude sur les

discriminations (GED), around 30% of all jobs are partially or totally closed to foreigners, representing almost 7 million jobs. The nationality requirement for access to employment affects both the public and private sectors. It should be noted, however, that the majority of closed jobs are in the public sector (the estimated number is 5.2 million). This is because permanent posts with statutory guarantees are inaccessible to non-EU nationals in all three civil services (State, hospital and local).

According to the above-mentioned GED report, a number of positions in public hospitals have been opened up to non-EU nationals either to make up for the shortage of manpower or to attract foreign talent. Non-EU foreign nationals are therefore part of the workforce and are recruited to carry out the same tasks as civil servants, but under precarious statutes that do not allow them to hope for career development.

With regard to the recruitment of foreign healthcare staff, the problem may arise with regard to the recognition or equivalence of diplomas, which are necessary to practise the healthcare professions, in this case the professions of nurse and care assistant. Foreign workers who can prove that they have a diploma obtained in France or recognized by French legislation are eligible for recruitment under the same conditions as French applicants. Once recruited, foreign workers, like all employees, must not suffer any discrimination in the course of their careers or in their career development within the industry, whether in terms of access to training or promotion, pay or professional mobility.[345]

2.29 Actions or Reports by Bodies Promoting Equal Treatment or Combating Racial, Ethnic or Religious Discrimination in France on the Rights of Persons, Whatever Their Nationality, Working in the Care Sector

The Human Rigths Defender (Défenseur des droits) carried out a survey in 2022 on "The perception of discrimination in employment in the personal services sector".[346] Considered to be "new figures in unskilled employment",[347] women working in personal services are at the crossroads of inequalities linked to gender, social class and national origin. Studies on this sector reveal a close relationship between working conditions, social insecurity and discrimination, which refers more broadly to systemic discrimination issues, particularly in the highly feminized cleaning and care professions.[348] The discrimination criteria

[345] For an illustration, see ILO, *Caring for People*, particularly on nurses, see p. 194 ff.

[346] Défenseur des droits/OIT, *Enquête: La perception des discriminations dans l'emploi – 16e baromètre »: édition consacrée au secteur des services à la personne 2022*. The results of this survey are corroborated by recent research published by L. Chasoulier, S. Lemière et R. Silvera, *Investir dans le secteur du soin et du lien aux autres* (Clersé-CGT, 2023), 172 ff.

[347] Défenseur des droits, *15e baromètre de la perception des discriminations dans l'emploi. Focus sur le secteur des services à la personne*, December, 2022.

[348] Défenseur des droits, *15e baromètre*,15.

most cited by female employees in the personal assistance sector are physical appearance (58% think that people are often discriminated against in France because of their physical appearance, compared with 49% for the working population as a whole) and origin or skin color (56% compared with 53%) [...]. As with the working population, other criteria that may be related to origin are also frequently cited: 45% of respondents in this sector believe that people are often discriminated against in France because of their nationality, 41% because of their difficulties in expressing themselves in French and 40% because of their religion.[349]

With specific regard to personal services workers of foreign origin who are perceived as non-white, sociological research,[350] particularly on home helps, has documented the prevalence of racial prejudice and discrimination (linked to origin and nationality) in this sector of activity, particularly in large cities.[351] The results of this work were confirmed by the Human Rigths Defender in its 2022 survey of the personal services sector.[352] In particular, it shows that the profile of immigrant workers or those from overseas France is different from the rest of the working population in the sector: some of them are better qualified and sometimes worked in skilled jobs before migrating. When they are recruited as home helps or once they are in their jobs, female candidates often undergo implicit selection tests that "white candidates" do not face: they are less often employed full-time, because they are subject to an implicit "trial period", they are more likely to be assigned elderly people deemed to be more "difficult", they are subject to increased surveillance and are more easily dismissed than their white colleagues.[353] The complexity of renewing a residence permit also encourages harassment, exploitation and modern slavery among undocumented domestic workers.[354] Lastly, employees in the sector are often confronted with racist comments or prejudice, whether from the organization's staff or from the beneficiaries of the services. Observation of recruitment interviews with childminders shows the decisive role played by origin and skin colour in professional assessment (North African women are perceived as strict but responsible, African women as nonchalant but maternal, Colombian women as docile but devious, etc.).[355]

To combat discrimination on the grounds of origin, across all sectors of activity, many workers are in favour of the measure consisting of "evaluating recruitment procedures to ensure that candidates from ethnic minorities have as

[349] Défenseur des droits, *15e baromètre*, 8.

[350] See in particular: Christelle Avril, "Ambiance raciste dans l'aide à domicile," *Plein Droit* 1, 96 (2013): 11–4; C. Ibos, *Qui gardera nos enfants? Les nounous et les mères* (Paris: Flammarion, 2012).

[351] Racial discrimination is much less common in rural areas, where most home carers are perceived as white.

[352] Défenseur des droits, *15e baromètre*, 14.

[353] Avril, "Ambiance raciste".

[354] D. Mouchenik, *La vie chez soi. Petits récits et réflexions engagées sur le soutien à domicile en France* (Paris: Michalon, 2022), 119–25.

[355] Ibos, *Qui gardera nos enfants?*, 42. See also Mouchenik, *La vie chez soi*, 146–48.

much chance of being called for interviews or hired as other candidates with the same skills and qualifications".[356]

2.30 Legislation on Harassment (including Gender-Based Harassment and Sexual Harassment) of Women Workers in the Domestic Sector

There is no legislation on harassment specific to domestic workers. As we indicated previously, the French legislator prohibits two types of sexual harassment: The first consists of repeated comments or behaviors with sexual or sexist connotations, which either undermine the dignity of the employee due to their degrading nature or humiliating, or create an intimidating, hostile or offensive situation against him. The second form of sexual harassment is based on a single act of particular intensity in that sexual harassment is considered "any form of serious pressure, even not repeated, exercised with the real or apparent aim of obtaining an act of a nature sexual, whether it is sought for the benefit of the perpetrator or for the benefit of a third party".

On the other hand, domestic workers risk being confronted, more than other employees, with a problem of proving harassment due to the solitude of exercising their profession.

Traditional accepted means of proof such as the testimony of work colleagues or emails are not used by employees working in the homes of people in a dependent situation; and audio recordings made clandestinely are not admissible before an industrial tribunal because they are contrary to the principle of fairness of proof in labor law.

2.31 Mechanisms in the Legislation to Combat Cases of Exploitation in the Workplace of Undocumented or Irregular Migrant Workers

France has ratified ILO Conventions 29 and 105. The ILO Member States have overwhelmingly adopted the Protocol of 2014 to the Forced Labor Convention, 1930, and the Forced Labor (Supplementary Measures) Recommendation, 2014 (no. 203), which complement the Forced Labor Convention, 1930 (no. 29), and existing international instruments by providing specific guidance on effective measures for the prevention, protection, remedy and elimination of all forms of forced labor.

According to the ILO, forced labor can be imposed on adults and children by state authorities, private companies or individuals. It can be observed in all types of economic activity such as domestic work, construction, agriculture, garment manufacturing, sexual exploitation, forced begging, etc. in all countries. The Forced Labor Protocol explicitly reaffirms the definition of forced labor, which includes the following three elements:

1. Work or service refers to any type of work, whatever the activity, industry or sector, including within the informal economy.

[356] Défenseur des droits, *2e baromètre* (2009), 36. According to which 88% of civil servants and 86% of private sector employees believe they are in favor.

2. The threat of some form of punishment refers to a wide range of constraints used to force someone to work.
3. Lack of consent: the expression "offered voluntarily" reminds us that a worker must consent to an employment relationship in a free and informed manner and that he or she is free to leave the job at any time. This is not the case, for example, when an employer or recruiter makes false promises to get the worker to take a job he or she would not otherwise have accepted.

Under French law, the offence of trafficking in human beings is defined in Article 225-4-1 of the Criminal Code as follows:

> I. Trafficking in human beings is the act of recruiting, transporting, transferring, harboring or receiving a person for the purpose of exploitation in any of the following circumstances:
> 1) With the use of threats, coercion, violence or deception against the victim, his or her family or a person having a habitual relationship with the victim;
> 2) Or by a legitimate, natural or adoptive ascendant of that person or by a person who has authority over him or abuses the authority conferred by his position;
> 3) Or by abuse of a situation of vulnerability due to age, illness, infirmity, physical or mental deficiency or pregnancy, apparent or known to the perpetrator;
> 4) In exchange for or by the granting of remuneration or any other benefit or promise of remuneration or benefit.

The exploitation referred to in the first paragraph of this I is the act of placing the victim at his or her disposal or at the disposal of a third party, even an unidentified third party, in order either to enable the commission against the victim of the offences of procuring, assault or sexual molestation, reduction to slavery, submission to forced labour or services, reduction to servitude, removal of one of the victim's organs, exploitation of begging, working conditions or accommodation contrary to the victim's dignity, or forcing the victim to commit any crime or offence.

Trafficking in human beings is punishable by seven years' imprisonment and a fine of 150,000 euros.

The law governing the entry and residence of foreign nationals in France recognizes the rights of victims of human trafficking, which are presented to them by the police or gendarmerie when they lodge a complaint against the perpetrators of this offence:

1. The possibility of admission to residence and the right to take up a professional activity as provided for by Article L. 425-1.
2. The reception, accommodation and protection measures provided for in articles R. 425-4 and R. 425-7 to R. 425-10.
3. The rights referred to in Article 53-1 of the Code of Criminal Procedure, in particular the possibility of obtaining legal aid to assert their rights.[357]

[357] Article R. 425-1 of the Ceseda.

The police or gendarmerie service will also inform the foreign national that he/she may benefit from a period of reflection of thirty days, under the conditions laid down in article R. 425-2, to decide whether or not to benefit from the possibility of admission to the residence permit referred to in 1). This information will be given in a language that the foreign national understands and in conditions of confidentiality that will ensure the foreign national's trust and protection. This information may be provided, supplemented or developed for the persons concerned by non-profit private law organizations specializing in support for prostitutes or victims of human trafficking, in assistance for migrants or in social action, designated for this purpose by the Minister responsible for social action.

Any foreign national to whom a police or gendarmerie service provides the information mentioned in article R. 425-1 and who chooses to benefit from the thirty-day reflection period provided for in the same article will be issued with a receipt of the same duration by the Prefect or, in Paris, by the Police Prefect, in accordance with the provisions of article R. 425-3. This period runs from the date of issue of the receipt. During the reflection period, no deportation decision may be taken against the foreign national in application of article L. 611-1, nor may it be enforced.

The reflection period may be interrupted at any time and the receipt referred to in the first paragraph withdrawn by the territorially competent Prefect, if the foreign national has, on his or her own initiative, renewed links with the perpetrators of the offences referred to in article R. 425-1, or if his or her presence constitutes a serious threat to public order. A receipt issued on application for a residence permit may be issued to a foreign national who requests to benefit from the reflection period provided for in article R. 425-1 and who is reported as such by a police or gendarmerie service. This document authorizes the holder to work.[358]

During the reflection period provided for in article R. 425-2, foreign nationals are entitled to work and to vocational training. They may also benefit from:

1. The asylum seeker's allowance provided for in Chapter III of Title V of Book V.
2. Social support to help them access their rights and regain their independence, provided by one of the organisations mentioned in the last paragraph of article R. 425-1.
3. In the event of danger, police protection for the duration of the criminal proceedings.

Care provided abroad is reimbursed under the conditions set out in the fourth paragraph of article L. 251-1 of the French Social Action and Family Code (Code de l'Action Sociale et des Familles).[359]

In accordance with article R. 425-5 of the Ceseda, a temporary residence permit bearing the wording "private and family life" is issued by the territorially competent prefect to a foreign national who meets the conditions defined in

[358] Article R.425-3 of the Ceseda.

[359] Article R.425-4 of the Ceseda.

article L. 425-1. The same temporary residence permit may also be issued to a minor of at least sixteen years of age who meets the conditions set out in this article and who declares that he or she wishes to work in an employed capacity or undergo vocational training. The application for a temporary residence permit must be accompanied by a receipt for the foreign national's complaint or a reference to the criminal proceedings involving his or her testimony. In accordance with article R. 425-7 of the Ceseda, this card entitles the holder to:

- The exercise of a professional activity and vocational training, in application of the provisions of article L. 425-1.
- Entitlement to social protection, under the conditions set out in article L. 160-1 of the Social Security Code; if the foreign national does not meet the conditions set out in this article, the cost of the care provided to him or her is covered under the conditions set out in the fourth paragraph of article L. 251-1 of the Social Action and Family Code.
- Asylum seeker's allowance.
- Social support to help them access their rights and regain their independence, provided by one of the organizations mentioned in the last paragraph of article R. 425-1 of the Ceseda.
- In the event of danger, police protection for the duration of the criminal proceedings.

Abbreviations

AJFP	Actualité juridique Fonction publique
AJF	Actualité juridique Famille
AJDA	Actualité juridique de droit administratif
Droit ouv.	Revue droit ouvrier
Dr. soc.	Revue droit social
JCP S	JurisClasseur périodique – Edition Sociale
RDT	Revue de droit du travail
RFDA	Revue française de droit administratif
Dr. soc.	Revue droit social
RTD eur.	Revue trimestrielle de droit européen
Sem. soc. Lamy	Revue Semaine sociale Lamy
JCP S	Jurisclasseurs périodique sociale
GISTI	Groupe d'information et de soutien des immigrés
Cons. Const.	Conseil constitutionnel
Cass. soc.	Chambre sociale de la Cour de cassation
Cass. crim.	Chambre criminelle de la Cour de cassation
CJCE	Cour de justice des communautés européennes
CJUE	Cour de justice de l'Union européenne
CEDH	Cour européenne des droits de l'homme
CA	Cour d'appel
TA	Tribunal administratif
Lebon	Recueil des décisions du Conseil d'Etat

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CHAPTER 3

German Care Workers' Discrimination Map Report[1]

Ziga Podgornik-Jakil, Dominic Andres, Eva Kocher

1. Gender

1.2 General Overview

1) Provide a brief overview of your national legislation on gender discrimination in the field of employment.

The German constitution (GG, Grundgesetz, Basic Law), in Art. 3 (2) and (3), provides a strong ban on discrimination of women, and on gender discrimination. However, it is not directly applicable to employment contracts.

The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) provides for rules against discrimination based on gender/sex in employment and covers direct (Sec. 3 (1) AGG) and indirect discrimination (Sec. 3 (2) AGG). It implements EU Directive 2006/54/EC, among others. The rules are therefore in principle similar to the directive.

There are also anti-discrimination laws at the level of the federal states, such as the State Anti-Discrimination Act (Landesantidiskriminierungsgesetz, LADG) for Berlin, which applies primarily to employees in the Berlin state administration and in public-law institutions (Section 3 (1) LADG).

[1] The contents of this report were finalized on June 28, 2024.

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In addition, the Transparency in Wage Structures Act of 2017 (Entgelttransparenzgesetz, EntgTranspG) is meant to enforce the right to equal pay for women and men for equal work or work of equal value (Sec. 1 EntgTranspG). It entitles individual employees to disclosure of information regarding the criteria and practices used to establish the level of remuneration (Secs. 10-16 EntgTranspG) and calls upon private employers with a workforce that usually counts more than 500 employees to use internal company evaluation procedures to assess their remuneration provisions and the various remuneration components disbursed, as well as the way in which they are applied, on a regular basis (Secs. 17-20 EntgTranspG). In addition, management reports on gender equality and equal pay have to be filed (Secs. 21 and 22 EntgTranspG).

For the public sector, special acts on gender equality provide for affirmation action. For federal institutions, the Federal Act to Ensure Equal Opportunities for Women and Men in the Federal Administration and the Courts on Gender Equality (Bundesgleichstellungsgesetz, BGleiG) aims at achieving gender equality, eliminating existing discrimination on the basis of gender, in particular discrimination against women, preventing discrimination in the future and improving the reconciliation of family life, care work and employment for women and men (Sec. 1 BGleiG). It contains specific provisions on gender mainstreaming and preference for women in recruitment and professional advancement (Secs. 4-10 BGleiG), on equality plans (Secs. 11-14 BGleiG), on working time (Secs. 15-18 BGleiG) and on the establishment of equal opportunities officers (Secs. 19-36 BGleiG).

Each federal state has a similar Act on Gender Equality (Landesgleichstellungsgesetz), e.g., the Act to Ensure Equality of Women and Men in the public sector of Land Brandenburg of 1994 (Gesetz zur Gleichstellung von Frauen und Männern im öffentlichen Dienst im Land *Brandenburg, Landesgleichstellungsgesetz,* LGG).

The Act on Equal Participation of Women and Men in Management Positions in the Private and Public Sectors of 2015 (Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst, FüPoG I,) made it mandatory for (German-)listed or co-determined companies to name target quota for the percentages of women on the supervisory board, the management board and two levels below the management board, respectively, as well as to submit a progress report. For some large companies, a minimum quote of 30% women was introduced. However, as the majority of the companies affected did not set any target quota at all or set a target quota of "zero", the Second Act on Equal Participation of Men and Women in Management Positions (FüPoG II), in 2021, adds binding rules for listed companies in the private sector that are subject to co-determination, as well as certain companies in which the German federal government holds a majority. The supervisory boards of these companies must appoint at least one woman and one man to the management board if it consists of more than three persons. In case of non-compliance, the appointment of a board member in disregard of the rules will be null and void. Also, if the supervisory board or man-

agement board (with regard to the management level) set a target quota of zero, they must give clear and comprehensible reasons.

2) Make a brief social commentary on the presence of women workers in the care sector.

Overall, most employees in the German care sector are women (81%–83%), which is far above the average for the German labour market as a whole, where men predominate (54%, women 46%). If "live-in" employees are included, who are commuter migrants mainly from Central and Eastern European countries working temporarily in German private households, the share of women is even higher (90%)—however, there are no official statistics for live-ins due to the predominance of undeclared and irregular employment (see Migrant Status see below questions 5.-9.).

Women predominate in all care occupations, the only exception being emergency medical services, where three-quarters of all employees are men. Women are slightly more represented in outpatient care than in inpatient care, and more represented in elderly care (*KldB*[2] – 821) than in nursing in medical care (*KldB* – 813). As for the total numbers of employees in the care sector, most women are employed in nursing in medical care.

1.3 Statistics or Databases

3) Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?

The Federal Statistical Office (Statistisches Bundesamt) and the Federal Employment Agency (Bundesagentur für Arbeit, BA) have produced statistics and databases on employment in the care sector that differentiate by gender (men and women)—other genders are not included.

They classify occupations in the care sector according to the KldB 2010, a standardized classification system that categorizes individual occupations according to their field of activity on the labour market. The KldB 2010 was developed under the leadership of the BA and the Institute for Employment Research (Institut für Arbeitsmarkt, IAB) with the participation of the Federal Statistical Office and the federal ministries concerned as well as experts in occupational and empirical (social) research and introduced in 2011. It realistically represents the current occupational landscape in Germany and at the same time offers a high degree of compatibility with the international occupational classification—the ISCO-08 (International Standard Classification of Occupations 2008).

The KldB 2010 systematizes individual occupations in a system of up to five-digit keys, which are divided according to the occupational specialization and requirement level: 1) occupational sectors (Berufsbereiche), 2) main occupational groups (Berufshauptgruppen), 3) occupational groups (Berufsgrup-

[2] Refers to classification of occupations (Klassifikation der Berufe, KldB 2010), explanation see question 3.

pen), 4) occupational subgroups (Berufsuntergruppen), and 5) occupational categories (Berufsgattungen such as assistant, professional, etc.). Care work is systematised in the occupational sector 8 (Health, social services, teaching, and education), and there are two occupational groups that generally cover this type of work: 813 (nursing in medical care) and 821 (elderly care).[3] These two occupational groups further divide nurses into occupational subgroups (e.g., 8130 (nursing without specialization), 8134 (emergency medical services), 8218 (specific activities in elderly care)) and occupational categories (e.g., 81301 (assistants in nursing without specialization)). Occupational categories are further subdivided into multiple different care occupations, which are not available in the aggregate data (see below).

As of databases, the Federal Statistical Office uses the "health personnel accounting" (Gesundheitspersonalrechnung),[4] which provides detailed information on the number and structure of health care employees each December 31 of the respective reporting year. The health personnel accounting is a secondary statistical calculation that combines around 50 statistical data sources on employment, available in the health care sector at the time of calculation. In addition to the annual statistics for individual health care facilities (hospitals, preventive or rehabilitation facilities, outpatient or (partially) inpatient care facilities, etc.), the most important sources of employment statistics include, in particular, the employment statistics of the BA on persons who are regularly employed, including those who perform nursing work as part of marginal employment, e.g. on a mini-job basis, the results of the microcensus, and other statistics from various professional associations (Federal Medical Association, Federal Dental Association, etc.). The health personnel accounting contains data on gender in care occupations as classified by the KldB 2010, which can be combined with other variables such as age groups, type of employment, and workplace setting.

The Federal Statistical Office also publishes statistics for the care sector in the form of tables, with an analysis every two years. Among other things, it records the number of regularly and marginally employed staff in inpatient (excluding hospitals) and outpatient care services (see 2.2.1 of the WP 2 Report).[5] According to the sources used in the Federal Statistical Office reports, 1.2 million persons are employed in the German care sector.

[3] Nursing in medical care and elderly care are in different main occupational groups, the first in 81 (medical health professions) and the second in 82 (non-medical health, personal care and wellness occupations, medical technology).

[4] Statistisches Bundesamt, "Gesundheitspersonalrechnung" (26 January 2023), <https://www.destatis.de/DE/Methoden/Qualitaet/Qualitaetsberichte/Gesundheit/gesundheitspersonalrechnung.pdf?__blob=publicationFile> (Accessed September 11, 2023).

[5] Statistisches Bundesamt, "Pflegestatistik - Pflege im Rahmen der Pflegeversicherung - Deutschlandergebnisse - 2021" (2022), <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Pflege/Publikationen/_publikationen-innen-pflegestatistik-deutschland-ergebnisse.html> (Accessed October 10, 2023).

The BA generates its data by the employment agencies and job centres in accordance with the German Social Code (Sozialgesetzbuch, SGB) in books SGB III and SGB II—unemployment statistics and basic security statistics. Other sources are employer reports according to the Data Collection and Transmission Ordinance (Datenerfassungs- und –übermittlungsverordnung, DEÜV-Meldungen)[6] which have to be delivererd to the social insurance institutions and temporary employment agencies' reports on their employees (Sec. 3. DEÜV).

On its website, the BA makes available data on gender in care occupations in relation to other demographic factors (age), average salaries, and employment relationship. Moreover, the BA publishes detailed annual reports that provide comprehensible statistics on the labour market situation in the German care sector.[7] These annual reports include care workers who are regularly employed (excluding marginal employment in mini-jobs) in inpatient (including hospitals) and outpatient facilities. It also provides data on gender participation in the care sector, including the unemployment rate between the two gender (see 2.2 of WP2 Report). According to the BA report, 1.7 million persons are employed in the German care sector.

- *In the case of databases, do these present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

The Federal Statistical Office provides aggregated data that records health care workers in employment relationships by age, gender, occupations (elderly care, nursing care, etc.), workplace setting (inpatient (including hospitals) and outpatient care), and type of employment (full-time, part-time, unemployed and marginal/mini-job, as well as full-time equivalents by age, gender, occupations, and establishments.

The BA provides aggregated data that mainly divides by workplace settings (inpatient care (including hospitals) and outpatient care), demographics (gender background, age), employment relation (full-time, part-time, unemployed, and mini-job), level of training (assistants, professionals, etc.), national background (German/non-German), etc.

Further aggregate data and reports are made available at the database Information System of Federal Health Reporting (Informations system der Gesundheitsberichterstattung des Bundes, IS-GBE), established by the Federal Statistical Office, which brings together health data and health information from over 100 different sources in a central location.

[6] Employers are legally obliged to report the data of their employees to the social insurance institutions (Sozialversicherungsträger).

[7] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich" (2023), <https://statistik.arbeitsagentur.de/DE/Statischer-Content/Statistiken/Themen-im-Fokus/Berufe/Generische-Publikationen/Altenpflege.pdf?__blob=publicationFile> (Accessed October 10, 2023).

- *Are these databases public and freely accessible to everyone, or only to researchers?*

The Federal Statistical Office and the BA offer free access to their data. The data are sorted according to KldB 2010. However, to obtain the data for specific nursing occupations belonging to occupational categories (see above), an individual request must be submitted to the Federal Statistical Office for a fee.

- *If databases exist, please provide links and/or how to request them.*
  - Federal Statistical Office (registration is necessary):
    The data of the Federal Statistical Office made available by the health personnel accounting can be accessed here: <https://www-genesis.destatis.de/genesis/online?operation=find&suchanweisung_language=de&query=Gesundheitspersonal#abreadcrumb>.
    To access the data sources that the Federal Statistical Office uses, see: <https://www.gbe-bund.de/gbe/hrecherche.prc_datenquellen?p_aid=61511467&p_uid=gast&p_sprache=D&p_knoten=STBA&tk=51310&tk2=51311&cnt_ut=1&ut=51311>.
  - Federal Employment Agency:
    The data of the BA can be accessed via the interactive statistics at its official website: <https://statistik.arbeitsagentur.de/DE/Navigation/Statistiken/Interaktive-Statistiken/Berufe-auf-einen-Blick/Berufe-auf-einen-Blick-Anwendung-Nav.html>.
  - Information System of Federal Health Reporting (IS-GBE):
    The data of the Information System of Federal Health Reporting can be accessed here: <https://www.gbe-bund.de/gbe/pkg_isgbe5.prc_isgbe>.
    To access to its data sources is available here: <https://www.gbe-bund.de/gbe/abrechnung.prc_abr_test_logon?p_uid=gast&p_aid=61511467&p_sprache=D&p_knoten=TR51310>.

4) Describe or comment on what the statistics or databases you have found show in relation to the participation of male and female workers in the care sector workforce, either taking this sector as a whole, or in relation to each of the occupations that make up this sector.

The recent reports by the Federal Statistics Office and BA give a general overview of gender participation (women and men) across the entire nursing sector. Both of them report that between 81% and 83% employees are women (for the different sources they use, see above question 3—in comparison, according to the report by the BA, the German labour market as a whole employs more men (54%) than women (46%).[8]

There are differences across workplace settings according to the report by the Federal Statistics Office.[9] For example, in 2021, 82% of employees in inpa-

[8] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[9] Statistisches Bundesamt, "Pflegestatistik - Pflege im Rahmen der Pflegeversicherung".

tient care were women, while the figure for outpatient care was 85%. Further differences are noted in occupational subgroups. According to the latest data, women predominate in all subgroups in the care sector, the only exception being the emergency medical service (KldB 2010 - 8134 Rettungsdienst), in which 75% of all employees are men.

The BA's interactive statistics for 2022 (including regular employment in nursing in medical care (KldB – 813) and elderly care (KldB – 821)), shows that around 81% employed in the care sector are women—in elderly care, 82% are women, and 79% in nursing in medical care (in the live-in (domestic) sector the unofficial figure is around 90% women—see answers to questions 2), on gender, and 5, on migrant status). According to the occupational subgroups for the total number of employees in the care sector (1.7 million), most women were employed in nursing and medical care (without specialization, KldB – 8130 (42.3%, 8.91% for men), followed by professions in elderly care (without specialization, KldB – 8210 (27.81%, 6.05% for men). The least women worked in professional childcare[10] (KldB – 8132) (0.25%, 0.01% for men). While most men, like women, were employed in nursing and health care (without specialization) and in elderly care (without specialization), emergency services was the third most common subgroup occupied by men (3.16%, 1.44% for women) and the only subgroup dominated by men.

1.4 Occupational Classification and Wages

5) If legislation exists on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of the workers, or whether it makes any reference to the presence of women in this sector or these occupations (e.g. acknowledging the majority presence of women in the sector, or granting them any special attention in terms of rights, etc.). If special reference is made to women, please specify.

Legislation does not make any special reference to women or gender. However, Sec. 55 of the Nursing Professions Act (Pflegeberufegesetz, PflBG) enables the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry for Health to establish yearly surveys for the purpose of federal statistics, which may also cover gender as a differentiating criterion. This was implemented in Sec. 22 (2) no. 1c) of the Nursing Professions Training Financing Ordinance (Pflegeberufe-Ausbildungsfinanzierungsverordnung, PflAFinV).

6) Does the legislation or, if applicable, collective agreements provide for occupational classification system in care sector? If so, do you consider any gender bias in this occupational classification (if so, please explain).

There are two types of regulation that are based on occupational classifications: Firstly, regulation on training and professions, and secondly, regulation on pay.

[10] This occupational subgroup contains the fewest employees in the care sector overall.

Regarding legislation, there are numerous regulations on midwives as well as on the training of nurses: Nurses complete three years of dual vocational training, whereby the proportion of practical training outweighs the theoretical training (Section 6 (1) PflBG). The training consists of theoretical and practical training and lasts three years at state, state-approved, or state-recognized nursing schools. While nurses' training is regulated in federal law, nursing assistants are regulated by the federal states, which have agreed on common minimum standards.[11] In the midwifery profession, training was transformed into a dual vocational training program in 2020 (Sec. 11 (2) of the Midwifery Act (Hebammengesetz, HebG); trainees receive a higher education bachelor's degree after six to eight semesters (Sec. 1 (7), 11 (1) HebG).

As for pay, both the minimum wages for the care sector established by the Sixth Nursing Working Conditions Ordinance (6. PflegeArbbV), and the collective agreements for the public sector that are prevalent in the care sector (see 3.2.3 and 5.1 in WP2), differentiate according to occupational classification. Sec. 2 (1) 6. PflegeArbbV differentiates the minimum wage according to the level of training (nursing assistants without a degree, nursing assistants with one-year training, and nursing professionals with three years of training and a state examination) and their work experience.

Collective agreements for the public sector are generally negotiated at regional level for federal and municipal employees (TVöD) and for employees of the federal states (TV-L), as well as for civil servants and some specific occupational groups such as doctors (TV-Ärzte/doctors). At the respective regional level, there are regulations for all public sector employees, as well as regulations for specific sectors. The latter applies above all to the regulation of wages according to the type of job and responsibility. In the care sector, these wages are set at the municipal and federal level and outlined in the pay tables (P-Table) of the collective agreements for nursing and care facilities (TVöD Pflege- und Betreuungseinrichtungen, TVöD-B) and TVöD Hospitals (TVöD Krankenhäuser, TVöD-K). In this respect, the TVöD-K is specific to the TVöD-B: the TVöD-B applies to all care workers except for those who fall within the scope of the TVöD-K. However, this has no effect on remuneration. The P-table applies equally in the special parts of TVöD-B and TVöD-K.

While there are no gender biases in legislation and collective bargaining agreements, empirical data show differences in pay between men and women with the same qualifications. For example, according to the most recent data from the BA's interactive statistics, in the occupational subgroup nursing without specialization (KldB - 8130), the median pay of full-time male nursing employees

[11] Bundesministerium für Familie, Senioren, Frauen und Jugend and Bundesministerium für Gesundheit (Deutschland), "Eckpunkte für die in Länderzuständigkeit liegenden Ausbildungen zu Assistenz- und Helferberufen in der Pflege. Beschlüsse der 89. Arbeits- und Sozialministerkonferenz 2012 und der 86. Gesundheitsministerkonferenz 2013" (29 January 2016), <https://www.bpa-arbeitgeberverband.de/fileadmin/user_upload/kleine-dokumente/BAnz_AT_17.02.2016_B3.pdf> (Accessed october 9, 2023).

in 2022 was 3.956 EUR, while it was only 3,771 euros for female nursing employees; in elderly care, it was 3,452 euros for men and 3,283 euros for women. There have also been legal analyses of collective agreements of the public sector that found systematic indirect discrimination of women;[12] these analyses have however not been undertaken specifically for the care sector.

7) Have there been any legal disputes or conflicts publicised by the media in your country over "job classification" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

There have been several legal disputes concerning job classification in the care sector. The following case concerned a care worker who was paid according to pay category (Entgeltgruppe) P 7 (TVöD/VKA: nurses with three-year training and corresponding activity), and claimed category P 8 (practical instructors in nursing with additional vocational pedagogical qualification). The Federal Labour Court (Bundesarbeitsgericht, BAG) dismissed the claim because it found her supervising activity did not account for at least 50% of her work.[13] Other similar cases concerned a Works Councils who lost the case against an employer (a nursing home for the elderly) who found that being in charge of a "living unit" (Wohngruppe) was not equal to being in charge of a "ward" as required by pay group P 10 TVöD/VKA.[14] Another recent case concerned extra pay according to EntgO TV-L that was granted to authorised nursing professionals. The Federal Labour Court found that the work in the outpatient department of a university hospital could be considered "nursing" activity within the meaning of the collective agreement (which had been referenced in the individual employment contract).[15]

A judgment by Regional Labour Court Hamm[16] concerned different treatment between sectors. The claimant was a nurse working in a forensic psychiatry hospital. The court confirmed that trained educators (pay category S 8 Entgeltordnung (TVöD-VKA) for educators or curative educators) could be paid significantly higher remuneration than trained nurses (P8 Entgeltordnung (TVöD-VKA)). The claimant may be doing essentially the same job; still, her qualification could in her case not considered equivalent to that of her colleagues.

8) Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from em-

[12] djb, "Die Vereinbarkeit des BAT mit dem Grundsatz der Entgeltgleichheit," *Streit* 14, 2 (1996): 75 f.; for the former version of the public services collective agreement „BAT"; Gertraude Krell and Katrin Tondorf, "Mittelbare Entgeltdiskriminierung in Tarifverträgen des öffentlichen Dienstes – ein Ende in Sicht?: Zugleich ein Beitrag zum Verständnis und zur Prüfung von Entgelt(un)gleichheit" d*jbz - Zeitschrift des Deutschen Juristinnenbundes* 174 (2011).

[13] (2021) 4 AZR 327/20 (BAG); parallel cases from the same day are (2021) 4 AZR 218/20 (BAG), (2021) 4 AZR 359/20 (BAG), (2021) 4 AZR 360/20 (BAG).

[14] (2022) 4 ABR 25/21 (BAG); similarly: (2021) 19 TaBV 6/20 (LAG Stuttgart).

[15] (2023) 6 AZR 62/22 (BAG).

[16] (2022) 3 Sa 1022/21 (LAG Hamm).

ployment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain).

There are special regulations for the care sector in the Working Hours Act. For example, the general rest period after the end of the daily working time can be reduced from eleven hours to ten hours for care workers according to section 5 (2) if this reduction is compensated by the extension of another rest period within one month. Section 5 (3) codifies an exception for on-call duty specifically created for care workers: Interruptions made during on-call duty can be compensated for at other times if the interruption does not exceed half of the rest period.

The collective agreements for the public sector (TVöD and TV-L, see WP 2, 5.2) contain specific rules for the care sector only in relation to pay/wages.

9) Have there been any legal disputes or conflicts publicised by the media in your country over "employment contracts" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

There have no such cases or conflicts been published in the media. As for the legal debate, there is one judgment on the discrimination of part-time-workers that concerned a nurse in a specialised hospital. In that case, the courts found that a collective agreement that provided for overtime pay for part-time-workers only if they worked more than full-time was a discrimination of part-time-workers, but also an indirect discrimination based on gender.

10) Do the legislation or, if applicable, collective bargaining agreements make any provision for wages in each of the care sector occupations, differentiating them in terms of their structure or amount from workers in the general or other production sectors?

On collective agreements in the care sector, see above answer to question 6.

Collectively agreed wages in other sectors are mostly structured similarly to wages in the care sector: payment is based on tasks, education/qualification level and work experience. Even though these three characteristics are referred to with varying intensity, structural differences are not discernible. However, there are differences in the level of pay. See for example the wages for workers with three years of vocational training, corresponding tasks and six years of work experience, excluding bonuses, shift allowances or other variable pay components:

Table 1 – Collective Agreements (2024).

TVöD-B P-Tabelle (care workers, excluding hospitals)		Metall- und Elektroindustrie ERA Berlin-Brandenburg (workers in metal or electronic industries)		Entgelttarifvertrag für die Systemgastronomie - BdS Bund (workers in the system gastronomy)	
Remuneration group	Gross remuneration	Remuneration group	Gross remuneration	Remuneration group	Gross remuneration
P7 Stufe 4	3.379 EUR	EG 6 (HS)	3.395 EUR	TG 5	2.488 EUR

11) Have there been any legal disputes or conflicts publicised by the media in your country over "wages" in the care sector and gender discrimination?

See above answer to question 7.

1.5 Reconciling Work and Family Life

12) Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?

Regulations for reconciling work and family life are set by general statutory laws (maternity protection will here be considered as health and safety protection, see below questions on gender 15–19).

Parental leave (Elternzeit) and parental allowance (Elterngeld) are regulated by the Federal Parental Allowance and Parental Leave Act (Elterngeld- und Elternzeitgesetz, BEEG). It allows parents who were employed at the time of their child's birth to take parental leave for up to 3 years (Sec. 15 (2) BEEG); during this time they are protected from dismissal (Sec. 18 BEEG). A share of up to 24 months can be taken between the third birthday and the child's completed eighth year. Parental leave may be taken, even on a pro rata basis, by either parent alone or by both parents jointly. An employee on parental leave may not be employed for more than 32 hours per week, averaged over the month (Sec. 15 (4) BEEG). A reduction in working time and its distribution may be requested and can only be turned down with justified reasons (Sec. 15 (5)-(7) BEEG).

Parental allowance (Elterngeld) is intended to compensate for the loss of earnings; it is covered by the state, i.e. it is not a social security benefit, and it is generally calculated on the basis of 67% of the parent's income before the birth of the child (Sec. 2 BEEG; at least 300 Euro, even for persons without an income). Employees as well as self-employed persons can claim parental allowance.

With the basic parental allowance (Secs. 2, 3 BEEG), the parents altogether can receive a parental allowance for 12 months per child. Parents are free to divide the months between themselves. Partners who share the rights to basic parental allowance with each other, win two more months of entitlement between them (single parents are entitled to 14 months of basic parental allowance) (Sec. 4 (3) BEEG). In the case of "ElterngeldPlus" (Sec. 4a (2) BEEG), parents can receive a parental allowance for 24 months, however at an amount half the basic parental allowance. "EltergeldPlus" is granted for four additional months if a parent works between 25 and 32 hours per week during this time (Sec. 4b (1) and (2) BEEG) ("Partnerschaftsbonus").

In the case of care for close relatives, the Caregiver Leave Act (Pflegezeitgesetz, PflegeZG) entitles employees, trainees and employee-like persons (Sec. 7 (1) PflegeZG) leave to take care of their close relatives—who counts as a close relative is outlined in Sec. 7 (3) PflegeZG. Employees can take full or partial leave, without pay by the employer (Sec. 3 PflegeZG) for a period of up to six

months (Sec. 4 PflegeZG); short-term caregiver leave can be taken for up to 10 days (Sec. 2 PflegeZG), but be extended up to the maximum period. The employer may not terminate the employment relationship from twelve weeks before the announced start until the end of the leave (Sec. 5 PflegeZG).

Longer-term care of relatives for up to 24 months is also regulated by the Family Caregiver Leave Act (Familienpflegezeit, FPfZG)—in contrast to PflegeZG, this entitlement is only applicable in companies with 26 or more employees (Sec. 2a (5a) FPfZG). This Act enables employees to reduce their working time to take care of a close relative; the reduced working hours must be at least 15 hours per week (Sec. 2 FPfZG). To cover the temporarily reduced income, the employee may apply to the Federal Office for Family and Civil Society Tasks for an interest-free loan payable in monthly instalments for the time of relative care (Sec. 3. (1) FPfZG). Entitlements by the FPfZG and PflegeZG can be combined, but only up to a maximum of 24 months (Sec 4 (1) PflegeZG).

Moreover, employees who take leave to organize an acute care situation for a close relative for up to ten days, can receive a wage replacement benefit (care support allowance (Pflegeunterstützungsgeld)) from their health insurance fund or the private compulsory care insurance (Sec. 44a SGB XI).

Other ways to improve the work-life balance are the options guaranteed by the Part-Time and Fixed-term Employment Act (TzBfG) for employees to apply for part-time employment, which the employer can only refuse with justified reasons (Sec. 8 TzBfG). Under certain conditions, there is also a right to ask for part-time work for a specific time span (at least one year, a maximum of five years; Sec. 9a TzBfG, "Brückenteilzeit").

For employees who benefit from collective agreements in the public sector (TVöD/TV-L[17]), including the healthcare professions (TVöD-B), Sec. 29 (1)e) TVöD/TV-L provides for paid time off from work of one day per calendar year to care for a seriously ill relative living in the same household. Moreover, public employees have right to reduce their working time for up to five years if they care for at least one child below the age of 18 and look after or care for another relative in need of care (Sec. 11 (1) TVöD).

According to the coalition agreement of the governing parties for 2021-2025, government plans to implement a two weeks partner leave after birth with the intention of increasing both the duration of parental leave and the participation of fathers in parental leave and parental allowance.[18] This follows Directive (EU) 2019/1158, which Germany implemented with a revision of BEEG in 2023, without yet including the partner leave—this is currently debated for 2024.

[17] Collective agreement of the public sector (Tarifvertrag für den Öffentlichen Dienst, TVöD) applies to federal and municipal employees, and the Collective Agreement for the Public Service of the Federal States (Tarifvertrag für den öffentlichen Dienst der Länder, TV-L) applies to state employees (except for Hessen, which has its own TV-H).

[18] SPD, Bündnis 90/Die Grünen und FDP, "Koalitionsvertrag 2021-2025: Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit" (2021).

- *Do the legislation or, if applicable, collective agreements make any reference to reconciling work and family life " for women workers" in the care sector in general or in each care sector job? If so, please summarise or comment.*

Gender is only explicitly referenced in the Maternity Protection Act (Mutterschutzgesetz, MuSchG), which is covered below (questions 15–20) as a health and safety regulation.

In the realm of parental leave and parental allowance (BEEG), the extra months of parental allowance as well as the rules on "Elterngeld Plus" are meant to incentivize fathers to take parental leave. However, the regulations are not gender-specific, but gender-neutral.

Pursuant to Sec. 27 (1) 1 AGG, any person may contact the Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes, ADS) if they believe that they have been discriminated against on the grounds of gender (Sec. 1 AGG) because of taking time off or adjusting working hours as a parent or family caregiver under the BEEG, PflegeZG, or FPfZG.

- *Have there been any court rulings on this matter? If so, please summarise or comment.*

There are many court rulings on the right to reduce working hours according to Sec. 8 TzBfG. Among these, we found one judgment that concerned the care sector. The plaintiff was a single mother of a one-year-old child; she was employed as a nursing professional in elderly care and demanded that her employer reduce her working hours. She lost the case because the employer could argue that urgent operational reasons preclude the distribution of working time requested by the plaintiff.[19]

- *Do the legislation or, if applicable, collective agreements, provide for different provisions in terms of work-life balance for staff in each of these care sector occupations compared to ordinary workers or workers in other production sectors? If so, please summarise or comment on the case(s).*

For regulations to increase the compatibility of work and family in collective agreements in care sector see the answers to this question above. Other sectors provide collective agreements and company agreements on the topics of caring for relatives, flexible working hours, parental support, parental leave, childcare and employer-provided social benefits for families. However, there are too many existing collective agreements to summarize in this report.[20]

[19] (2014) 9 AZR 915/13 (BAG).

[20] For an overview, see Christiane Flüter-Hoffmann, "Familienfreundliche Regelungen in Tarifverträgen und Betriebsvereinbarungen: Beispiele guter Praxis" (2005), <https://www.bmfsfj.de/resource/blob/76376/34cf5d066c64a0f498ed612b45a6b1a7/familienfreundliche-regelungen-data.pdf> (Accessed October 5, 2023).

- *Have there been any court rulings on differences in conciliation between the care sector and other sectors? If so, please summarise or comment on the case(s).*

  We do not know of any such rulings.

1.6 Accidents, Health and Safety at Work

13) Have statistics or databases been published in your country on occupational accidents or illnesses arising from the work of personnel in the care sector as a whole or in each of the care sector jobs according to the workers' gender?

Employers are obliged to report occupational accidents in their companies to the accident insurance institutions if insured persons are killed or injured in such a way that they become incapable of work for more than three days (Sec. 193 (1) SGB VII). For care sectors, the Employer's Liability Insurance Association for Health Services and Welfare Care (Berufsgenossenschaft für Gesundheitsdienst und Wohlfahrtspflege, BGW), (see section 7.1 in WP2), collects annual data on occupational accidents (Sec. 8 SGB VII) and diseases (Sec. 9 SGB VII) for employees in the health and care sector; data are not differentiated according to care professions). This data covers all healthcare professionals (e.g., nursing staff, doctors, veterinaries, etc.); to obtain data exclusively for nursing staff, an additional inquiry must be made to the BGW.

The data is published in the annual statistical reports of the German Statutory Accident Insurance institution (Deutsche Gesetzliche Unfallversicherung, DGUV),[21] the umbrella organisation for BGW and employer liability insurance associations for other sectors (Berufsgenossenschaften); it also covers the public sector accident insurance institutions (Unfallversicherungsträger der öffentlichen Hand).

There are no gender-specific data available.

- *If so, do the databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  The data are aggregated on the national (federal) level.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

The data published by the BGW on the website of the DGUV are available free of charge.

- *If published databases exist, please provide links and/or how to request them.*

The above-mentioned data for years 2021 and 2022 are available here: <https://www.dguv.de/de/zahlen-fakten/au-wu-geschehen/arbeitsunfaelle/index.jsp>.

[21] Deutsche Gesetzliche Unfallversicherung, "Statistik - Arbeitsunfallgeschehen 2022" (September 2023), <https://publikationen.dguv.de/widgets/pdf/download/article/4759> (Accessed October 10, 2023).

Data for earlier years can be requested directly from BGW (free of charge): <https://www.bgw-online.de/bgw-online-de/kontakt/kontakt-service-43312>.

14) Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.

Data on occupational accidents subject to reporting (Meldepflichtige Arbeitsunfälle) from the individual employer liability associations for 2022 show that the total number of accidents in the health and care sector (111,183) is among the highest compared to other sectors represented, surpassed by administration (149,822),[22] wood and metal industry (144,455) and trade and merchandise logistics (123,301), but ahead of construction (107,678), transport post-logistics-telecommunications (73,709), hotels and restaurants (68,376), energy, textiles, electrical and media (61,359) and basic materials and chemicals (28,665).[23] According to statistics requested from the BGW, of the 111,183 occupational accidents in the health and care sector in 2022, 29,465 were directly related to the care sector. In addition, 66,268 of 370,141 suspected occupational illnesses (Berufskrankheiten Verdachtsanzeigen) in all sectors[24] were reported in the care sector. The reports do not say anything about the reasons for these high numbers. Training material by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) suggests that working under time pressure to be one of the mental stresses that lead to increasing number of sick days in the sector.

15) Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.

Sec. 1 MuSchG explicitly refers to pregnant women in order to protect their health and that of their child.

MuSchG implements Directive 92/85/EEC 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 (Pregnant Workers Directive). To protect the pregnant employee, the employer is prohibited from sending the pregnant employee to work during late pregnancy (six weeks before the birth—unless the pregnant woman expressly declares her willingness to perform work) and after childbirth (eight weeks) (Sec. 3 (1) MuSchG). The employee cannot be fired during pregnancy and for four months after giving birth (Sec. 3 MuSchG). The employer is not allowed to employ the pregnant

[22] Administration in private companies and occupations that do not belong to other employer's liability insurance associations.

[23] Deutsche Gesetzliche Unfallversicherung, "Arbeits- und Wegeunfallgeschehen," <https://www.dguv.de/de/zahlen-fakten/au-wu-geschehen/index.jsp> (Accessed October 4, 2023).

[24] Deutsche Gesetzliche Unfallversicherung, "Arbeits- und Wegeunfallgeschehen".

or breastfeeding employee to work overtime (Sec. 4 MuSchG), nightshifts (Sec. 5 MuSchG), and Sundays and holidays (Sec. 6 MuSchG).

16) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

We do not know of any such cases.

1.7 Termination of Contract, Social Protection

17) Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.

The employee cannot be fired during pregnancy and for four months after giving birth (Sec. 17 MuSchG). This regulation generally applies to all employees, not just to care workers.

The AGG, by implementing Art. 2 (2b) Directive 2006/54/EG, states that direct discrimination on grounds of sex shall also be taken to occur in the event of the less favourable treatment of a woman on account of pregnancy or maternity (Sec. 3 (1) AGG).

18) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

In 2021, the Regional Labour Court in Mecklenburg-Vorpommer had to decide a case that involved a female professional nurse who worked for a severely disabled person, who was also her employer. Her contract was supposed to end in the event of his death. As was pregnant at the time of his death, she argued, on the basis of Sec. 17 MuSchG, that her contract could not be terminated in the late stages of her pregnancy. She lost the case because the judges deemed the employment contract to be a fixed-term contract; the provision according to which the employment contract ended with the death of the employer is also sufficiently definite, since the date of death of a person can be determined beyond doubt.

19) Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).

Parental allowance (Elterngeld) is covered by the state, it is not a social security benefit. It is intended to compensate for the loss of earnings, but it is not limited to a specific gender (Sec. 1 BEEG)—parents are free to divide the 12 (up to 14 months) between themselves (Sec. 4 (3) BEEG), with "ElterngeldPlus" Sec. 4a (2) BEEG up to 24 months (for more details, see above question 12).

During maternity leave, the employee is entitled to a maternity allowance (Mutterschaftsgeld) (max 13 euros per day) (Sec. 19 MuSchG), covered by

their statutory health insurance (Sec. 19 (1) MuSchG) or by the state (Sec. 19 (2) MuSchG), and a maternity allowance supplement from her employer. The maternity allowance supplement equals the difference between 13 euros and the employee's average daily pay (Sec 20 (1) MuSchG).

Women who are barred from working activity due to maternity protection, are entitled to maternity protection pay (Mutterschutzlohn) from their employer—it corresponds to the average pay for the last three calendar months before pregnancy (Sec. 18 MuSchG).

20) Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sector? If so, please summarise or comment on the case(s).

We do not know of any legal disputes on the matter.

1.8 Equality Bodies, Reports

21) If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.

The Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes, ADS) is an independent agency with the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The ADS was established in 2006 in accordance with Secs. 25-30 AGG which implemented EU Directives 2000/43/EC, 2000/78/EC, and 2006/54/EC. The Independent Federal Anti-Discrimination Commissioner (Unabhängige:r Bundesbeauftragte:r für Antidiskriminierung – since July 2022: Ferda Ataman) is the head of the ADS (Sec. 25 (3) AGG). The Commissioner is elected by the German Parliament (Deutscher Bundestag) for five years (Secs. 26-26i AGG).

The ADS provides information, counselling, support in settlements, and carries out measures to prevent discrimination and commissions scientific studies (Sec. 27 AGG). It also sends regular reports to the German Federal Parliament (Bundestag) every four years (Sec. 27 (4) AGG) and publishes the Annual Report of the Independent Federal Anti-Discrimination Commissioner, which summarizes and describes the various forms of discrimination which have been reported to ADS during the year. The reports rather focus on users of services, including health and care services, rather than on employees (e.g., care workers).[25] The same is true for the sectoral study "Discrimination Risks and Protection in the Health Sector" (Diskriminierungsrisiken und Diskriminierungsschutz im

[25] Unabhängige Bundesbeauftragte für Antidiskriminierung, "Jahresbericht 2022" (June 2023), <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Jahresberichte/2022.pdf?__blob=publicationFile&v=7> (Accessed October 10, 2023).

Gesundheitswesen).[26] However, although the focus of the reports is on the gender discrimination of employees in the health and care sector, the data mostly concerns users of these services rather than employees themselves. There is only a mention of midwifes as a severely understaffed care occupation. In another ADS report from 2015 entitled "Equal Rights – Against Gender Discrimination" (Gleiche Rechte – gegen Diskriminierung aufgrund des Geschlechts), one of the reasons cited for the gender pay gap in Germany is the higher presence of women in the care sector, as these professions are still predominantly perceived as "feminine."[27]

There are also anti-discrimination offices at the state level, such as the State Office for Equal Treatment - Against Discrimination in Berlin (Landesstelle für Gleichbehandlung – gegen Diskriminierung), which is responsible, among other things, for raising awareness of anti-discrimination rights and promoting the development and implementation of strategies against structural discrimination.

The German Federal Government regular presents Reports on Gender Equality before parliament. Its second report addressed the issue of gender and care work in particular, and called for necessary reforms to eliminate the unequal gender presence in this profession.[28]

The Federal Foundation for Equality (Bundesstiftung Gleichstellung) is a federal foundation under public law (Sec. 1 Act on the Establishment of the Federal Foundation for Equality (Gesetz zur Errichtung der Bundesstiftung Gleichstellung, GleiBStiftG)) with the purpose to strengthen and promote equality between women and men in Germany (Sec. 2 GleiBStiftG). Its tasks are, among other things, collecting, processing and providing information, data and facts on the subject of equality, commissioning studies (Sec 3 (1) 1 GleiBStiftG) and strengthening practical gender equality work, in particular by advising administration, civil society, etc. (Sec 3 (3) 1 GleiBStiftG).

1.9 General Legal Evaluation on No-Discrimination

22) Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and

[26] Susanne Bartig et al., "Diskriminierungsrisiken und Diskriminierungsschutz im Gesundheitswesen – Wissensstand und Forschungsbedarf für die Antidiskriminierungsforschung: Studie im Auftrag der Antidiskriminierungsstelle des Bundes" (June 2021), <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/diskrimrisiken_diskrimschutz_gesundheitswesen.html> (Accessed October 10, 2023).

[27] Antidiskriminierungsstelle des Bundes, "Gleiche Rechte – gegen Diskriminierung aufgrund des Geschlechts. Bericht der unabhängigen Expert_innenkommission der Antidiskriminierungsstelle des Bundes" (Berlin, 2015), <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/Literatur/Literatur_Themenjahr_Geschlecht/Handlungsempfehlungen_Kommission_Geschlecht.pdf?__blob=publicationFile&v=2> (Accessed October 10, 2023).

[28] Bundesregierung, "Zweiter Gleichstellungsbericht: Erwerbs- und Sorgearbeit gemeinsam neu gestalten" (BT-Drucks. 18/12840).

refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

To answer this issue, please take into account the UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, no. 100; Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, no. 111; the Workers with Family Responsibilities Convention, No. 156; the Maternity Protection Convention, no. 183; and the Domestic Workers Convention, no. 189.

At the European level, remember mainly Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; 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; Directive 2010/41/EU on the application of the principle of equal treatment between men and women who are self-employed.

For the AGG and the EntgTranspG see above question 1. They do not provide for special rules for the care sector.

The General Equal Treatment Act (AGG) implements EU Directive 2006/54/EC, prohibiting direct and indirect discrimination, but does not make any direct references to the care sector. Moreover, Germany ratified the ILO Violence and Harassment Convention 190—whether and what legal adjustments, e.g. in the AGG, and enforcement the ratification of the convention will entail is still open.[29] According to Art. 8 (1) b), the members shall identify, in consultation with the employers' and workers' organizations concerned and through other means, the sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment, and no. 9 of Recommendation 206 recognizes that in the health sectors and occupations as well as in emergency services and domestic work exposure to violence and harassment may be more likely.

2. Migrant Status

Attention – Authors' note:

a) General information on migrants in the care sector is requested in this section; broadly speaking, these are non-EU third country nationals (where appropriate, EU nationals will be included). In some questions, nationals of the countries covered by the report will also be included.
b) Some questions refer to undocumented migrants (or irregular migrants): See notions defined above. In general terms undocumented migrants are those

[29] Eva Kocher, "ILO Convention No. 190 concerning the Elimination of Violence and Harassment in the World of Work and Recommendation No. 206" *Z Problematyki Prawa Pracy I Polityki Socjalnej* 1 (2023).

who do not have a residence and work permit in the host country, while documented migrants (or regular migrants) have been granted a residence permit.

c) Some of the questions refer to legislation on foreigners or immigration: by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.
d) Some questions may be answered not only by referring to the specific legislation on aliens, but also to other legislation, such as, for example, the legislation established by each country in the field of human rights or labour rights.

2.1 General Overview

1) Provide a brief overview of your national legislation on anti-discrimination on the grounds of race or ethnic origin, religion, or belief, in the field of employment or occupation.

Art. 3 (3) GG, provides a ban on discrimination because of sex, parentage, race, language, homeland, and origin, faith or religious or political opinions. However, it is not directly applicable to employment contracts.

The AGG provides for rules to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. It implements EU Directives 2000/43/EC and 2000/78/EC, among others. The rules are in principle similar to the directives.

There are also anti-discrimination laws at the level of the federal state, such as the LADG, which applies to the Berlin public administration and other institutions under public law (Sec. 3 (1) LADG). Among other things, it expressly prohibits direct (Sec. 4 (1) LADG) and indirect (Sec. 4 (2) LADG) discrimination on the basis of ethnic origin, racist and anti-Semitic attributions, and religious beliefs (Sec. 2 LADG).

2) Also provide a brief overview of the legislation concerning the rights and duties of "foreigners": EU third country nationals (by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.).

The rights and obligations of EU third-country nationals are regulated by the Immigration Act (Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern, Zuwanderungsgesetz, *ZuwandG*). The main part of the Act is the Residence Act (Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Aufenthaltsgesetz, AufenthG), which regulates the entry, residence, termination of residence, and integration of people from non-EU countries (Sec. 1). It also regulates residence for purposes of education (Secs. 16-17b), economic activity including employment and self-employment (Secs. 18-21), humanitarian reasons (Secs. 22-26), or family reasons (Secs. 27-36a AufenthG).

In August 2023, the Act on the further development of skilled labor immigration (Gesetz zur Weiterentwicklung der Fachkräfteeinwanderung) was passed. It is meant to implement the new EU Blue Card Directive 2021/1883 and to create better labour market access for workers with low skills, also enabling a "lane change" for asylum seekers. Skilled labour immigration now rests on three pillars, with skilled labour pillar still as the central element of immigration: Whoever is a skilled worker should be able to pursue any qualified occupation in the future. On a second pillar, workers with at least two years of professional experience and a professional qualification recognized by the state in their country of origin, should be able to exercise their profession in Germany with recognition in German—provided a salary threshold is met or the employer is bound by collective agreements. Also, anyone wishing to have their professional qualification recognized in Germany will be able to do so even after having entered the country, if they are in a "recognition partnership" with an employer. The third path focuses on people's potential and would introduce an "opportunity card" on a points system.

Foreigners from countries outside the European Economic Area and the EU may only work in Germany if their residence permit allows it. Sec. 18 (1) AufenthG regulates the "principle of skilled immigration":

> The admission of foreign employees is geared to the requirements associated with making Germany an attractive place to conduct business and research, giving due consideration to the labour market situation. The opportunities given to foreign skilled workers serve to guarantee the supply of skilled workers and to strengthen the social security systems. They are intended to promote the lasting integration of skilled workers into society and the labour market, with due consideration of public security interests.

While Sec. 18 only applies higher education qualification ((2) no. 4), Secs. 18 (3), 18a AufenthG opens the German labour market also to people with recognized vocational training. The provision was introduced in 2020 with the Immigration Act for Skilled Workers (Fachkräfteeinwanderungsgesetz, FachKrEG) and revised in August 2023.

According to Sec. 18 (2) AufenthG, a temporary residence permit to take up employment is granted if the foreigner has a concrete job offer, the Federal Employment Agency has given its approval and the equivalence of the qualification has been established. For foreigners over 44 years of age, there is also a minimum wage limit (unless the foreigner can prove that he or she is covered by adequate old age pension). Where there is a public interest in employing the foreigner, in particular under regional, economic or labour market policy aspects, exceptions are made.

The procedure and conditions for the consent/approval of the Federal Employment Agency, as required by Secs. 39-42 AufenthG, are regulated by the Ordinance on the Employment of Foreigners (Beschäftigungsverordnung, BeschV). For the consent, irrespective of their qualification, a "labour-market test" is required (Sec. 39 (3) AufenthG), i.e. the test if no German workers or foreign-

ers having the same legal rights of access to the labour market (mostly EU workers) are available for the employment concerned.

Usually, an important barrier for making use of these permits, are processes of establish the equivalence of the professional qualification with a German professional qualification. The Federal Professional Qualifications Assessment Act (Gesetz über die Feststellung der Gleichwertigkeit von Berufsqualifikationen, BQFG) regulates and standardises the procedure for the recognition of foreign professional qualifications. It applies to professions regulated by federal law (such as professions in the care sector regulated by PflBG). It mainly extends the regulations under the EU Directive on the Recognition of Professional qualifications (Directive 2005/36/EC) to non-regulated professions and to professional qualifications from third countries (Sec. 2 (2)). Recognition can be applied for from abroad.

In view of the arduous and lengthy processes these assessments usually undergo, Sec. 16d (4) AufenthG (Sec. 2 BeschV) also provides for temporary residence permits that enable undergoing the process of recognition of the professional qualification in Germany. These permits however must be based on an agreement between the Federal Employment Agency and the employment administration of the foreigner's country of origin. The agreement are a way of taking into account the interests of the countries of origin and thus avoiding a "brain drain".

A consent of the Federal Employment Agency is not necessary in the case of the EU Blue Card (Sec. 18g AufenthG), implementing Directive (EU) 2021/1883.

- *In terms of national legislation on foreigners or migrants, please make a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.*

According to Sec. 39 (2) no. 1, the Federal Employment Agency may only give its approval to the employment of foreigners as skilled workers if the worker is not employed under less favourable terms than German nationals employed in an equivalent position.

There are no specific rights for foreigners in employment, apart from the provisions on undocumented workers (see questions 24–27). Art. 3 (3) GG contains a ban on discrimination based on origin, which applies to the public sector. Within the scope of EU law, Art. 21 (2) CFR any discrimination on grounds of nationality shall be prohibited. As for the private sector outside of the scope of EU law, experts hold that a discrimination of third-party nationals based on their origin will be considered a discrimination on the basis of ethnic origin.[30]

[30] Wolfgang Däubler, "§ 1, marg. 36," in *Allgemeines Gleichbehandlungsgesetz: Mit Entgelttransparenzgesetz, Berliner LADG: Handkommentar*, hrsg. von Wolfgang Däubler und Thorsten Beck (5th edn., Baden-Baden: Nomos, 2022); Gregor Thüsing, "§ 1 AGG, marg. 68" in *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, hrsg. von Franz J Säcker et al. (8th edn., München: C. H. Beck, 2021).

3) Make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in employment in your country.

Even before the implementation of the so-called "guest worker" programmes via the recruitment agreements (Anwerbeabkommen) between the 1950s and 1970s—for instance with Italy (1946), Greece (1960), Turkey (1961), and Yugoslavia (1965), Germany relied on labour by foreigners, especially in agriculture and mining, and later in booming industry. Their numbers have steadily increased throughout the 20th and 21st centuries and they have played an important role in the German economy.[31]

However, it was not until the beginning of the 21st century that federal government led by the Social Democrats (SPD) and the Green Party (Die Grüne) recognised Germany as a "country of immigration" (Einwanderungsland) by passing the Immigration Act (Zuwanderungsgesetz, ZuwandG) in 2005. The Act started to regulate state integration offers for immigrants (non-EU third country and EU nationals) in a uniform manner, with integration courses for foreigners as its core matter.[32] Importantly, it implemented the Residency Act (Aufenthaltsgesetz, AufenthG)—for EU citizens, the Freedom of Movement Act/EU (Freizügigkeitsgesetz/EU, FreizügG/EU) regulates these matters. With the newest revision of the *FachKrEG* the AufentG has been amended with the aim of making Germany more attractive to skilled workers from non-EU third countries and facilitating their employment.[33]

According to the latest data for 2022, 23.8 million people with a migration background (Migrationshintergrund)[34] lived in Germany (29.27% of the total population (81.3 million)), of whom 13.4 million (16.48% of the total population) did not have German nationality.[35] Most of them came from EU countries (5,064,515 in total), the majority of them having Romanian nationality (883,670), followed by Polish nationals (880,780), Italian nationals (644,970), and Croatian nationals (436,325). Overall, however, most foreigners living in Germany had Turkish nationality (1,487,110), followed by Ukrainians (1,164,200) and Syrians (923,805)—the latter two mainly due to the on-

[31] Jochen Oltmer, *Migration. Geschichte und Zukunft der Gegenwart, 2. aktualisierte und erheblich erweiterte Auflage* (Bundeszentrale für politische Bildung, 2020); Manuela Bojadžijev, *Die windige Internationale: Rassismus und Kämpfe der Migration* (Westfälisches: Dampfboot, 2023).

[32] Bundesregierung, "Zuwanderungsland Deutschland," <https://www.bundesregierung.de/breg-de/suche/zuwanderungsland-deutschland-403874> (Accessed September 25, 2023).

[33] On this general strategy, see also Kristin Noack and Greta-Marleen Storath, "Migrantische Arbeitskräfte in der formellen Altenpflege in Deutschland und Schweden" *WSI-Mitteilungen* 401 (2022).

[34] All persons who were either not born with German citizenship themselves or who have at least one parent who was not born with German citizenship. This category has been used by the Federal Statistical Office in surveys of federal statistics since 2005.

[35] However, they can be born in Germany to non-German parents (Sec. 4 StAG (Natinality Act, Staatsangehörigkeitsgesetz)—the jus sanguinis rule.

going war in Ukraine and the unstable situation after the recent civil war in Syria, respectively.[36]

According to the data provided by the BA,[37] a total of 5.6 million (4.9 million regularly employed)[38] foreign employees were working in Germany in 2022, (14.43%) out of 38.8 million altogether (34.4 million regularly employed). 2.7 million were from EU countries, the majority of them having Romanian nationality (564,000) and Polish nationality (553,000), as well as 2.9 million from non-EU third countries, the majority of them having Turkish nationality (650,000). Between 2021 and 2022, the presence of foreigners from non-EU third countries (2.5 millionà2.9 million) overtook those from the EU (2.6 millionà2.7 million)—in other words, now more non-EU third country nationals work in Germany than EU nationals. Most foreign employees worked in transport and logistics (998,530), followed by food and catering (668,780).

4) Finally, make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in the care sector in your country.

Foreigners, i.e. people without a German passport, account for around one in seven employees in the German care sector. Whereas a few years ago it was predominantly EU citizens, third-country nationals now make up the majority of foreigners in the care sector—on the level of single nationalities, however, Polish nationals are the largest group. Most of foreigners work in nursing in medical care (KldB – 813), and slightly less in elderly care (KldB – 821). While almost two-thirds of employed Germans are nursing professionals, it is only half of foreign employees (the other half are mainly nursing assistants)—the report does not give more precise information.[39]

The picture changes, however, if one includes the so-called live-in workers (domestic workers who live in the household they work in), who come as commuting migrants mainly from Central and Eastern European countries (especially Poland) and work temporarily in German private households. Live-in workers are not recorded in official statistics due to the high number of undeclared and irregular employment relationships (bogus self-employment); they represent the largest informal part of the care sector (see below questions 5–9). Due to the prevalence of home-based long-term care in Germany (80%)[40] and the resulting need for home care workers, live-ins came to form, unintention-

[36] Statistisches Bundesamt, "Ausländische Bevölkerung nach Altersgruppen und ausgewählten Staatsangehörigkeiten am 31.12.2022" (31 December 2022), <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/Tabellen/auslaendische-bevoelkerung-altersgruppen.html> (Accessed September 25, 2023).

[37] Bundesagentur für Arbeit, "Migration und Arbeitsmarkt," <https://statistik.arbeitsagentur.de/DE/Navigation/Statistiken/Interaktive-Statistiken/Migration-Zuwanderung-Flucht/Migration-Zuwanderung-Flucht-Nav.html> (Accessed September 25, 2023).

[38] Excluding marginally employed, such as on the mini-job basis (see WP2, 4.5).

[39] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[40] See WP2, 2.3.

ally, what the research and consulting organisation "minor" (see below, question 5) calls a fourth pillar[41] of the German care system, as the current supply of outpatient care does not meet the demand.[42]

2.2 Statistic or Databases on Foreign and Migrant Workers

This question includes both EU nationals and third-country nationals in the EU as the object of analysis.

5) Have statistics or databases been published in your country on foreigners or immigrants who are part of the personnel providing services in each of these care sector occupations?

The BA provides databases and statistics (see above question 3. on gender) on employment for the entire labour market and differentiates by nationality, country of origin, and migration background (see above note 34). Such data for the care sector can be (partially) found in the BA's published statistics and reports, but not on its interactive statistics website. Moreover, there is no official data on live-in workers, but only estimations made by public expert organizations working in this field, such as minor,[43] and in scientific publications.[44]

The statistics "Employees by Occupation" (Beschäftigte nach Berufen) published by the BA uses the KldB 2010 (for an explanation, see above questions 3 and 4 on gender) and distinguishes between regularly employed German nationals and foreigners (not separate nationalities) in different care occupational categories.[45] The BA makes these data available on a monthly basis at the federal and state level.[46] Moreover, every two years, the BA publishes a report (BA Report), which contains statistics on foreigners employed in this sector and sepa-

[41] First pillar are family members, followed by outpatient (second pillar), and inpatient care (third pillar) (Minor – Projektkontor für Bildung und Forschung, "Die „vierte Säule" der Pflege: Aktuelle Bedarfe und Erwartungen von 24-Stunden-Betreuungskräften (Live- Ins) in Bezug auf ihre Arbeit in Deutschland" (2023), <https://minor-kontor.de/die-vierte-saeule-der-pflege/> (Accessed January 3, 2024).

[42] Minor – Projektkontor für Bildung und Forschung, "Tragende Säule bröckelnder Versorgungssicherheit ohne regulären Untergrund: Situation und zukünftige Entwicklung in der ambulanten Pflege und die Perspektive von Betreuerinnen aus der 24-Stunden-Betreuung (Live-Ins) auf die Pflegesituation vor Ort" (2022), <https://minor-kontor.de/wp-content/uploads/2022/10/FE_WP_Tragende-Saeule-broeckelnder-Versorgungssicherheit-ohne-regulaeren-Untergrund_22-10-20.pdf> (Accessed January 3, 2024).

[43] Minor Kontor, <https://minor-kontor.de/> (Accessed September 21, 2023).

[44] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[45] There are no data for specific care occupations that do not fall into the five-digit keys of the KldB 2010 (see question 3 on gender for explanation).

[46] Bundesagentur für Arbeit, "Beschäftigte nach Berufen (Klassifikation der Berufe 2010) - Deutschland, West/Ost und Länder (Quartalszahlen)," <https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html?nn=1523064&topic_f=beschaeftigung-sozbe-bo-heft> (Accessed September 25, 2023).

rates them according to migration status (EU nationals, non-EU third-country nationals, asylum countries, West Balkan countries, triple-win programme, and top five countries of origin of care workers (see below)).[47]

- *If yes, which care sector occupations are they most employed in?*

According to the BA report, of total 1.7 million care workers, 13% (218,000) of all employees in the care sector were foreigners in 2021;[48] as of March 2023, their percentage increased to 16% (270,460).[49]

According to the BA's monthly statistics, as of December 2022, 1,833,762 regularly employed German nationals and foreigners worked in two occupational groups: nursing in medical care (KldB – 813) and elderly care (KldB – 821).[50] Out of 1.2 million regularly employed nurses in medical care, 1,045,103 held German nationality and 150,048 were foreigners (12.5%), while out of 633,762 working in elderly care, 519,032 were German in comparison to 114,730 foreigners (22.1%). According to the occupational subgroups sorted via KldB 2010, most foreigners worked in nursing in medical care (without specialization, KldB – 8130) (137,887 (7.52% out of 1,833,762), followed by professions in elderly care (without specialization, KldB – 8210) (113,859 (6.21%). Foreigners are least employed in professional child care (KldB – 8132) (127 (0.006%) and leading positions in elderly care (KldB – 8219) (161 (0.008%).[51]

In the absence of official figures on live-in workers, estimates based on available research suggest that between 200,000 and 700,000 live-ins were employed in Germany in 2020/2021.[52] Slightly more than 90% are female. The majority commute from Central and Eastern EU countries, especially Poland—according to some estimates almost 50% are from Poland, and the rest come mainly from Southern and Eastern European countries that are not part of the EU (Serbia, Ukraine, etc.).

- *If there are statistics or databases, do these establish the "nationality" or origin of foreign personnel providing services in these sectors? What nationalities are predominant?*

The results published in the BA report[53] for 2022 show that the majority of foreigners employed in the care sector were from non-EU third countries (62%

[47] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[48] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

[49] The figure is derived from the statistical analysis of the BA we requested.

[50] The number is higher than the one used in the BA report (1.7 million) because the latter excludes some occupational subgroups such as emergency services (KldB – 8134).

[51] Bundesagentur für Arbeit, "Beschäftigte nach Berufen".

[52] Greta Schabram und Nora Freitag, "Harte Arbeit, wenig Schutz: Osteuropäische Arbeitskräfte in der häuslichen Betreuung in Deutschland" (Berlin, 2022); Bernhard Emunds et al., hrsg. von., *Pflegearbeit im Privathaushalt: Sozialethische Analysen* (Paderborn: Brill Ferdinand Schöningh, 2021).

[53] Bundesagentur für Arbeit, "Arbeitsmarktsituation im Pflegebereich".

(48% in 2017)), followed by EU nationals (38% (51% in 2017))—hence, non-EU third-country nationals have overtaken the EU nationals in the past 5 years. Of these, 35% (45% in 2017) are from the Top 5 countries (see below), 18% are from Western Balkan countries (18% (15% in 2017)), 17% (11% in 2017) are from the top triple-win countries (Vietnam, Philippines, Bosnia and Herzegovina, etc.), and 8% (3%) are from the top asylum countries.

According to the special evaluation (Sonderauswertung) we requested from the BA on employees in the German care sector by nationality, of the 270,460 foreign employees in 2023, the top five (Top 5) non-German nationalities are from Poland (22,859, 8.45%), Bosnia and Herzegovina (18,758, 6.93%), Turkey (16,755, 6.19%), Romania (16,549, 6.11%), and Croatia (15,238, 5.63%). Further data on the nationalities of foreign employees in the various nursing occupations can be requested for a fee.

- *Do databases also distinguish by gender? If yes, please describe what the statistics show.*

Databases by the Federal Statistical Office and the BA distinguish by gender for different care occupations according to KldB 2010 (see above question 3 on gender)—on the different gender representation in the care sector and in different occupational subgroups, see question 4 on gender. However, these do not show how many among them are foreigners. The BA's interactive statistics provide only the figures on labour force participation of foreign women (41%, 38% for regular employees (2022)) and men (62%, 59% for regular employees) for the entire German labour market. There are no freely accessible databases that distinguish between the genders of different nationalities working in the care sector or in different care occupations.

- *Do databases exist for each of the occupations, with a distinction between labour migrants, refugees, and other categories of foreigners or migrants?*

On the distinction into specific foreigner categories working in the care sector, see answers above—EU nationals, non-EU third-country nationals, asylum countries (not asylum status), West Balkan countries, triple-win programme, and top five countries of origin of care workers.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  This data is aggregated data on national level.

- *These databases public and freely accessible to everyone, or only to researchers?*

As mentioned, such data are mainly available via published statistics and reports from the BA and partially via BA's interactive statistics. However, if one wishes to have access to more detailed data, e.g., on the gender of different nationalities for a specific occupational subcategory in the care sector, individual inquiries must be made, for which there is a fee.

- *If published databases exist, please provide links and/or how to request them.*

  Federal Employment Agency:
  The data of the BA can be accessed via the interactive statistics at its official website: <https://statistik.arbeitsagentur.de/DE/Navigation/Statistiken/Interaktive-Statistiken/Berufe-auf-einen-Blick/Berufe-auf-einen-Blick-Anwendung-Nav.html>.
  Access to different monthly statistics that contain the percentage of foreigners in different care occupations (according to the KldB 2010): <https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html?nn=1523064&topic_f=beschaeftigung-sozbe-bo-heft>.

6) Describe any statistics or databases you have encountered.

See answers to question 5 on migrant status and questions 3 and 4 on gender.

- *Describe what these statistics show in relation to the nationality of the person working in the care sector and, if applicable, in relation to the gender by nationality of these staff.*

  See answers to question 5 on migrant status.

- *If you have found statistics or databases, please describe whether these show a distinction between general migrants, refugees, or other categories of migrants?*

  See answers to question 5 on migrant status.

7) Have statistics or databases been published on people working in the care sector, whether nationals of your country, EU, or non-EU nationals, differentiating them by race or ethnic origin, religion, or language?

Such statistics and databases do not exist.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  Not applicable.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

  Not applicable.

- *If published databases exist, please provide links and/or how to request them.*

  Not applicable.

8) Describe what statistics or databases you have found, i.e., summarise and comment on the data found on participation in the care sector by workers on the basis of race or ethnicity, religion, and language.

Not applicable.

9) Have there been any legal disputes or conflicts publicised by the media about the race or ethnicity, religion or language of staff providing services in the care sector? If so, please describe the situation and the solutions provided.

The publication "Workplace Integration of Nursing Professionals from Abroad" (Betriebliche Integration von Pflegefachkräften aus dem Ausland),[54] commissioned by the Hans Böckler Foundation (Hans Böckler Stiftung, HBS), a research and study organisation of the German Trade Union Confederation (Deutsche Gewerkschaftsbund, DGB), addresses workplace conflicts between newly immigrated foreigners and German nationals working in the German care sector. Based on interviews with foreign nursing professionals, it shows the complicated cooperation between nurses educated in Germany (often also with a migrant background), and foreign nurses. Expectations and different professional experiences play an important role here. For example, nurses in Southern Europe or Latin America are used to taking over tasks that are assigned exclusively to doctors in Germany. Foreign nurses will therefore miss professional acknowledgment. If such different expectation and disappointments are explained away with stereotypical "cultural differences", this can have effects as micro-aggressive racism. In addition, due to their weaker knowledge of German, foreign nurses often act only as listeners to German nurses rather than playing an active role, or feel excluded from information; sometimes, language might also be used more or less directly as an instrument of hierarchisation against foreign nurses. An article in the daily newspaper *Süddeutsche Zeitung*[55] that reported on the research findings of this study,[56] pointed out that structural racism in the nursing sector is also related to the fact that foreigners working as nurses in Germany are less likely (14%) to participate in daily meetings with their supervisors than German nationals (37%). In general, any study of the problem should keep in mind that the general public attitude towards migration has worsened in the last years. As migration restriction policies take the lead in public opinion, daily racism and racist attacks increase, and this reflects in workplaces against foreign workers. Legal disputes in this regard have not been published in the media.

Religion is often an issue, due to the strong involvement of the churches institutions in care sectors. For example, a Catholic hospital in an older case

[54] Robert Pütz et al., *Betriebliche Integration von Pflegefachkräften aus dem Ausland: Innenansichten zu Herausforderungen globalisierter Arbeitsmärkte* (Düsseldorf: Hans-Böckler-Stiftung, 2019; Study der Hans-Böckler-Stiftung 416); see also Grace Lugert-Jose, "Philipinische Pflegekräfte in Deutschland" (September 2023), <https://gracelugert.com/wordpress/wp-content/uploads/2023/09/GLJ-Arbeitsplatz-Studie-Phil.Nurses-Fokus-D_R-14May23-DE.pdf> (Accessed October 2, 2023).

[55] Kristiana Ludwig, "Ausländische Pflegekräfte sind nicht willkommen," *Süddeutsche Zeitung* (7 August 2018), <https://www.sueddeutsche.de/karriere/arbeitsmarkt-auslaendische-pflegekraefte-sind-nicht-willkommen-1.4083810> (Accessed September 29, 2023).

[56] Hildegard Theobald, "Pflegearbeit in Deutschland, Japan und Schweden: Wie werden Pflegekräfte mit Migrationshintergrund und Männer in die Pflegearbeit einbezogen?" (Düsseldorf, 2018).

turned down an application for a position as an intensive care nurse in a Catholic hospital, because of the applicant's lack of religious affiliation. The labour court held that the rejection constituted inadmissible discrimination that triggered compensation under Section 15 (2) AGG.[57] According to in 2022 reformed Basic Regulations of Church Service (Grundordnung des kirchlichen Dienstes), Art. 6 (3) of the regulation states that pastoral and catechetical are the only activities that can only be assigned to persons who belong to the Catholic Church—previously this also applied to persons working in educational and leadership roles.

An article in the weekly newspaper Zeit[58] mentions study results by sociologist Aleksandra Lewicki, who investigated the discrimination privilege for Christian churches based on Sec. 9 AGG, which allows affiliated institutions of religious communities to be treated differently based on their religious beliefs. In her studies, she points out that non-Christians, often Muslims, are more likely to receive fixed-term employment contracts than their Christian counterparts.[59] The issue of religious affiliation and working in faith-based organizations, such as nursing, was also highlighted in the ADS report, "Dealing with Religious Diversity in the Workplace" (Umgang mit religiöser Vielfalt am Arbeitsplatz).[60]

2.3 Formal/Informal Employment

This question refers to third country nationals of the EU.

10) Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?

For formal employment see questions 3 and 4 on gender and question 5– 9 on migrant Status.

[57] (2012) 2 Ca 4226/11 (ArbG Aachen); the case was published by ADS in its handbook: *Antidiskriminierungsstelle des Bundes, Handbuch „Rechtlicher Diskriminierungsschutz"* (Baden-Baden: Nomos, 2017).

[58] Lars-Thorben Niggehoff, "Muslimische Pfleger dürfen keine Karriere machen" *Zeit Online* (7 February 2018), <https://www.zeit.de/gesellschaft/2018-01/pflegenotstand-fluechtlinge-religion-diskriminierung-kirchliche-pflegeeinrichtung?utm_referrer=https%3A%2F%2Fwww.google.com%2F> (Accessed October 2, 2023).

[59] Aleksandra Lewicki and Linda Supik, "On Institutions, White Christian Privilege and the Politics of Equality and Citizenship" in *Gender, Race and Inclusive Citizenship. Dialoge zwischen Aktivismus und Wissenschaft*, edited by Tobias Neuburger et al. (Heidelberg: Springer VS, 2022).

[60] Antidiskriminierungsstelle des Bundes, "Umgang mit religiöser Vielfalt am Arbeitsplatz" (August 2016), <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise_umgang_mit_religioeser_vielfalt_am_arbeitsplatz_20160922.html> (Accessed October 2, 2023).

There is no data available on the proportion of informal employment in employment by sector in the Federal Statistical Office.[61] Such data is also not available at the BA, given that it uses only data collected by the employment agencies and job centres (see question 3 on gender).

According to the database by the website World Economics, which covers 155+ countries and adjusts World Bank and IMF estimates of GDP and the size of the informal economy,[62] estimates that the size of Germany's informal economy is 11.2% which would represent approximately $561 billion at GDP levels.

Due to the high number of undeclared and irregular employment relationships (bogus self-employment) of live-in workers, they represent the largest informal part of the care sector. However, there are no databases or official statistics, only estimates (see question 5 on migrant status).

- *Do databases exist for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?*

  We know of no such databases.

- *Do you know whether these statistics or databases distinguish between work migrants, refugees, or other categories of foreigners or migrants?*

  Not applicable.

- *Do these databases also distinguish by gender?*

  Not applicable.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  Not applicable.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

  Not applicable.

- *If published databases exist, please provide links and/or how to request them.*

  Not applicable.

11) Describe or comment on any statistics or databases you have found regarding the participation of migrant workers in the care sector in either the formal or informal economy. Where statistics show data by gender and by category of migrants within

[61] Statistisches Bundesamt, "Indicator 8.3.1 - Proportion of Informal Employement in Total Employment, by Sector and Sex," <https://sdg-indikatoren.de/en/8-3-1/> (Accessed September 27, 2023).

[62] World Economics, "World Economics GDP Database" (May 2023), <https://www.worldeconomics.com/Concepts/World-Economics-GDP-Database/> (Accessed September 27, 2023).

the formal and informal economy, please comment on them or include a description of them.

On statistics or databases for the formal economy, see question 5 on migrant status.

There are no statistical databases on the informal work of third-country nationals or EU citizens in the German care sector. There are only estimates from various research institutes and associations (see question 5 on migrant status), which indicate that the rate of irregular employment is high among live-ins. *According to these estimations,* slightly more than 90% are female.[63]

12) Have any statistics or databases been published in your country on the possible presence of "undocumented" or "irregular" immigrants (without authorisation to reside or work in your country) who may be providing services in care occupations?

There are no official statistics or databases on this topic—not even on how many people are undocumented or without a residence permit in Germany.

There were only estimates from the Pew Research Institute, a Washington-based think tank, which claimed that there were around 1.2 million irregular migrants living in Germany in 2017. This figure was disputed by the Berlin-based German Center for Integration and Migration Research (Deutsche Zentrum für Integrations- und Migrationsforschung, DeZIM), which criticized the methods and different categories used in the U.S. to arrive at these results. The actual estimate, according to DeZIM, is most likely 63,000, but there is no information on how many of these irregular migrants actually work in the care sector.[64]

- *Do these databases also distinguish by gender?*

  Not applicable.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  Not applicable.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

  Not applicable.

- *If published databases exist, please provide links and/or how to request them.*

  Not applicable.

[63] Schabram und Freitag, "Harte Arbeit, wenig Schutz".

[64] Roland Hosner, "One million irregular migrants in Germany? A methodological critique of estimates of irregular migrants in Europe published by Pew Research Center" (February 2020), <https://www.dezim-institut.de/fileadmin/user_upload/Demo_FIS/publikation_pdf/FA-5003.pdf> (Accessed October 11, 2023).

- *Comment on any statistics or databases you have found regarding the participation of irregular or regular migrants in the care sector. Where statistics have been found which differentiate by gender, please comment on the data.*

  Not applicable.

2.4 Facilitation of Migrants' Access to the Care Sector

This question refers to third country nationals of the EU.

13) Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If yes, please describe them. Also indicate if this sector is understaffed (Are there staff shortages in the sector?).

The care sector in Germany suffers from *severe* staff shortages due to the mixture of demographic (aging population), social (gendered character of care, which assigns care work as feminine work), and work-related factors (bad working conditions, absence of a sectoral collective agreement, devaluation of care work, high drop-out rate during training, etc.) (see WP 2, 2.4).

The provision on granting temporary residence permit to have one's qualification recognised in Germany, based on a bilateral agreement between the competent employment agencies (Sec. 16d (4) AufenthG), has a special clause for the care sector (no. 1), referring to professions in the health and care sector regulated by federal or state law that can only be exercised with a special authorisation, such as health-, elderly- and child-care nurses (incl. assistants) (Sec. 1 PflBG), midwives (Sec. 5 HebG), and others. The temporary residence permit may in these cases not only aim at establishing the equivalence of the professional qualification with a German professional qualification, but also at having the authorisation granted. These permits are granted for a year, and may be extended up to a maximum period of residence of three years.

Since 2013, the Federal Employment Agency has concluded placing agreements on the bases of this provisions with the employment agencies of several countries. As a general rule, the agreements demand an elementary knowledge of the German language (CEFR level B1). These are organised in the so-called "Triple-Win" programme, cooperation between the German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit, GIZ) and the Central Placement Office (ZAV) of the Federal Employment Agency, for the sustainable recruitment of nursing staff from abroad. The "triple" benefit is that employers gain linguistically and professionally well-prepared nurses, the foreign nurses gain professional and personal prospects through a transparent placement procedure, and the countries of origin benefit by relieving the burden on their labour markets. Employers not only pay a fee of 7,900 euros gross) for each nurse placed with them, but also have to cover the costs of having the qualifications recognised in Germany, language training to CEFR level B2, as well as organise appropriate accommodation.

In this framework, more than 3.500 qualifizierte Pflegekräfte from Bosnia-Herzegovina, Serbia, the Philippines and Tunisia have been placed with German employers in the care sector (for numbers: BT-Drs. 19/16732; numbers for 2020/2021: BT-Drs. 20/5615, p. 103. Serbia dropped out of the programme in 2020, due to its own need for care workers. At the moment (July 2023), placement agreements have also been concluded with employment agencies of Indonesia, Kerala (India), Mexico, Jordan and Columbia (the latter two since 2022). Informal cooperation agreements exist since 2019 with El Salvador and Vietnam (in the latter case, for people with work experience but no formal qualification in care work).[65] So far, slightly more than 4.700 care professionals were recruited altogether, most of the from the Philippines (more than 2.000), from Serbia (ca. 900), from Bosnia-Herzegovina (almost 900) and from Mexico (almost 600).[66]

The Federal Ministry of Health funds the German Agency for International Healthcare Professionals (DeFa - Deutsche Fachkräfteagentur für Gesundheits- und Pflegeberufe), established in 2019, to support employers including personnel service agencies in the application processes with German authorities at home and abroad. The Federal Government holds the website www.make-it-in-germany.de, which gives information to qualified professionals.

2.5 Legal Situation (Labour Rights and Immigration Law)

This question refers to third country nationals of the EU.

14) Describe whether migrants with residence and work authorisation have the same labour rights as other "national" workers in the care sector.

Take into account the provisions of European law, according to which third-country national workers enjoy equal treatment with workers who are nationals of the Member State in working conditions or Social Security (art. 12 of Directive 2011/98/EU, of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State). Also, if your country has ratified them, ILO Conventions No. 97 (Revised) on migrant workers, 1949; and Convention No. 143 on migrant workers, 1975.

[65] Sabine Dittmar, "Answer of the Parliamentary State Secretary Sabine Dittmar to a question by MP Tino Sorge (CDU/CSU), Question 157, 7 February 2023," *BT-Drs.* 20/5615 (10 February 2023).

[66] Bundesagentur für Arbeit, "Sozialversicherungspflichtige Bruttoarbeitsentgelte – Deutschland, West/Ost, Länder und Kreise (Jahreszahlen)," <https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html?topic_f=beschaeftigung-entgelt-entgelt> (Accessed October 2, 2023).

Germany ratified the Migration for Employment Convention (Revised), 1949 (No. 97) in 1959, but has not yet ratified Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).[67]

There are no differences in the legal situation of migrant workers as regards labour and employment rights.

Art. 12 of Directive 2011/98/EU has been discussed in relation to access to social rights. The provision was implemented by Art. 3 (2) Act to Improve the Rights of Beneficiaries of International Protection and Foreign Workers (Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern), which repealed Secs. 113 (3)-(4) and 114 (3)-(4) SGB VI: now providing comprehensive equality for all insured persons when receiving pensions abroad.[68] However, further implementation deficits do not seem to be ruled out in view of the scope of the directive.[69]

Already in 2012 the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) held that provisions violate the general right to equality (Art. 3 (1) GG) as well as the ban on indirect discrimination based on gender (Art. 3 (3) GG) and are therefore unconstitutional and void, if they restrict the access of foreigners to child allowances (Kindergeld), parental allowances (Elterngeld) and maintenance advance (Unterhaltsvorschuss) to foreign residents.[70] However, there is a similar provision in Sec. 62 (2) of the Income Tax Act (Einkommenssteuergesetz, EStG) according to which persons from non-EU states granted residency in Germany on humanitarian, political, or international law grounds may only claim child allowance (Kindergeld) after three years of continuous legal or otherwise allowed residency and only if they demonstrate their integration into the labour market, i.e. show that they are either legally employed in Germany, receive "unemployment benefits I" (Arbeitslosengeld I, ALG I) or are taking parental leave. The provision has been declared void in 2022 for the reasons stated above (unequal treatment of different groups of foreigners without adequate justification).[71]

There are some special rules regarding diplomats working in Germany. Firstly, they can bring domestic workers with them for up to two years (Sec. 22 Be-

[67] On the requirements for German law, see Katharina Spieß, "Die Wanderarbeitnehmerkonvention der Vereinten Nationen: Ein Instrument zur Stärkung der Rechte von Migrantinnen und Migranten in Deutschland" (Berlin, 2007); Katharina Spieß, "Der Schutz irregulärer Migrantinnen und Migranten in ihren Rechten in der Arbeit durch die UN-Menschenrechtskonventionen – Ein Überblick," in *Arbeit in der Illegalität: Die Rechte von Menschen ohne Aufenthaltspapiere*, hrsg. von Andreas Fischer-Lescano, Eva Kocher und Ghazaleh Nassibi (Frankfurt am Main: Campus, 2012).

[68] Daniela Schweigler und Stefan Stegner, "Die Abschaffung der Rentenkürzung für Drittstaatsangehörige mit Auslandswohnsitz: Europa- und Völkerrecht als Antidiskriminierungs-Schrittmacher," *ZESAR* 10 (2015).

[69] Frank Schreiber, "§ 34 Soziales EU-Verfassungsrecht, Rn. 96" in *Sozialrechtshandbuch (SRH)*, hrsg. von Franz Ruland, Ulrich Becker und Peter Axer (7 edn, Baiden-Baiden: Nomos, 2022).

[70] (2021) 1 BvL 3/10 (BVerfG).

[71] (2022) 2 BvL 9/14, 2 BvL 10/14, 2 BvL 13/14, 2 BvL 14/14 (BVerfG).

schV). The German Foreign Office also proposes a model contract to be used in these cases.[72] Labour law is generally applicable in the households of diplomats, but the possibility of judicial enforcement against diplomats may be lacking because they enjoy immunity from German civil jurisdiction under Sec. 18 of the German Civil Procedure Act (Gerichtsverfassungsgesetz, GVG) and cannot be sued in court during the period of immunity, even in the event of serious violations of the law.[73] However, the BAG has held a diplomat liable for exploitative employment of a domestic worker, stating that a foreign diplomat's immunity under Sec. 18 GVG ends when he or she leaves the country.[74]

15) Do the "labour" legislation (i.e., on working conditions) or, if applicable, collective agreements in your country, make any reference to the migrant or foreigner status of the person working in each of these care sector occupations?

No.

16) Have there been any court rulings on this matter? If so, please summarise or comment on them.

No.

17) Does the legislation on foreigners or immigration in your country (e.g., on residence or work permits, family reunification, permit renewal, etc.) specifically mention people working in one of these care sector occupations? Have there been any court rulings on this matter? If so, please summarise or comment on them.

Sec. 16d (4) AufenthG mentions the health and care sector in the section "Measures for the recognition of foreign professional qualifications". It regulates that the residence permit for persons who want to stay in Germany as long as their foreign professional qualifications are in the recognition procedure by the competent German state administration. This is the legal basis for specific programs such as "triple win" (see question 13) on migrant status). The provision was introduced by the FachKrEG of 2019, which was meant to counter the shortage of skilled workers especially in the health and care sector. Accordingly, Sec. 2 BeschV mentions health and care sector in the context of placement agreements. In addition, Annex to Sec. 38 BeschV also lists certain countries in which the recruitment and placement of health and care workers to Germany may only be carried out by the BA. Furthermore, domestic work is mentioned in Sec. 15 BeschV, which states that

[72] Cornelia Pieper, "Answer of the Minister of State at the Federal Foreign Office to a question by MP Eva Högl (SPD), 29 February 2012," in *Deutscher Bundestag, Plenarprotokoll 17/161* (29 February 2012): 19159.

[73] Eva Kocher, "Hausangestellte im deutschen Arbeitsrecht: Ratifikation der ILO-Konvention 189," *NZA* 929 (2013).

[74] (2012) 5 AZR 949/11 (BAG).

> approval of a residence title to engage in full-time employment [...] for up to three years for domestic work and necessary everyday care assistance in households with persons in need of care (SGB XI) may be granted subject to a labour market test if the persons concerned have been placed on the basis of an agreement governing the procedure and selection between the BA and the public employment service of the country of origin. Within the three-year period of admission to the labour market, approval may be granted for a change of employer. For renewed employment after leaving the country, approval may only be granted if the person concerned has stayed abroad after leaving the country for at least as long as he or she was previously employed in Germany.

18) Do migrants with the corresponding residency permit and authorisation to work in the care sector (in each of these occupations) have access to the same rights as other workers in other production sectors?

There are no differences in the legal situation of migrant workers regarding labour rights (see also Migration 14).

19) Have there been any court rulings on this matter? If so, please summarise or comment on them.

We do not know of any court cases in the matter.

20) Have there been any collective bargaining provisions to favour the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnic origin, etc.?

We are not aware of any collective bargaining provisions regarding this issue. In 2018, the *United Services Trade Union (Vereinte Dienstleistungsgewerkschaft, ver.di),* that organises employees in the care sector, took the following position on the issue of recruiting care workers from abroad:

> The trade unions in Europe emphasise that the migration of care workers from other European and international countries may solve short-term operational staffing needs, but is not a contribution to balancing the staffing needs in care in Germany.[75]

Sec. 28 Collective Agreement for the Public Sector (Tarifvertrag für den öffentlichen Dienst, TvöD) grants public employees special leave for good cause, waiving continued payment of remuneration. Sec. 29 TVöD grants leave from work for several days in cases of (eg) death of a partner, child or parent, or fulfilment of general civic duties under German law. These provisions may probably be used for the purpose of visiting families.

[75] ver.di, "Ausländische Fachkräfte nicht die Lösung" (8 April 2018), <https://gesundheit-soziales-bildung.verdi.de/themen/fachkraeftemangel/++co++cbbc3a02-44b7-11e8-b234-525400f67940> (Accessed September 28, 2023).

21) Do you know if there have been any conflicts publicised by media between migrant workers of the care sector and the people they care for in terms of non-discrimination on the basis of ethnicity, religion, or nationality? If so, please explain.

Everyday discrimination against foreign employees in inpatient and outpatient care is occasionally reported in the media. For example, in 2020, a weekly newspaper edited by the protestant church reported on the daily racism foreign nurses face in elderly care facilities, such as relatives of the elderly complaining about the lack of "Germans" in senior homes.[76] In 2023, an a study on the satisfaction of Filipino nurses working in various health care facilities in Germany found that 64% of the nurses had been confronted with racism on the part of patients as well as by their German colleagues.[77] Also, in 2021, various employment issues for "live-in" workers (including their relations with care-receivers) are summarized in the documentary "Eine Polin für Oma" (A Polish Woman for Grandma) by the German public broadcaster ARD.[78]

The ADS report entitled "Discrimination risks and protection in the health care sector" also analyses discrimination based on ethnic origin and racial discrimination in the care sector. It focuses on different forms of discrimination based on skin colour, language, etc. and thus provides a more detailed insight into the category "migration background" (see Footnote 34), which national statistical analyses ignore—the ADS also collects its data through counselling it offers to possible victims of discrimination. However, as with gender discrimination, the report focuses only on care users and not on nurses themselves—for example, their lack of access in comparison to German nationals.[79] A few examples of direct (Sec. 3 (1) AGG) and indirect discrimination (Sec. 3 (2) AGG) of nurses with migration background are covered in the ADS's report and strategies against racist bullying.[80] However, this report only mentions a few anecdotal examples of nurses who were harassed by their German colleagues and by patients because of their skin colour—the patients refused to be cared for by them.

[76] Jana-Sophie Brüntjen, "Der Rassismus in Deutschland zeigt sich auch in der Pflege," *Sonntagsblatt* (3 July 2020) <https://www.sonntagsblatt.de/artikel/rassismus-deutschland-pflege-studie> (Accessed September 27, 2023).

[77] Lugert-Jose, "Philipinische Pflegekräfte in Deutschland"; the study is also reported in the regional daily Neue Osnabrücker Zeitung (Ankea Janßen, "Rassismus in der Pflege: „Sie nennen Asiaten Schlitzaugen"," *Neue Osnabrücker Zeitung* (25 September, 2023), <https://www.noz.de/deutschland-welt/politik/artikel/pflegekraefte-ueber-rassismus-sie-nennen-asiaten-schlitzaugen-45551169> (Accessed October 2, 2023).

[78] Mirjana Momirovic und Caroline Haertel, "Eine Polin für Oma" (2021), <https://www.youtube.com/watch?v=67kXGFlj0aY&t=1s> (Accessed October 2, 2023).

[79] Bartig et al., "Diskriminierungsrisiken und Diskriminierungsschutz".

[80] Antidiskriminierungsstelle des Bundes, "Strategien gegen rassistisches Mobbing und Diskriminierung im Betrieb" (2015), <https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Handreichung-Betriebsraete/handreichung_betriebsraete.pdf?__blob=publicationFile&v=9>.

The study "Workplace Integration of Nursing Professionals from Abroad" commissioned by the HBS contains some examples on the discrimination on foreign nurses working in Germany.[81] One example is discrimination in outpatient care, as foreign nurses are sometimes seen as incompetent by those in need of care or their relatives because of their origin. However, the report also makes clear, disagreements between foreign nurses and their patients can also be due to different work cultures in care in Germany and the knowledge acquired in the nurses' home countries.

2.6 Statistics on Salaries

This question refers to third country nationals of the EU.

22) Have any statistics or databases been published in your country on migrant workers' salaries in the care sector?

The BA publishes data on median salaries of German and non-German nationals (foreigners) not specifically for the care sector, but for the occupational segment: health and social work, education, and teaching. Foreigners are further subdivided into third-country nationals and EU citizens, nationals of main asylum seeker countries, nationals of the Western Balkan countries and Eastern European third countries. In addition, the statistics also include the median salary of every nationality in the occupational segment. These statistics only cover the regularly employed—this means that e.g. most of live-ins are excluded.

For the data on the salaries of foreigners specifically for the care sector in the narrower sense, a special evaluation can be requested from the BA for a fee.

- *Have any statistics or databases been published in your country on the occupational classification of migrant workers in the care sector?*

  See answers to question 5) on migrant status.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  The data is aggregated on national level.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

The databases are publicly accessible. Access to the databases for the average salaries of foreigners working in the care sector is subject to a fee.

- *If published databases exist, please provide links and/or how to request them.*

Specific data from the BA database can be requested here: <https://statistik.arbeitsagentur.de/DE/Navigation/Service/Datenanforderung/Datenanforderung-Nav.html>.

[81] Pütz et al., *Betriebliche Integration von Pflegefachkräften aus dem Ausland.*

23) If you have found statistics or databases, please describe what they show in relation to the job classification and wages of migrant workers in the care sector.

According to data made available by the BA for the entire German labour market in 2022, the median income for German nationals was 3,785 euros (3,541 euros in 2020), and for foreigners 2,881 euros (2,638 euros in 2020). For the occupational segment of health care, social work, education and teaching, data available for 2020 show that the median for German nationals was 3,482 euros and for foreigners 3,227 euros —for EU nationals 3,228 euros and for third-country nationals 3,220 euros.[82]

2.7 Undocumented Workers

This question refers to third country nationals of the EU.

24) Are migrants in an undocumented situation (without authorisation to reside or work) entitled to employment rights when working in the care sector in your country? Please outline your views on this issue.

There are no differences in the legal situation of migrant workers as regards labour rights, independent of their legal situation concerning residency. As a consequence, undocumented and irregular migrants have the same legal rights arising from an employment relationship as regular workers: wage and compensation claims, leave, continued payment of wages in case of illness.[83] According to Sec.10 (1) of the Act to Combat Undeclared Work and Unlawful Employment (Schwarzarbeitsbekämpfungsgesetz, SchwArbG), it is a criminal offense if the employer employs a worker without the required residence and employment permit under conditions that are conspicuously less favourable than comparable German workers.

For foreigners who lack the necessary employment permit, the law assumes, for the purpose of remuneration, that the foreigner has been employed for three months (Sec. 98a (1) AufenthG). The agreed remuneration is considered to be the usual remuneration unless employer and foreign employee agreed on a lower or higher remuneration on a permissible basis (Sec. 98a (2)). Contractors and intermediaries, even without a direct contractual relationship to the employer are also liable for these obligations, unless they could assume, on the basis of due diligence, that the employer did not employ any foreigner who lacks the authorisation for employment (Sec. 98a (3)-(5). The rights can be enforced in a German labour court (Sec. 98a (6).[84]

[82] Bundesagentur für Arbeit, "Sozialversicherungspflichtige Bruttoarbeitsentgelte".

[83] Heike Rabe und Manuela Kamp, "Arbeitsausbeutung und Menschenhandel. Arbeitnehmerinnen und Arbeitnehmern zu ihren Rechten verhelfen: Eine Handreichung für Beratungsstellen" (July 2012), <https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/handreichung_arbeitsausbeutung_und_menschenhandel.pdf> (Accessed October 2, 2023); T. Tschenker, "Arbeit ohne Lohn. Irreguläre Migrant_innen nach wie vor ohne Zugang zum Recht" (2015), <http://forum-recht-online.de/wp/wp-content/uploads/2015/03/FoR1501_8_Tschenker.pdf> (Accessed October 3, 2023).

[84] Eva Kocher und Ghazaleh Nassibi, "Rechte für Beschäftigte als Sanktionen gegen Arbeitgeber_innen: Eine erste Einschätzung der Neuregelung in § 98 a AufenthG," in Fischer-Lescano,

However, when these rights are enforced at labour courts, workers often fear that the court or any other official will report their residency status (respectively the lack thereof) to authorities responsible for foreigners. Sec. 87 (2) AufenthG regulates the conditions of such a transfer of data and information to authorities (Übermittlungspflicht). Although it is not clear if a labour court is really obliged to transfer these data,[85] the fear of transfer hampers enforcement.[86]

25) Have there been any court rulings on this matter? If so, please summarise or comment on them.

An example is the case of the domestic worker in a diplomat's household (see question 14) on migrant status). In the 2003 case of a Polish national[87] who was working in a private household in Germany and injured herself, the labour court ordered the employer (the family) to pay wages and compensation; the existence of an employment relationship was based on prima facie evidence.[88] Further case of undocumented domestic workers represented by the lawyer Christian Lewek[89] has been covered by the documentary film "Dringend gesucht – Anerkennung nicht vorgesehen" by Anne Frisius in cooperation with Mónica Orjeda and Nanja Heid (2014).[90]

Outside the care sector, there was the case in 2009 of a Serbian construction worker who worked irregularly in Germany. With the help of ver.di, he sued his employer in the labor court for 25,000 euros and won the case.[91]

26) With the onset of the COVID-19 pandemic, measures were adopted by the State to allow "undocumented" foreign personnel to obtain residence or work permit, both structural and extraordinary?

There were no such extraordinary measures adopted during COVID-19 pandemic. However, the AufenthG gives the federal states the right to decide whether to grant a residence permit to a foreigner who is subject to an enforceable obligation to leave the country if there are atypical circumstances that currently lead to hardship (Sec. 24 AufenthG). A special "hardship" commission

Kocher und Nassibi, *Arbeit in der Illegalität*.

85 According to the German Red Cross handbook on illegality of residence, which refers to the wording in Sec. 2 of the *AufenthG*, this obligation of the labor court does not exist if the court becomes aware of the employee's illegal stay only "on occasion" and not in an individual case in order to fulfil its duty; see Marie von Manteuffel, "Aufenthaltsrechtliche Illegalität: Beratungshandbuch" (2017).

86 Christian Lewek, "Arbeitsrechte für Menschen ohne Papiere in Deutschland," in Fischer-Lescano, Kocher und Nassibi, *Arbeit in der Illegalität*.

87 At that time, Poland was not yet in the EU.

88 (2003) 13/Ca 268/02 (ArbG Hannover).

89 (2003) 13/Ca 268/02 (ArbG Hannover).

90 Anne Frisius und Mónica Orjeda, "Dringend gesucht – Anerkennung nicht vorgesehen" (2014).

91 Spieß, "Der Schutz irregulärer Migrantinnen".

decides whether the residency permit should be granted. These commissions, however, do not publish cases, statistics, or numbers; we do not know if the procedure has been used for the purpose of this question.

27) From the onset of the COVID-19 pandemic to the present day, have measures been taken by the State to allow "undocumented" foreign personnel providing services "in the care sector" to obtain residence or work permits?

No such measures were taken.

2.8 Equality Bodies, Reports

This question refers to third country nationals of the EU.

28) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of migrant workers in the care sector? If yes, please describe this report.

Next to gender equality, the ADS also covers racial, ethnic, or religious discrimination. Moreover, there are anti-discrimination offices at the level of federal states, such as the State Office for Equal Treatment - Against Discrimination in Berlin, that are responsible for this. The details about the work of these offices are already covered above (question 21) on gender—for the relevant ADS publications, see question 21) on migrant status.

The Office for the Equal Treatment of EU Workers (Gleichbehandlungsstelle EU-Arbeitnehmer) is an office of the Federal Government Commissioner for Migration, Refugees, and Integration. It provides basic information and counselling on labour rights and vocational training for EU citizens wishing to work in Germany (for publications see question 24 on migrant status).

The German Institute for Human Rights (Deutsches Institut für Menschenrechte, DIMR) is the general independent human rights institution in Germany. It was established by law in 2015, according to the UN Paris Principles (Resolution of the General Assembly 48/134 of 20 December 1993, on national institutions for the promotion and protection of human rights) to inform the public about the human rights situation in Germany and abroad, and to promote and protect human rights (Sec. 2 Law on the Legal Status and Tasks of the German Institute for Human Rights (Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, DIMRG). According to the Sec. 2 (5) DIMRG, the institute submits an annual report to federal parliament (the German Bundestag) on the work of the institution and the development of the human rights situation in Germany, on which Bundestag is to comment. While these annual reports do not mention the care sector, the institute has commissioned scientific reports on this topic (see below and note 83).

Faire Mobilität (Fair Mobility is an organisation affiliated to the DGB that has 13 centres for the counselling of foreign workers nationwide. Since 2020, it is being

funded by the Federal State with around 4 Mio Euro yearly.[92] A local independent counselling organizations for employment and social rights of foreigners working in Germany is the Berlin Advisory Centre for Migration and Good Work (Berliner Beratungszentrum für Migration und Gute Arbeit, BEMA).[93] The organisation minor (see note 43) provides counselling for foreign workers in Germany in different sectors and areas, via social media. In addition to the counselling services, these organizations also publish information brochures. On a more general level, the Anti-Discrimination Association Germany (Antidiskriminierungsverband Deutschland) is an umbrella organization of independent anti-discrimination offices and regional counseling centers that represent specific groups such as Muslim women, lesbian women, gays, Kurdish teachers, or Turkish people.[94]

Organisations such as the Society for Civil Liberties (Gesellschaft für Freiheitsrechte)[95] and European Centre for Constitutional and Human Rights[96] promote strategic litigation and promote legal interventions with the help of studies, opinions, or draft laws.

29) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of people, whatever their nationality, working in the care sector? If yes, please describe this report.

This question concerns both nationals of the country, EU nationals and EU third country nationals.

In addition to question 28 on migrant status:

The Office for the Equal Treatment of EU Workers recently published a report on the legal issues of Polish live-ins who work in Germany through placement agencies.[97] The report analyses the civil-law contracts that these agencies conclude with live-ins. Often, these are service contracts instead of employment contracts; they are colloquially referred to as "garbage contracts"

[92] Faire Mobilität, "Über uns," <https://www.faire-mobilitaet.de/ueber-uns> (Accessed October 3, 2023); for the financing, see Bericht des Haushaltsschusses (BT-Drs. 19/20146 2 17 June 2020).

[93] Berliner Beratungszentrum für Migration und Gute Arbeit, "Über uns," <https://bema.berlin/uber-uns/> (Accessed October 3, 2023).

[94] Der Antidiskriminierungsverband Deutschland (advd), <https://www.antidiskriminierung.org/> (Accessed October 3, 2023).

[95] Gesellschaft für Freiheitsrechte, "Wer wir sind," <https://freiheitsrechte.org/ueber-die-gff/werwirsind> (Accessed October 3, 2023).

[96] European Centre for Constitutional and Human Rights, "Wie wir arbeiten," <https://www.ecchr.eu/ecchr/mit-juristischen-mitteln-menschenrechte-verteidigen/> (Accessed October 3, 2023).

[97] Eva Kocher and Nastazja Potocka-Sionek, "Rechtsfragen beim Einsatz polnischer Betreuungskräfte (Live-ins) in Deutschland durch Vermittlung polnischer Agenturen," (Berlin, 2022), <https://www.eu-gleichbehandlungsstelle.de/eugs-de/analysen/rechtsfragen-beim-einsatz-polnischer-betreuungskraefte-live-ins-in-deutschland-durch-vermittlung-polnischer-agenturen-2124804> (Accessed October 10, 2023).

in Poland, because they are privileged by the law, in order to be used as an effective disguise for employment, and are characterized by uncertainty, lack of stability, and lack of protection. The office also funds the minor organisation's "MB 4.0 - Gute Arbeit in Deutschland" project, which contributed information for the report. The project has been conceptualizing and developing outreach information and counselling work in the social media for EU immigrants in twelve languages—primarily, for live-in workers from Poland, as well as other Central and Eastern European countries.[98] In addition, minor regularly publishes reports on the legal situation and professional experiences of live-in workers, highlighting the important role they play in the German long-term care sector.[99]

In addition, DIMR and minor jointly authored a report on the situation of live-ins from Eastern Europe in Germany.[100] The report documents the working and living conditions of live-in workers in private households—e.g. earning far below the minimum wage, working around the clock, and lack of separation between home and work.

2.9 Legislation on Harassment of Women Workers in the Domestic Sector

This question concerns both nationals of the country, EU nationals and EU third country nationals.

30) Comment whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Comment whether the worker's employer (including migrant workers) can be held responsible for such situations.

To answer this issue, please consider the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; or Convention (Council of Europe) on preventing and combating violence against women and domestic violence, adopted on 7 April 2011 (Istanbul Convention).

Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime was implemented through the Act to strengthen victims' rights in criminal proceedings (Gesetz zur Stärkung der Opferrechte im Strafverfahren), which introduced psychosocial assistance in legal

[98] Schabram und Freitag, "Harte Arbeit, wenig Schutz".

[99] Minor – Projektkontor für Bildung und Forschung, "Die „vierte Säule" der Pflege: Aktuelle Bedarfe und Erwartungen von 24-Stunden-Betreuungskräften (Live- Ins) in Bezug auf ihre Arbeit in Deutschland" (2023), <https://minor-kontor.de/die-vierte-saeule-der-pflege/> (Accessed October 10, 2023).

[100] Nora Freitag, "Arbeitsausbeutung beenden: Osteuropäische Arbeitskräfte in der häuslichen Betreuung in Deutschland" (Berlin, 2020), <https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Analyse_Studie/Analyse_Arbeitsausbeutung_beenden.pdf> (Accessed October 10, 2023).

proceedings (Sec. 406g German Code of Criminal Procedure (Strafprozeßordnung – StPO)) as well as further rights, including the notification of aggrieved persons of rights in criminal proceedings (Sec. 406i StPO).

Germany ratified the Istanbul Convention in 2018, but initially reserved the right to establish jurisdiction for offences committed abroad by foreigners or stateless persons who have their habitual residence in Germany (Art. 44 (1.e) Istanbul Convention). It also reserved the right not to issue a renewable residence permit to victims whose stay is necessary owing to their personal situation or for the purpose of their co-operation in an investigation or criminal proceedings (Art. 59 Istanbul Convention). In February 2022, these reservations were revoked with the argument that Germany indeed already implements these requirements of the Istanbul Convention, notwithstanding some legal uncertainties. In relation to Art. 59 Istanbul Convention, the government points to Sec. 60a (2) AufenthG according to which the deportation of a foreigner is to be suspended if the public prosecutor's office or the criminal court considers his or her temporary presence to be appropriate in connection with criminal proceedings, because it would be more difficult to investigate the facts of the case without information from the foreigner.

Most importantly for the sector of employment, Sec. 3 (3) and (3) AGG regulates harassment including sexual harassment as a form of discrimination (according to EU Directives 2000/43/EC, 2000/78/EC and 2006/54/EC). Sec. 12 AGG holds the employer responsible for all these forms of discrimination. The employer has the duty to take measures necessary to ensure protection including preventive measures (1) and shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training (2). Where employees violate the prohibition of discrimination, the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to put a stop to the discrimination; this may include cautioning, moving, relocating or dismissing the employee in question (3). Where employees are discriminated against in the pursuance of their profession by third persons, the employer shall also take suitable, necessary and appropriate measures to protect the employee in question (4).

The Act on Occupational Health and Safety (ArbSchG) covers every form of possible risks, including psychological risks (Sec. 4 lit. 1 ArbSchG).[101] However, it excludes domestic workers in private households (Sec. 1 (2), in accordance with Art. 3a) Council Directive 89/391/EEC, a rule that may however be invalid, due to indirect discrimination based on gender.[102]

[101] Cf. Art. 3 lit. e) ILO Convention no. 155 (Occupational Safety and Health Convention), 1981.

[102] (2022) C 389/20 (ECJ) CJ./. Tesorería General de la Seguridad Social (TGSS)); Vera Pavlou, "Domestic work in EU law: The relevance of EU employment law in challenging domestic workers' vulnerability," *European Law Review* 41, 3 (2016): 379.

On this background, it is important to note that Germany ratified ILO Violence and Harassment Convention 190 in June 2023; it will enter into force for Germany on 14 Jun 2024 (BT-Drs. 20/5652). Art. 6 of the Convention should promote the development of sector-specific regulation and of a special protection of vulnerable workers. Art. 8 lit. b) and c) of ILO Convention 190 oblige ratifying states to identify the sectors, occupations or work situations in which workers are most exposed to violence and harassment in order to protect them effectively. According to No. 9 of Recommendation 190, special attention should be paid to "night work, work in isolation, health, hospitality, social services, emergency services, domestic work, transport, education or entertainment". In particular, concepts are urgently needed to establish the prevention and sanction of conflicts and violence against live-in-workers.[103]

Also, the extent to which, for example, remedies for victims of gender-based violence and harassment in the world of work (Art. 10 lit. e) of the Convention) are already "gender-responsive, safe and effective" will require concrete empirical studies, in order to be able to draw concrete conclusions for regulation.

2.10 Exploitation in the Workplace (Undocumented Migrant Workers)

This question refers third country nationals of the EU.

31) Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with regard to undocumented or irregular migrant workers (without residence authorisation). Comment on whether in these cases migrants in an irregular situation can denounce or have access to the courts in cases of exploitation and labour exploitation. Also, whether there are cases in the legislation in which they can obtain a residence authorisation.

To answer this issue, please take into account the Directive 2009/52/ of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Germany already had a regulatory system to combat undeclared work in the SchwArbG before Directive 2009/52/ was transposed into national law by the Second Directive Transposition Act (2. Richtlinienumsetzungsgesetz) in 2011. Sec. 98a AufenthG implemented Art. 6 Directive 2009/52/, according to which the employer is obliged to pay the remuneration for the work performed and to pay the taxes and social security contributions, regardless of the residency status and work permit of the employee. However, if an employee brings an action against his employer before the labour court, the issue arises on the basis of Sec.

[103] Freitag, "Arbeitsausbeutung beenden," 31; on ways to detect specific vulnerabilities in this respect, see Anna-Katharina Dietrich, Eliane Friess und Kordula Heineck, "Zwangsarbeit und Arbeitsausbeutung verhindern: Branchenspezifische Analyse - Anzeichen erkennen & handeln: 2. Ausgabe: Landwirtschaftliche Saisonarbeit und häusliche Pflege" (Berlin, 2022).

87 (2) AufenthG, which obliges public bodies to transmit data to the foreigners authority if they have knowledge that the employee does not hold a required residence permit—see question 24 on migrant status.

Moreover, the provisions of Art. 13 (4) and Art. 6 (2) 2 of the Directive 2009/52/ was implemented into Sec. 25 (4b) AufenthG, which stipulates that if the employee is a third-country national who has worked under particularly exploitative working conditions, or if the employee is a minor, they are granted a temporary residence permit. It allows for the issuance of a residence permit for the duration of the criminal proceedings against the employer. Specifically, a foreigner who has been the victim of a criminal offence under Sec. 10 (1) or Secs. 11(1) (3) SchwArbG or under Sec. 15a of the Temporary Employment Act (Arbeitnehmerüberlassungsgesetz, AÜG) may be granted a residence permit for a temporary stay, even if he or she is subject to an enforceable obligation to leave the country. The same applies if the foreigner is a victim of human trafficking pursuant to Secs. 232-233a Criminal Code (Strafgesetzbuch, StGB) (Sec. 25 (4a) AufenthG). In both cases, however, the victim must be relevant for the issuance of the residence permit or be willing to cooperate in the proceedings against the employer.

Abbreviations

6. PflegeArbbV	6. Pflegearbeitsbedingungenverordnung (Sixth Nursing Working Conditions Ordinance)
ADS	Antidiskriminierungsstelle des Bundes (Federal Anti-Discrimination Agency)
ArbG	Labour Court (Arbeitsgericht)
ArbSchG	Arbeitsschutzgesetz (Occupational Safety and Health Act)
AufenthG	Aufenthaltsgesetz (Residency Act)
AÜG	Arbeitnehmerüberlassungsgesetz (Temporary Employment Act)
BA	Bundesagentur für Arbeit (Federal Employment Agency)
BAG	Bundesarbeitsgericht (Federal Labour Court)
BAuA	Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (Federal Institute for Occupational Safety and Health)
BEEG	Bundeselterngeld- und Elternzeitgesetz (Federal Parental Allowance and Parental Leave Act)
BEMA	Berliner Beratungszentrum für Migration und Gute Arbeit (Berlin Advisory Centre for Migration and Good Work)
BeschV	Beschäftigungsverordnung (Ordinance on the Employment of Foreigners)
BGleiG	Bundesgleichstellungsgesetz (Federal Act to Ensure Equal Opportunities for Women and Men in the Federal Administration and the Courts on Gender Equality)

BGW	Berufsgenossenschaft für Gesundheitsdienst und Wohlfahrtspflege (Employer's Liability Insurance Association for Health Services and Welfare Care)
BQFG	Gesetz über die Feststellung der Gleichwertigkeit von Berufsqualifikationen (Federal Professional Qualifications Assessment Act)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court)
DEÜV Meldungen	Datenerfassungs- und übermittlungsverordnung (Data Collection and Transmission Ordinance Reports)
DGB	Deutsche Gewerkschaftsbund (German Trade Union Confederation)
DGUV	Deutsche Gesetzliche Unfallversicherung (German Statutory Accident Insurance)
DIMR	Deutsches Institut für Menschenrechte (German Institute for Human Rights)
DIMRG	Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte (Law on the Legal Status and Tasks of the German Institute for Human Rights)
ECJ	European Court of Justice
EntgTranspG	Entgelttransparenzgesetz (Transparency in Wage Structures Act)
FachKrEG	Fachkräfteeinwanderungsgesetz (Act for Skilled Workers)
FPfZG	Familienpflegezeit (Family Caregiver Leave Act)
FreizügG/EU	Freizügigkeitsgesetz/EU (Freedom of Movement Act/EU)
FüPoG I & II	Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst I & II (Act on Equal Participation of Women and Men in Management Positions in the Private and Public Sectors I & II)
GDP	Gross Domestic Product
GG	Grundgesetz für die Bundesrepublik Deutschland (Basic Law, German Constitution)
GleiBStiftG	Gesetz zur Errichtung der Bundesstiftung Gleichstellung (Law on the Establishment of the Federal Foundation for Equality)
HBS	Hans Böckler Stiftung (Hans Böckler Foundation)
HebG	Hebammengesetz (Midwifery Act)
IAB	Institut für Arbeitsmarkt- und Berufsforschung (Institute for Employment Research)
ILO	International Labour Organisation
ISCO-08	International Standard Classification of Occupations 2008
IS-GBE	Informationssystem der Gesundheitsberichterstattung des Bundes (Information System of Federal Health Reporting)
KldB 2010	Klassifikation der Berufe 2010 (Classification of Occupations 2010)

LADG	Landesantidiskriminierungsgesetz (State Anti-Discrimination Act)
LAG	Landesarbeitsgericht (Regional Labour Court)
LGG	Gesetz zur Gleichstellung von Frauen und Männern im öffentlichen Dienst im Land Brandenburg, Landesgleichstellungsgesetz (Act to Ensure Equality of Women and Men in the public sector of Land Brandenburg)
MuSchG	Mutterschutzgesetz (Maternity Protection Act)
PflAFinV	Verordnung über die Finanzierung der beruflichen Ausbildung nach dem Pflegeberufegesetz (The Nursing Professions Training Financing Ordinance)
PflBG	Pflegeberufegesetz (Nursing Professions Act)
PflegeZG	Pflegezeitgesetz (Caregiver Leave Act)
SchwArbG	Schwarzarbeitsbekämpfungsgesetz (Act to Combat Undeclared Work and Unlawful Employment)
SGB V	Sozialgesetzbuch V(Social Security Code, Book V)
SGB VI	Sozialgesetzbuch VI (Social Security Code, Book VI)
SGB VII	Sozialgesetzbuch VII (Social Security Code, Book VII)
SGB XI	Sozialgesetzbuch XI (Social Security Code, Book XI)
StAG	Staatsangehörigkeitsgesetz (Natinality Act)
StGB	Strafgesetzbuch (Criminal Code)
StPO	Strafprozeßordnung (German Code of Criminal Procedure)
TV	Tarifvertrag (Collective Agreement)
TVöD	Tarifvertrag für den öffentlichen Dienst (Collective Agreement for the Public Sector)
TVöD-B	Tarifvertrag für Pflege- und Betreuungseinrichtungen (Collective Agreement for the Public Sector, Nursing and Care Facilities)
TVöD-K	Tarifvertrag für Krankenhäuser (Collective Agreement for the Public Sector, Hospitals)
TzBfG	Teilzeit- und Befristungsgesetz (Part-Time and Fixed-term Employment Act)
ver.di	Vereinte Dienstleistungsgewerkschaft (United Services Union)
VKA	Vereinigung der kommunalen Arbeitgeberverbände (Federation of Municipal Employers' Associations)
ZuwandG	Zuwanderungsgesetz (Immigration Act)

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CHAPTER 4

Italian Care Workers' Discrimination Map Report[1]

Maria Luisa Vallauri, William Chiaromonte, Giulia Frosecchi, Samuele Renzi, Michele Mazzetti

1. Gender

1) Provide a brief overview of your national legislation on gender discrimination in the field of employment.

Anti-discrimination law has its constitutional basis in Article 3 of the Italian Constitution. This article asserts the principle of equal social dignity among citizens and mandates equality before the law, prohibiting discrimination based on sex, race, language, religion, political opinions, and personal or social conditions. However, it is widely believed that this list is not exhaustive, meaning that violations of the principle of equality can occur outside of those cases. Article 3(2) indicates the principle of substantive equality, which requires the Republic to remove economic and social obstacles that effectively limit the equality of citizens. Moreover, Article 37(1) of the Constitution reaffirmed the traditional protective objectives of differentiated protection of women's work while also introducing the principle of equal protection, which guarantees women equal treatment with adult male workers. According to a protective rationale, the constitutional article declares that women must be granted the working conditions

[1] The contents of this report were finalized on June 28, 2024.

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required to fulfil their family function and safeguard motherhood. From an egalitarian perspective, women have the right to equal pay for work of equal value.[2]

The rationale for protecting women underpins many laws and is enshrined in the Constitution.[3] Both nuptial clauses (which required women workers to leave their jobs after marriage) were declared null and void by Law no. 7 of 9 January 1963. Under the law, there is a presumption of illegitimacy of dismissal ordered between the request for nuptial publications and the year following the celebration. The unlawfully dismissed female worker has the right to be readmitted to work and to be paid her wage from the date of her dismissal to the date of her actual readmission. The presumption also applied to the employee's resignation during the above-mentioned time, unless she confirmed it within one month with the Provincial Labour Inspectorate. Another example is Legislative Decree no. 151 of 26 March 2001 on the protection and support of maternity and paternity that safeguarded working mothers.

In this historical context, the Equal Opportunities Code (Legislative Decree no. 198 of 11 April 2006) is crucial. This legislative decree transposes EU legislation's principles and reorganises national legislation to combat direct and indirect gender discrimination and to ensure valid equality in all social and economic areas. The Legislative Decree no. 198 of 11 April 2006 is structured in four books:

1) Book I: Provisions for promoting equal opportunity for men and women (Articles 1–22).
2) Book II: Equality of men and women in ethical and social relationships (Articles 23–24).
3) Book III: Equality of men and women in economic interactions (Articles 25–55).
4) Book IV: Equality of men and women in civil and political relations (Articles 56–58).

In addition to the establishment of a general principle of equal treatment, the most important points of the code concern the protection of equal opportunities in the workplace in the event of maternity or paternity (Article 25(2a) Legislative Decree no. 198 of 11 April 2006) and the prohibition of wage discrimination (Article 28(1) Legislative Decree no. 198 of 11 April 2006). The lawmaker gives special attention to fighting against workplace harassment by enacting a set of repressive laws as well as a set of rules supporting equitable treatment. In this respect, sanctions have been tightened up since 2006 by reforming Legis-

[2] Cristina Alessi, "Le azioni positive," in *La tutela antidiscriminatoria. Fonti, strumenti, interpreti*, a cura di Marzia Barbera, e Alberto Guariso (Torino: Giappichelli, 2019).

[3] Maria Grazia Giammarinaro et al., *Donne gravemente sfruttate. il diritto di essere protagoniste* (2022), <www.slavesnomore.it> (Accessed September 26, 2023); Beatrice Busi, *Separate in casa* (Roma: Ediesse, 2020); Lilli Casano, *Verso un mercato del lavoro di cura : questioni giuridiche e nodi istituzionali* (Valenza: ADAPT University Press, 2022); Darcy du Toit, "La tutela dei diritti dei lavoratori domestici e di cura: verso un nuovo paradigma," in Casano *Verso un mercato del lavoro*.

lative Decree no. 198 of 11 April 2006. Additionally, the legislative decree creates committees and bodies that are tasked with enforcing the discipline, such as the Women's Entrepreneurship Committee, National Equality Committee, and Equality Councillors. In the final section of the legislative decree, the legislator establishes positive actions to raise the proportion of women in institutions.[4]

Law no. 162 of 5 November 2021 was adopted to strengthen gender equality in the workplace. This law broadened the notion of direct discrimination by establishing that this discrimination can also be perpetrated during the selection process. The law broadens the range of companies obliged to prepare periodic reports on the situation of personnel aimed at combating the gender gap. The reform introduces the possibility for enterprises to make a gender equality certification. Enterprises that obtain the certification are rewarded with a waiver of the employer's total social security contributions, with the awarding of an additional score for obtaining funding on national and regional European funds and state aid to co-finance the investments incurred. Moreover, possession of parity certification may result in the award of a bonus score to award contracts for works or services.[5]

In Italy, two equality bodies were established to implement European directives: the Equality Councillors (*Consigliere di Parità*) and the Office for the Promotion of Equal Treatment and the Elimination of Discrimination on the grounds of Race or Ethnic Origin (*Ufficio Nazionale Antidiscriminazioni Razziali* or UNAR). While the Equality Councillors deal with preventing and combating gender discrimination, the UNAR deals with discrimination based on race and ethnic origin. In general, these are bodies that have limited powers and mainly deal with alternative dispute resolution. Equality Councillors are created at the provincial, regional and national levels.

Access to justice and case law concerning discrimination remains limited compared to other areas of labour law. This scarcity underscores the challenge of identifying and addressing discrimination, particularly within the framework of individual contractual freedoms versus the principle of equality.

Regarding discrimination in the care sector, the survey for Equality Councillors and the Italian National Stakeholder Meeting highlighted several cases of discrimination faced by workers in the care sector. These cases shed light on significant challenges related to equality and fair treatment in the workplace.[6]

One prominent form of discrimination highlighted during the Italian National Stakeholder Meeting was gender-based discrimination, particularly concerning maternity rights. For example, a female worker in a public health institution

[4] Donata Gottardi, "Dalle discriminazioni di genere alle discriminazioni doppie o sovrapposte: le transizioni," *Giornale di diritto del lavoro e di relazioni industriali* 27 (2004)].

[5] Giulia Frosecchi, "La tutela contro le discriminazioni sul lavoro," in *Elementi di diritto del lavoro*, a cura di William Chiaromonte, Maria Luisa Vallauri, e Maria Paola Monaco (Torino: Giappichelli, 2021).

[6] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting Held in Rome on 10 April 2024"; Consigliera Nazionale di Parità, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting".

encountered resistance when seeking to transition from full-time to part-time employment due to maternity reasons. Despite legal provisions mandating equal treatment for part-time and full-time working mothers, the administration initially denied her request. However, following intervention from the Inspectorate of Labour and legal action, the issue was ultimately resolved.[7]

Another prevalent issue discussed was discrimination based on contractual terms, particularly concerning part-time employment. A young mother employed under a discriminatory part-time contract faced challenges in negotiating fair working conditions. Despite efforts by the worker, her union representative, and legal counsel, the employer refused to engage in discussions, leading to the worker reluctantly accepting a full-time position to avoid job loss.

Additionally, cases of discrimination against foreign workers were highlighted during the dialogue. In one instance, a worker from Albania faced harassment and coercion to resign after returning from maternity leave. Despite attempts to intervene and address the discriminatory behaviour of the employer, procedural limitations hindered effective resolution of the issue. The Equality Councillors highlighted forms of intersectional discrimination, particularly concerning gender, religion, and ethnicity. People of colour, especially Moroccan women wearing the Hijab, experienced significant difficulties in the workplace, often encountering discrimination and prejudice.[8]

Regarding workers employed in the care sector, including nursing professionals, healthcare assistants, caregivers, and similar roles, several critical issues were identified. The boundary between gender discrimination, work-life balance issues, organizational discomfort, endogenous or induced psychological distress, harassment, or bullying is often blurred. The precarious nature of the female labour market, especially among young women, leads to increased apprehension about speaking out, with many preferring to seek advice and information from equality councillors rather than directly confronting their employers.[9]

The Italian National Stakeholder Meeting also revealed challenges related to work-life balance, temporary work assignments, and flexible working hours within the healthcare sector. While positive steps have been taken, such as the signing of agreements to promote work-life balance initiatives, the dialogue underscored the ongoing need for vigilance and proactive measures to combat discrimination in the workplace.[10]

2) Make a brief social commentary on the presence of women workers in the care sector.

In the Italian legal system, there is no unitary legal notion of care sector and care worker, but there are different forms of care work with autonomous disciplines. These forms of care work share the functional characteristic of providing

[7] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".
[8] Consigliera Nazionale di Parità, "Responses to the Questionnaire".
[9] Consigliera Nazionale di Parità, "Responses to the Questionnaire".
[10] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

personal and/or healthcare to people with disabilities, older people, sick people, and children. In line with the consortium's decision on the scope of the study, the report excludes consideration of childcare providers and medical practitioners, concentrating exclusively on care workers possessing qualifications spanning from low to medium levels.

This report considers four types of care workers:

1) Health professionals with at most a Bachelor's degree.
2) Social and care workers.
3) Basic care workers.
4) Home caregivers.

Each of these four categories corresponds to professions that are autonomously regulated in the Italian legal system.

1) Health professionals with at most a Bachelor's degree encompass nurses, midwives, healthcare and rehabilitation technicians who obtained their professional qualification after a bachelor's degree.
2) Social and care workers correspond to social and health workers (*operatore socio-sanitario* or OSS) who have obtained the qualification through a course accredited by public bodies, which requires a secondary school diploma.
3) Basic care workers correspond in Italian law to social assistance workers (*operatore socio-assistenziale* or OSA) who perform low-complexity and varied care tasks and are involved in personal care, domestic help and hygiene/health services.

Italian legislation is highly fragmented, particularly concerning the professional roles of Social and Care Workers and Basic Care Workers. The decentralisation of responsibility to the regions within the healthcare sector has resulted in a proliferation of models and methodologies for recognising these professional roles, which often have varying designations across Regions. The required training is not standardized nationally but instead determined at the regional level, leading to a wide disparity in the number of training hours. Additionally, national regulations in the healthcare sector suggest that the role of Basic Care Workers (OSA) should no longer be employed in the public sector, yet it continues to be prevalent in the private sector.[11]

4) Finally, home caregivers (*assistenti domiciliari, or badanti*)[12] are a category that the law and collective agreements partially assimilate to domestic workers,

[11] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[12] The term "badante" is commonly used to refer to home caregivers. This colloquial expression lacks direct correspondence in national law. Nonetheless, its adoption has been observed in certain collective agreements. Legislative references typically designate these individuals as "domestic workers," "family aides," or "home assistants/helpers" (i.e., *lavoratori domestici, assistenti domiciliari, assistenti familiari o assistenti domiciliari*). This analysis, encompassing both legislative and collective agreement perspectives, incorporates both terminologies. However, it is noted that during the national stakeholder meeting, home

albeit they specifically take care of elderly, sick or dependent persons without a specific qualification.

The National Institute for Public Policy Analysis (*Istituto nazionale per l'analisi delle politiche pubbliche*, or INAPP) estimates that there were slightly under 618,000 care workers in Italy in 2020, with 68.7% women and 31.3% men working in this field.[13] More than 72% of individuals work in healthcare institutions, with nurses and midwives accounting for 59.3%, physicians and dentists for 23.1%, and other carers (social and care workers, basic care workers) for 17.6%.[14]

In a 2019 report, the Organization for Economic Co-operation and Development (OECD), and the European Commission's European Observatory of Health Policies and Systems highlighted that Italy employs fewer health professionals than most Western European countries. In 2019, there were 5.8 healthcare professionals per 1,000 inhabitants in Italy, in contrast to 8.5 in the EU. Furthermore, the number of healthcare professionals has been consistently declining; Italy had approximately 557,000 healthcare professionals in 2016, which decreased to about 456,000 by 2022. National Federation of Associations of Nursing Professions (*Federazione Nazionale degli Ordini delle Professioni Infermieristiche*, or FNOPI) estimates that Italy would need between 50,000 and 60,000 additional healthcare professionals to reach the EU average.[15] According to the World Health Organisation (WHO) Regional Office for Europe, in 2020 there were 60.8 health professionals per 10,000 inhabitants in Italy.[16] According to the INAPP, the number of healthcare professionals increased by 2.3% between 2019 and 2020. This rise, however, was insufficient to compensate for the 41,000 reductions between 2008 and 2018 (turnover blocks).[17]

During the Italian National Stakeholders Meeting,[18] FNOPI, alongside labour unions and employers' organisations, emphasised the issue of labour short-

caregivers emphasised the necessity of employing a less pejorative term, expressing a preference for "assistenti familiari" or "assistenti domiciliari" ("home assistants" or "home caregivers").

13 Luisa D'Agostino e Alessia Romito, "L'evoluzione del mercato del lavoro del comparto sanitario nel contesto della digitalizzazione dei servizi e delle prestazioni " (Istituto nazionale per l'analisi delle politiche pubbliche - INAPP, 2023).

14 D'Agostino e Romito, "L'evoluzione del mercato del lavoro."

15 FNOPI, *Scheda sulla professione infermieristica*, Schede di analisi FNOPI, 2020.

16 WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act* (2022), 132–33, <https://www.who.int/europe/publications/i/item/9789289058339> (Accessed 16 January 2024).

17 D'Agostino e Romito, "L'evoluzione del mercato del lavoro."

18 The CARE4CARE project methodically engages stakeholders, including trade unions, employers' associations, and civil society organizations, at both national and EU levels. The primary objective is to gather different perspectives, insights, suggestions, and crucial information to enrich and update the research report. In Italy, the national stakeholder meeting was held on 10 April 2024 in Rome, while the European-level discussion took place on 17 April 2024 in Brussels. These meetings served as crucial moments to engage stakehold-

ages. Within this context, several discussions emerged regarding the potential of technology to support healthcare and assistance personnel. The role of platforms as facilitators in matching users' needs with nursing personnel was underlined. In this context, FNOPI stressed the ongoing debate surrounding the possible introduction and dissemination of the community nurse role, as outlined in the Health Pact (*Patto per la salute*), and legislated in Decree-Law no. 34 of May 19, 2020, subsequently converted into Law no. 77 of July 17, 2020 (*Decreto Rilancio*).[19]

The main cause of these labour shortages has been the numerous turnover blocks introduced by legislation in order to contain public spending on healthcare.[20] Alongside this phenomenon, a trend has emerged in the public health sector to outsource care services using forms of contracting and subcontracting to cooperatives and private companies. This trend is homogeneous throughout the country and concerns both health professionals, social and care workers, and basic care workers. There are two main reasons for this choice:

a) the decision to circumvent public recruitment competition procedures, and
b) the containment of personnel costs and NHS expenditure.

The pandemic crisis has forced a temporary change of course. The *Decreto Rilancio*, provided for the integration of the nursing workforce, initially with temporary contracts, then, from 2021, with permanent contracts.[21] There is no evidence that this is a permanent change of policy.

According to the FNOPI, female healthcare professionals in Italy are distributed in a heterogeneous manner across the country, with regions where their presence exceeds 80% (*Trentino Alto Adige/Südtirol*) and a national average of 76%.[22] Concerning the gender pay gap, female health professionals earn about 12.8% less than men considering all contracts (full time and part time); however, the gap drops to 2.6% if only full time contracts are considered.[23]

Concerning distribution in the labour market, FNOPI reports that the vast majority of health professionals (more than 75%) work in hospital facilities. Ap-

ers, ensuring that their voices are heard and that their insights contribute significantly to the project outcomes.

19 CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

20 FNOPI, *Scheda sulla professione infermieristica*.

21 ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." Personale sanitario, 2022. <http://dati.istat.it/Index.aspx?QueryId=31546> (Accessed September 26, 2023); FNOPI, "8 Marzo 2022: Infermieristica, professione al femminile, ma non per questo sempre 'rosa'," 2022, <https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/> (Accessed September 26, 2023); FNOPI, *Stato della carenza infermieristica al 2021*, Schede di Analisi FNOPI, 2022, <https://www.fnopi.it/aree-tematiche/carenza-infermieristica-al-23-agosto-2022/> (Accessed September 26, 2023); FNOPI, *Scheda sulla professione infermieristica*.

22 FNOPI, "8 Marzo 2022".

23 FNOPI, "8 Marzo 2022".

proximately 14% of health professionals have a part-time contract; 98% of those part-time workers are women. In 2021, there were approximately 37,000 freelance health professionals, while there were approximately 78,000 health professionals employed by private facilities.[24]

Regarding age, most health professionals are between 36 and 55 years old. Health professionals over 65 years of age with professional seniority of more than 30 years account for approximately 13,000, while those with no professional seniority of more than 30 years account for approximately 25,000. Health professionals up to 28 years of age number about 39,000. The average age of all health professionals in Italy is about 46 years, while that of civil servants alone is about 51 years with marked differences. In the Regions where the turnover block has been completed the age is markedly higher than in the others.[25]

Concerning geographical distribution, the largest number of health professionals is concentrated in the North-West regions. This is followed by the South, the Centre, the North-East and the Islands. This uneven distribution is partially explained on the basis of population, which is larger in the North than in the other areas of the country, and on the basis of remuneration, which is slightly higher in the Northern regions.[26]

Regarding social and care workers, data are fragmentary because there is no professional register. Trade unions estimate between 200 and 300,000 workers, 90% of whom are women.[27] Trade unions indicate an average age of around 45 years.[28] The age of the operators ranges from 30 to 60 years old. There are no data available on Social and health workers employed in the private sector (scientific hospitalisation and care institutions or IRCCS, foundations, research institutions, private nursing homes) and in the public sector (prisons, schools, public health facilities), nor on self-employed workers. Furthermore, there is a lack of data on workers employed on a temporary or permanent basis during the COVID-19 pandemic.[29] According to trade unions, social and care workers work a wide range of care duties with very heavy shifts, having to make up for shortages of nursing staff and being burdened with a plethora of tasks that are not provided for in contracts and for which they have no spe-

[24] FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri. Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*. Schede di Analisi FNOPI, 2015*Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*. Schede di Analisi FNOPI, 2015.

[25] FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri*.

[26] ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." Personale sanitario, 2022. <http://dati.istat.it/Index.aspx?QueryId=31546> (Accessed September 26, 2023); FNOPI, *Scheda sulla professione infermieristica*.

[27] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[28] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[29] Federazione Nazionale Migep, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67, ai fini dell'introduzione del personale infermieristico e degli operatori socio sanitari tra le categorie usuranti," *Audizione sui disegni di legge nn 934 e 2347* (2022).

cific training.[30] During the pandemic, social and care workers and basic care workers experienced a great deal of work-related stress, which led to a significant increase in burnout and occupational accidents and illnesses.

No data are available for basic care workers (*operatore socio-assistenziale*, OSA).

A cross-cutting issue for all care professions (health professionals, social and care workers, primary care workers) working in residential facilities for the elderly, hospices, and long-stay wards, is that the system of standard costs set in public funding/budgeting.[31] These standard costs refer to a predetermined number of working minutes per patient within which each operator is required to remain. There is a high variability of this minute allocation as it is established in an essentially uncoordinated manner by each Italian Region. The allocation of a very low minute allocation for each operation results in a very high workload for healthcare workers and a negative impact on users' health.[32] NURSIND points out that the excessive emphasis on the standardisation and compression of working time has a negative impact on the quality of healthcare.[33]

According to data from the INPS Observatory on domestic workers, in 2022, the total number of domestic workers contributing to the INPS was 894,299, reflecting a decrease of 7.9% compared to 2021 (-76,548 workers).[34] This decline follows increases in the previous years, driven by the regularisation of employment relationships to allow domestic workers to travel to work during lockdown periods and the entry into force of regulations governing the regularisation of irregular employment relationships (Decree Law no. 34 of 19 May 2020). Similar phenomena were observed in the years following 2009 (Law, no. 102 of 03 august 2009) and up to 2012 (Legislative Decree no. 109 of 16 July 2012), during which regularisation of workers, both EU and non-EU citizens, occurred.[35]

The data indicates the dual impact of the COVID-19 pandemic on the increase of domestic workers. The first effect is attributed to the containment measures, which restricted movement to those who could demonstrate a legitimate reason, such as having a regular employment relationship. The second effect, also related to the pandemic, is linked to the regularisation procedure for irregular immigrant workers initiated in 2020. This procedure focused on two sectors (agriculture and domestic work), attracting workers from other sectors as well

[30] Federazione Nazionale Migep, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67".

[31] Camera dei Deputati. "Patto per la salute 2019-2021." 2019. <https://www.camera.it/ temi-ap/2020/01/09/OCD177-4262.pdf> (Accessed September 26, 2023).

[32] CGIL FP, " 'La cura dei diritti' / Gli standard assistenziali infermieristici a tutela del personale e dei pazienti" (*FP-CGIL Lombardia*, 2021) <https://fpcgil.lombardia.it/2021/06/16/la-cura-dei-diritti-gli-standard-assistenziali-infermieristici-a-tutela-del-personale-e-dei-pazienti/> (Accessed 16 January 2024).

[33] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[34] INPS, "Statistiche in breve: lavoratori domestici" (2023), <https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013> (Accessed September 26, 2023).

[35] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023), 94 ff.

and resulting in an overrepresentation of domestic work in the years immediately following regularisation. With the easing of containment measures, many regularised workers shifted sectors, returning to their original fields.

Regarding gender and nationality, there are significant differences. The most pronounced decrease in 2022 was observed among foreign male workers (-21.1%), a group that had seen the most significant increase between 2019 and 2021 (+66.6%). Foreign women, despite a slight decrease in 2022 (-5.6%), remain dominant in the domestic sector, constituting 58.7% of the total. The second-largest group comprises Italian women, representing 27.8% of the total.

Regarding home caregivers, there were 429,426 of them in Italy in 2022, corresponding to 48% of all domestic workers.[36]

The category of home caregivers (*assistenti domiciliari*, or *badanti*) among domestic workers is more prevalent among nationals from Eastern European countries, such as Georgia (82.4%), Bulgaria (73.8%), Ukraine (65.7%), and Romania (63.0%). Among workers of Asian origin, the presence of caregivers is less significant, dropping below 20% for Bangladesh, the Philippines, and Pakistan.[37]

Specifically focusing on home caregivers, their average age is slightly higher (51.3 years) compared to other domestic workers (47 years). Moreover, the majority of caregivers are over 50 years old (62.2%), while only a small percentage are under 30 (4.9%). This demographic profile reflects the demanding nature of caregiving roles, often attracting older individuals with more experience.[38]

In terms of hours worked, home caregivers tend to work longer hours on average compared to other domestic workers. Only a small percentage of caregivers (6.1%) work less than 10 hours per week, with a significant portion (42.2%) working over 40 hours per week. This contrasts with the majority of other domestic workers who work fewer hours, with 84% of them working less than 30 hours per week.[39]

Italian home caregivers, a vital component of the caregiving sector in Italy, represent a noteworthy portion of the domestic workforce. While constituting a minority, their numbers are significant given Italy's ageing population. Unlike foreign caregivers, Italian home caregivers display a diverse range of ages and backgrounds, reflecting various entry points into the profession. With approximately 48% of caregivers being Italian, they contribute substantially to meeting the care needs of families. Despite their local familiarity, Italian home caregivers face challenges such as long hours and low wages, with 42.9% working over 40 hours per week and 60% earning less than 6,000 euros annually.[40]

[36] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*,71 ff.

[37] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 97–102.

[38] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 105.

[39] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 107.

[40] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 110–17.

The level of undeclared work in the domestic sector remains a significant concern. The historical trend shows that the majority of domestic workers have been engaged in irregular employment relationships. While there have been efforts to reduce informality through regularisation measures, the sector still exhibits a high prevalence of undeclared work, with the current rate standing at 51.8% in 2021.[41]

Irregularities in the sector include not only undeclared work but also under-declared work (i.e. declared for fewer hours than those actually worked or according to a lower professional classification). In both cases, the worker receives all or part of the wages irregularly. The effect of these forms of irregular work is twofold: the employer saves on the cost of care (by not taxes and social security contributions and by paying a lower wage than that stipulated by collective agreements), the worker receives a payment on which he/she does not pay taxes and contributions.[42]

The reasons behind the recourse to irregular work stem from the combination of do-it-yourself welfare with the calculation of convenience on the part of workers. Households cut down on welfare costs and workers opt for immediate payments.[43]

Another problem reported in the analyses on domestic work is the scarcity of irregularity complaints by workers; they only turn to the authorities in cases of serious exploitation, and at the end of their working relationship. Although labour inspectors could carry out inspections at any time, it is very rare that checks on domestic work are carried out ex officio. Generally, the labour inspector intervenes upon a direct complaint from the worker.[44]

To promote the regularisation of domestic work, it has been suggested to increase the tax and social security benefits associated with this activity.[45] Currently, anyone who regularly employs a domestic worker can, when making a tax declaration, deduct the amount of the sums paid quarterly to INPS as long as it does not exceed the threshold of 1,549.37 euros per year. (Article 10(1)(e) and 10(2) Presidential Decree no. 917 of 22 December 1986). Moreover, the employer may also deduct from the gross tax the 19% of the expenses incurred for caregivers of dependent persons in the performance of daily life acts, up to a maximum amount of 2,100 euros per year, but only if the total income does not exceed 40,000 euros (Article 15(1)(i-*septies*) of Presidential Decree no. 917 of 22 December 1986).[46]

[41] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 118–23.

[42] Silvia Borelli, *Who Care? Il lavoro nell'ambito dei servizi di cura alla persona* (Napoli: Jovene, 2020), 202.

[43] Borelli, *Who Care?*, 202.

[44] Borelli, *Who Care?*, 203.

[45] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[46] Borelli, *Who Care?*, 203.

3) Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?

Data on care workers in Italy are often aggregated; databases and reports do not usually break down care professions by gender. Regarding healthcare professionals, data are published by National Institute of Statistics (*Istituto Nazionale di Statistica*, or ISTAT) and FNOPI. ISTAT data are normally aggregated at national level and are not divided by gender. In contrast, FNOPI data are divided by gender.

As far as social and care workers are concerned, the data are difficult to find. The data examined in this report are derived from the text of the hearing of the 2022 trade unions of these workers at the Senate of the Republic.[47]

There are more data on home caregivers and domestic workers. There are reliable data on these workers divided also by gender available on the INPS website. In addition to the INPS, useful data can be found in the DOMINA Report.[48]

Trade unions possess data on categories of workers that they publish in reports. Apart from data published in reports, trade unions tend not to disclose data unless requested.

After determining that there are few case law precedents on the issue of gender discrimination of female care workers, the research unit submitted a questionnaire to the Italian equality bodies (i.e. the Equality Councillors)[49] dealing with this issue. Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Only a small number of the answers received are relevant for this research.

Moreover, the report encompasses the data collected from the questionnaire responses gathered in anticipation of the Italian National Stakeholders Meeting, which involved trade unions, employers' associations, and other pertinent stakeholders.[50] Furthermore, it incorporates insights garnered during the Italian National Stakeholders Meeting held in Rome on 10 April 2024, as well as those obtained from the CARE4CARE European Meeting held in Brussels on 17 April 2024.

[47] Federazione Nazionale Migep, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67".

[48] Osservatorio DOMINA sul Lavoro Domestico, *4° Rapporto Annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2022).

[49] Equality Counsellors are a figure established to promote and monitor the implementation of the principles of equal opportunities and non-discrimination between men and women in employment.

[50] Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CGIL, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; CISL, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; CISL FISASCAT, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; CUB Sanità, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; NOSOTRAS, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting"; UNEBA, "Responses to the Questionnaire in Preparation for the Italian National Stakeholders Meeting".

The table below lists the key databases and links to websites containing reports or data relevant to the research.

Table 1 – Key databases and web sources used in the research.

Author	Year	Title	Link
FNOPI	2015	*Tutti i numeri degli infermieri. Chi sono, dove lavorano, privati, dipendenti e disoccupati: una professione allo specchio*	<https://www.fnopi.it/archivio_news/attualita/2093/Scheda%20n%202%20L-analisi%20dei%20dati%20Istat.pdf>
OECD	2019	*The State of Health in the EU. Italy: Health Profile 2019*	<https://www.oecd.org/italy/italy-country-health-profile-2019-cef1e5cb-en.htm>
CEASE-IT	2021	*Studio multicentrico nazionale Gli episodi di violenza rivolti agli infermieri italiani sul posto di lavoro*	<https://www.fnopi.it/wp-content/uploads/2022/06/UNIGE-studio-multicentrico-Universita-Genova-1.pdf>
FNOPI	2021	*Scheda sulla professione infermieristica*	<https://www.fnopi.it/wp-content/uploads/2021/05/SCHEDA-INFERMIERI-12-maggio.pdf>
FNOPI	2022	*8 marzo 2022: infermieristica, professione al femminile, ma non per questo sempre "rosa"*	<https://www.fnopi.it/2022/03/08/8-marzo-infermiere-2/>
FNOPI	2022	*Stato della carenza infermieristica al 2021*	<https://www.fnopi.it/aree-tematiche/carenza-infermieristica-al-23-agosto-2022/>
ISTAT	2022	*Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato*	<http://dati.istat.it/Index.aspx?QueryId=31546>
MIGEP	2022	*Audizione sui disegni di legge nn. 934 e 2347*	<https://www.quotidianosanita.it/allegati/allegato6181410.pdf>
Ministero della Salute	2022	*Osservatorio Nazionale sulla Sicurezza degli Esercenti le Professioni Sanitarie e socio-sanitarie. Relazione attività anno 2022*	<https://www.fnopi.it/wp-content/uploads/2023/03/Osservatorio-nazionale-sulla-sicurezza-degli-esercenti-le-professioni-sanitarie-e-socio-sanitarie.pdf>
Senato	2022	*Audizioni informali di rappresentanti di CGIL, CISL, UIL e FNOPI, intervenuti in videoconferenza, sui disegni di legge nn. 934 e 2347 (inserimento infermieri e OSS in categorie usuranti)*	<https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=18&id=1331859&part=doc_dc>
WHO	2022	*Health and care workforce in Europe: time to act*	<https://www.who.int/europe/publications/i/item/9789289058339>
INPS	2023	*Osservatorio sui lavoratori domestici*	<https://servizi2.inps.it/servizi/osservatoristatistici/12>

Author	Year	Title	Link
DOMINA	2023	*5° Rapporto annuale sul lavoro domestico*	<https://www.osservatoriolavorodomestico.it/rapporto-annuale-lavoro-domestico-2023>
Fondazione Leone Moressa	2023	*Rapporto FLM 2023*	<http://www.fondazioneleonemoressa.org/2023/09/29/presentazione-rapporto-flm-2023/>
INAPP	2023	*L'evoluzione del mercato del lavoro del comparto sanitario nel contesto della digitalizzazione dei servizi e delle prestazioni*	<https://oa.inapp.org/xmlui/bitstream/handle/20.500.12916/3905/INAPP_DAgostino-Romito_Evoluzione-mdl-comparto-sanitario-digitalizzazione_WP-103_2023.pdf>

4) Describe or comment on what the statistics or databases you have found show in relation to the participation of male and female workers in the care sector workforce, either taking this sector as a whole, or in relation to each of the occupations that make up this sector.

Please, refer to the data discussed in answer to question 2 above.

5) If legislation exists on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of the workers, or whether it makes any reference to the presence of women in this sector or these occupations (e.g. acknowledging the majority presence of women in the sector, or granting them any special attention in terms of rights, etc.). If special reference is made to women, please specify.

There is no comprehensive legislation concerning women in the care sector, other than home caregivers.[51] This sector is subject to the general regulations that apply to all workers. Moreover, Legislative Decree no. 198 of 11 April 2006 expressly forbids gender discrimination (see question 1 on gender). In general, only positive actions for vulnerable people are allowed.[52]

[51] Law no. 339 of 2 April 1958 distinguishes domestic workers between clerical workers and manual workers. However, the classification into categories and the specification of tasks are regulated by collective agreements. Remuneration can be either in cash or in kind. However, it is the collective agreement that establishes the minimum wage as well as the annual adjustment. Working hours are determined by the collective agreement and may not exceed a maximum weekly limit of 54 hours for cohabiting workers and 40 hours for non-cohabiting workers. In relation to other aspects of the employment relationship of domestic servants, see answers to questions 11, 12, 13, 15, 17, 19 on gender.

[52] Positive action, also known as affirmative action or positive discrimination, refers to all public measures that benefit members of a minority or vulnerable group in order to remedy a social difference through the legal system. The first regulation of positive actions was established in the Italian legal system with Law no. 125 of 10 April 1991, one of the most sophisticated regulations on equality between men and women in the workplace, which was then transfused into the Equal Opportunities Code. Shortly after, law no. 215 of 25 February 1992, relating to positive activities for female entrepreneurship, was also passed, and was

The Italian Constitution supports motherhood. Parenthood legislation applies to all workers, including those in the care sector, with some exceptions for home caregivers (See answer to question 12 on gender).

Recruitment differs between the public and private sectors for care workers. The former involves a competition based on qualifications and examinations; the latter is discretionary. There are established regulations aimed at preventing discrimination based on sex or gender in employment access. In relation to this matter, the relevant legislation for gender equality includes Law no. 903 of 9 December 1977, Law no. 125 of 10 April 1991, and Legislative Decree no. 198 of 11 April 2006. Furthermore, protection against discrimination concerning age, nationality, ethnic-racial origin, religious beliefs, political opinions, and trade union membership is outlined in Legislative Decree no. 215 of 9 July 2003, and Legislative Decree no. 216 of 9 July 2003. The combination of these legislations results in a broad prohibition of discrimination in employment access, ensuring compliance with EU law.

6) Does the legislation or, if applicable, collective agreements provide for occupational classification system in care sector? If so, do you consider any gender bias in this occupational classification (if so, please explain).

In Italian labour law, collective agreements tendentially determine the occupational classification system. Collective agreements in the care sector therefore determine tasks, qualifications and occupational categories.[53]

The work task can be defined as the set of activities, assignments and operations that the employee undertakes in agreement with the employer.

The qualification represents the professional status of the worker, i.e. the set of knowledge, skills and competences of a specific professional figure. Collective agreements outline the qualifications within a company, categorising them and specifying their respective tasks, as stated in Article 2071 of the Civil Code. From this qualification derives a series of rights and duties inherent to the employment relationship, as well as economic, regulatory and social security treatment. The employer, at the time of hiring, is required to notify the employee of his/her qualification in relation to the duties for which he/she was hired (Article 96 of the Civil Code).

Occupational categories identify and group the various professional profiles, so as to delineate the legal and economic regime to which the worker is subject under the employment relationship. Categories can be distinguished between those of legal source and those of contractual source. The former are the four figures identified by Article 2095 of the Civil Code: managers, middle manage-

later incorporated into the Equal Opportunities Code. The discipline's innovativeness, however, contrasts with its limited effectiveness. Currently, the Equal Opportunities Code (Legislative Decree no. 198 of 11 April 2006) contains the discipline of positive actions for women in Italy (see question 1 on gender). Cf. Alessi, "Le Azioni Positive," 508 ff.

[53] Riccardo Del Punta, *Diritto del lavoro*, a cura di Roberto Romei, Maria Luisa Vallauri, e William Chiaromonte (Milano: Giuffrè, 2023), 505–11.

ment, clerical workers and manual workers (the same article refers to special laws and collective agreements for the exact determination these categories). The latter are those introduced by collective agreements and add to the legal categories the figures of officials and intermediaries.[54]

Collective bargaining has introduced the *inquadramento unico* (unitary classification) for all workers. This system is based on a plurality of professional levels, common to the categories of manual and clerical workers, ordered on a single scale. Belonging to a given professional level is established based on the activity performed.[55] In practice, the *inquadramento unico* has no impact on the professional classification of care workers.[56]

Under Italian collective agreements and labour legislation, gender is completely irrelevant for the professional classification of workers.

7) Have there been any legal disputes or conflicts publicised by the media in your country over "job classification" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

Since the research unit did not find any case law in the legal databases on job classification discrimination, it submitted a questionnaire to the Italian equality bodies (i.e. Equality Councillors) to inquire whether they collected complaints of discrimination by female care workers that had not reached the courts.

Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Among the replies received, only 2 Councillors stated that they had taken action against or assisted female workers who had been discriminated at work. However, only 1 of the 2 responses concerned job classification disputes. However, in compliance with privacy legislation, the Councillor has not disclosed any data relating to this dispute.

8) Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain)

In Italian labour law, there are no special regulations that distinguish employment contracts in the care sector. Employment contracts are governed by labour law in every sector. The principle of tendential non-derogation of the form of contract is enshrined in Italian labour law. In other words, the job relationship is governed by regulations that the parties cannot deviate from. These rules are outlined in both legislation and collective bargaining agreements. This non-derogation principle only applies to rules that are detrimental to the em-

[54] Del Punta, *Diritto del lavoro*, 507–11.

[55] Alessandro Failla, "I poteri del datore di lavoro," in Chiaromonte, Vallauri, Monaco, *Elementi di diritto del lavoro*, 115–16.

[56] Roberta Nunin, "La classificazione dei lavoratori subordinati in categorie e l'inquadramento unico" in *Trattato di Diritto del lavoro. Vol. IV: Contratto di lavoro e organizzazione. Tomo I: Contratto e rapporto di lavoro*, a cura di Mattia Persiani, e Franco Carinci (Padova: CEDAM, 2012).

ployment relationship. However, Article 8 of Decree-Law no. 138 of 13 August 2011, converted into Law no. 148 of 14 September 2011, provides that the social partners may derogate in a pejorative sense within company collective agreements aimed at improving employment, the quality of employment contracts, and the management of company employment crises. Furthermore, Decree-Law 48 of 5 May 2023 allowed the social partners to stipulate collective agreements derogating from the national law in which it is possible to identify the grounds for concluding fixed-term contracts.

Gender discrimination in employment contracts is prohibited under Italian labour law. Law no. 903 of 9 December 1977 repealed all legal and contractual gender-related barriers. However, domestic work legislation provides for several gender-related exceptions to the general labour regulation. Particularly, a special and less extensive discipline is provided for parents employed with a subordinate contract in domestic and family services (Article 62 of Legislative Decree no. 151 of 26 March 2001). They are entitled to maternity leave and paternity leave, and to the relevant remuneration. Article 25 of the collective agreement for domestic helpers and carers of 8 September 2020 (FIDALDO CCNL) stipulates that it is forbidden to work for women during the two months preceding the presumed date of birth, except for any advance or postponement provided for by the law; for the period between that date and the actual date of birth; during the three months after the birth, except for authorised postponements. These periods must be counted in the length of service for all purposes, including those relating to Christmas bonuses and holidays. Female domestic workers can apply for household allowances only on a deferred basis, with payments made semi-annually (instead of monthly); these allowances are also calculated not on wages received, but on hours subject to insurance (Article 14 Presidential Decree no. 1403 of 31 December 1971). In compliance with this legislation, gender discrimination in employment access is prohibited, as outlined in the collective agreement for the public health sector and other relevant statutes.[57]

Furthermore, there is no maternity protection for occasional work paid with the *libretto di famiglia* (family booklet).[58] The *libretto di famiglia* (family booklet), which is a particular form of employment contract that lies halfway between self-employment and subordinate employment, allows non-entrepreneur natural persons to manage operations relating to occasional work (registration, deposits, baby-sitting bonus and reimbursements) carried out by self-employed persons. The *libretto di famiglia* is a prefinanced nominative payment booklet consisting of payment slips with a nominal value of 10.00 euros, aimed at paying for work activities lasting no more than one hour. The activities that the user can remunerate

[57] Borelli, *Who Care?*, 177.

[58] INPS, "Prestazioni di lavoro occasionale: libretto famiglia" (*Lavoro*, 2023) <https://www.inps.it/it/it/dettaglio-scheda.schede-servizio-strumento.schede-aree-tematiche.prestazioni-di-lavoro-occasionale-libretto-famiglia-51098.prestazioni-di-lavoro-occasionale-libretto-famiglia.html> (Accessed September 26, 2023).

by means of the *libretto di famiglia* are specified by law and consist of: minor domestic work, including gardening, cleaning or maintenance work; home care for children and for older, sick, or persons with disability; private lessons. Occasional work services are subject to the following economic limits (referring to the calendar year in which the work is carried out): equal to 5,000 euros for each provider, with reference to all the users; not exceeding 10,000 euros for each user, with reference to all the providers; equal to 2,500 euros for the total services rendered by each provider in favour of the same user. The amounts received by the provider are calculated net of: contributions; insurance premiums; management costs.[59]

Article 29(15–18) of Law no. 56 of 29 April 2024, which converts, with modifications, Decree-Law no. 19 of 2 March 2024, have introduced additional provisions regarding care work, particularly for home caregivers. The legislature aims to progressively enhance the quality and quantity of care and assistance services for elderly individuals who are not self-sufficient, and to regularise care work provided in their homes.

Starting from the date communicated by INPS upon the conclusion of admission procedures for funding under the National Program for Youth, Women, and Employment 2021–2027, and until 31 December 2025, employers hiring or converting domestic workers to indefinite contracts for assisting elderly individuals aged at least eighty years, already receiving the accompanying allowance, are granted a 100% exemption from total social security contributions and insurance premiums for up to 24 months. This exemption is capped at 3,000 euros annually, recalibrated and applied quarterly, while maintaining pension contribution rates. The tax exemption for newly hired employees to promote job creation is a measure that has been present in Italian law for many years, but had not yet been extended to the domestic sector.

Employers availing of this benefit must have a current Equivalent Economic Situation Indicator (ISEE)[60] not exceeding 6,000.00 euros for facilitated socio-healthcare benefits.

Exceptions to this benefit include situations where less than 6 months have elapsed since the termination of a domestic work relationship with duties as an assistant to elderly individuals between the same worker and employer, or within the same household. Additionally, the benefit does not apply to the hiring of relatives or relatives by marriage, unless the employment concerns specific duties outlined in relevant legislation.

The contribution exemption is subject to maximum expenditure limits: 10 million euros for 2024, 39.9 million euros for 2025, 58.8 million euros for 2026,

[59] William Chiaromonte, "Subordinazione, autonomia e dintorni," in Chiaromonte, Monaco, Vallauri, *Elementi di diritto del lavoro*, 76–9; Maurizio Falsone, "La disciplina delle prestazioni occasionali. il libretto famiglia. il contratto di prestazione occasionale (commento all'art. 54 Bis d.l. n. 50/2017)," in *Commentario breve alle leggi sul lavoro*, a cura di Raffaele De Luca Tamajo et al. (Padova: CEDAM, 2022); Costantino Cordella, "Libretto Famiglia e Contratto Di Prestazione Occasionale," *Diritto delle relazioni industriali* 28 (2018): 1158.

[60] The ISEE (Equivalent Economic Situation Indicator) is the indicator used to assess and compare the economic situation of households applying for facilitated social benefits.

27.9 million euros for 2027, and 0.6 million euros for 2028. These funds are allocated within the framework of the National Program for Youth, Women, and Employment 2021–2027, pending Program modifications and admission of the measure to funding, complying with applicable procedures, territorial constraints, and eligibility criteria.

INPS monitors the reduced contribution revenue pursuant to Article 29(15–17) of Law no. 56 of 29 April 2024. If prospective data indicate that the spending limit has been reached, INPS discontinues further applications for contribution relief.

Concerning the annual ISEE threshold of 6,000.00 euros established for eligibility for this contribution relief measure, it is noteworthy that this figure is exceptionally low. For instance, it falls below the threshold required to qualify for the inclusion allowance (set at 9,360.00 euros),[61] which serves as a poverty alleviation measure. Moreover, according to ISTAT data, an ISEE of 6,000.00 euros per annum falls beneath the absolute poverty threshold, the benchmark employed in Italy for shaping public policy.[62] Consequently, it can be inferred that the contribution relief measure will only benefit a small number of individuals who, in general, are unable to afford to hire a home caregiver.

9) Have there been any legal disputes or conflicts reported in the media in your country over "employment contracts" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

Since the research unit could not find any result concerning disputes or conflicts over employment contracts, it submitted a questionnaire to the Italian equality bodies (i.e. Equality Councillors) on whether they collected complaints of discrimination by female care workers that did not reach the courts.

A specific question was addressed to the Equality Councillors regarding gender discrimination disputes or difficulties involving employment contracts. Only two Councillors responded, stating that they had taken action or assisted employees discriminated against; however, only one of the two responses dealt with employment contract issues. That said, in accordance with privacy laws, the Councillor did not disclose any information about this issue.

Five councillors replied that they had assisted workers in discrimination cases. Two responses concerned discrimination cases related to the violation of parenting rules. One response concerned two cases of discrimination and harassment of health and care workers in two different nursing homes. One articulated response concerned actions taken to improve work-life balance and actions concerning the protection of female workers subjected to sexual violence.

[61] Ministero del Lavoro e delle Politiche Sociali, "Assegno Di Inclusione" (*Nuove misure inclusione e accesso lavoro*) <https://www.lavoro.gov.it/temi-e-priorita/decreto-lavoro/Pagine/assegno-di-inclusione> (Accessed September 26, 2023).

[62] ISTAT, "Le statistiche dell'ISTAT sulla povertà, anno 2022" (2023); Donatella Grassi e ISTAT (a cura di), *La misura della povertà assoluta* (ISTAT, 2009).

As part of the data collection process for the Italian National Stakeholders Meeting, the National Equality Councillor's office contributed additional instances of discrimination faced by care workers based on gender, particularly regarding their working and living conditions. These insights were supplemented by discussions held during the Italian National Stakeholders Meeting.[63]

In one case, a female employee of a public health institution suffered discrimination when her request to change from full-time to part-time employment was denied by the administration on the grounds of maternity. This decision was deemed indirectly discriminatory under Article 25 of the Equal Opportunities Code, amended in November 2021 to address equal pay issues.

Similarly, a working mother in a residential care facility for elderly people (RSA) encountered difficulties, which resulted in an inspection by the competent authority. Following a warning to the RSA to rectify the situation, the issue was resolved.

Another case concerned a young mother employed in an RSA nursing home who was offered a discriminatory part-time contract because of her family responsibilities. Despite efforts to negotiate a fair agreement, the employer refused to cooperate, leading the employee to accept full-time employment for fear of losing her job.

Furthermore, a foreign employee from Albania, employed in personal services,[64] suffered harassment, and was forced to resign upon her return from maternity leave, under the pretext of a mandatory transfer to another location. Despite legal recourse, the employer's discriminatory behaviour could not be effectively challenged due to procedural constraints.

The National Equality Councillor's office also highlighted efforts to address work-life balance issues in the care sector. As part of this strategy, In Emilia-Romagna Region the Equality Councillor signed of a memorandum of understanding with Local Health Unit of Romagna (*Azienda Unità Sanitaria Locale della Romagna* or AUSL Romagna) in March to promote the reconciliation of work and family responsibilities.

10) Do the legislation or, if applicable, collective bargaining agreements make any provision for wages in each of the care sector occupations, differentiating them in terms of their structure or amount from workers in the general or other production sectors?

Remuneration is the compensation for the work carried out by the employee, entitling them to a remuneration commensurate with the quantity and quality of their work. This remuneration should, in any case, be adequate to ensure

[63] Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[64] The concept of "personal services" encompasses a wide range of activities, which are detailed in regional legislation. This category encompasses interventions designed to prevent, reduce, alleviate, or eliminate conditions of disability, necessity, and individual or family distress. These interventions involve the provision of socio-assistance and socio-healthcare services aimed at addressing various social and healthcare needs.

both the employee and their family a dignified standard of living, as enshrined in Article 36 of the Constitution.[65]

In Italy, the minimum wage is not established by law. Generally, remuneration is determined freely by the parties involved, yet subject to a minimum threshold. However, due to the non-implementation of Article 39, second part, of the Constitution, which stipulates that collective agreements have universal effect, the judiciary has identified this threshold in the minimum wage values set by collective agreements signed by the most representative unions in the sector. Remuneration may be provided in cash or in kind and is determined by regular monthly payments, payments made more frequently than monthly, and severance pay.[66]

The law does not provide an explicit definition of remuneration. In contrast, the Supreme Court defines it as everything the worker receives from the employer in exchange for his work and because of the personal subjection to the employment relationship (Cass. SS.UU. 13 Decembre 1984, no. 1069). The four principles that govern remuneration are consideration, obligatory nature, continuity, and irreducibility. These principles cannot be derogated by collective agreement or the parties.

The most common forms of remuneration include time-based wages, piecework compensation, in-kind benefits, as well as profit-sharing, commissions, and product sharing schemes. The remuneration is paid on a monthly basis. Employer-paid wages comprise both fundamental components and supplementary or in-kind elements. Fundamental elements consist of the minimum contractual remuneration stipulated by collective agreements corresponding to each contractual qualification, contingency allowances (formerly used for adjusting wages to cost-of-living increments until 31 December 1991, but now static), separate pay elements (such as the 10.33 euros per month EDR introduced from 1 January 1993), and length-of-service increments. These amounts vary by qualification and are periodically adjusted according to the relevant collective agreement's terms and conditions.[67]

In addition to the basic elements, remuneration may consist of other accessory elements. These elements are established by collective or individual agreements and are of two types:[68]

1) *Superminimum* (consisting of sums agreed in the individual contract between the parties, or as part of company agreements).
2) Allowances (consisting of sums agreed in collective agreements and intended to compensate for performing work that entails greater burdens and difficulties for the worker).

In addition to monetary benefits, the employer may also provide benefits in kind such as accommodation, canteen, and fringe benefits.

[65] Oronzo Mazzotta, *Diritto del lavoro* (Milano: Giuffrè, 2022), 585.
[66] Del Punta, *Diritto del lavoro*, 585–92.
[67] Del Punta, *Diritto del lavoro*, 595–600.
[68] Mazzotta, *Diritto del lavoro*, 594–613.

The Italian system provides for compensation paid on a multi-month (periodic) basis, which may be compulsory or voluntary. The forms of remuneration in this category include are the thirteenth-month wage, the fourteenth-month wage and loyalty/productivity/performance bonuses. The thirteenth-month wage is provided for by law (Presidential Decree no. 1070 of 28 July 1960) and is currently regulated by collective agreements. The thirteenth month's wage is paid once a year, usually in December. This wage is normally equal to one month's ordinary salary. The fourteenth-month wage is an additional monthly payment provided for by some collective agreements. The amount and modalities are similar to those of the thirteenth-month wage, but usually, the fourteenth-month wage is paid in the summer. Bonuses are regulated by collective agreements and are often linked to the achievement of a production, seniority, or productivity goal.[69]

The elements of remuneration are compiled by collective agreements in tables that are used to determine the correct wage to be paid. The items included in these tables are numerous and have a decisive influence on the salary. Thus, the wage actually paid to an employee to whom all the allowances provided for in the collective agreement are applied may be much higher than the basic wage and may fluctuate significantly over time. In this system, it is rather complex to determine the value of the work performed. Furthermore, collective agreements do not value soft skills or do so only to a very limited extent, giving much more weight to qualifications and hard skills. This is problematic precisely in the care sector, in which interpersonal skills, empathy and other soft skills are indispensable.

As we have seen, Italy has historically adopted the wage determination model based on collective bargaining. This model has allowed a progressive increase in the national wage. However, the precondition for the functioning of the bargaining system is a high rate of unionisation and enforcement of collective agreements. The unionisation rate is difficult to measure in Italy, but since the 1980s there has been a reduction in the number of trade union members. Visser's studies, conducted between 2004 and 2016, showed a national downward trend, placing Italian national unionisation at around 50% in 2003, 40% in 2005, and around 35% in 2016.[70] Additionally, the variability of unionisation in relation to the sector of work must be considered: in some sectors, it is very high, while in others, such as domestic work, it is very low. Regarding the application of collective agreements, measurement is virtually unfeasible because there is no authority to record this data. Moreover, as there is no certification of representation and the constitutional mechanism of collective bargaining is not applied, the statistics on this issue have very limited value.

[69] Mazzotta, *Diritto del lavoro*, 594–613.

[70] Jelle Visser, *I sindacati in transizione. Documento OIL/ACTRAV* (Organizzazione Internazionale del Lavoro, 2020); Jelle Visser, "The Rise and Fall of Industrial Unionism," *Transfer: European Review of Labour and Research* 18 (2012): 129; Jelle Visser, "L'iscrizione al Sindacato in 24 Paesi" *Economia & lavoro* 42 (2008): 17.

The adoption of Directive 2022/2041 on adequate minimum wages in the EU, does not oblige member states to introduce legal minimum wages, nor does it establish a common threshold valid throughout the EU. It merely establishes some criteria to ensure minimum wages, above the subsistence threshold, taking into account the cost of living and purchasing power of the relevant member state. The two alternative ways to achieve this are to set a statutory minimum wage or to extend the coverage of collective bargaining. Coverage will have to reach 80%, where necessary through an action plan under EU monitoring.

All available estimates for Italy indicate a coverage rate, at least formally, well above 80% (100% for the OECD, 99% for the ILO, 97% for Eurofound's European Business Survey); from a formal point of view, therefore, no action by the Italian legislator seems necessary to comply with the directive.[71]

It is worth mentioning, however, that in July 2023 a bill (A.C. 1275) for the establishment of a legal minimum wage was submitted to the Italian Parliament by the opposition parties.[72] The proposal aims to introduce a minimum wage of 9.00 euros per hour. According to the proponents, this figure would be calculated on the basis of 50% of the national average wage revalued in light of last year's inflation. Again, according to the proponents, this minimum level would correspond to approximately 70% of the median wage. The parliamentary process was suspended due to the government's decision to entrust the CNEL with a study on the subject, before also taking a position in relation to the transposition of the 2022/2041 directive.

The document drawn up by the CNEL, and approved on 12 October 2023,[73] expressed a negative opinion on the need to legislate on the minimum wage, also in view of the high rate of coverage of collective bargaining, which far exceeds the 80% threshold stipulated in the directive. According to the CNEL, therefore, collective bargaining is still the medium to be privileged and valorised for the definition of an adequate wage. Nevertheless, it is acknowledged, as also evidenced from discussions with national stakeholders engaged in the Care4Care project, that reliance solely on minimum wages established by collective agreements may not consistently ensure an adequate wage, primarily due to the time required for agreement renewal. This stance has, temporarily, halted the legislative progression.

Neither collective bargaining nor the law sets out any provisions for wages that are differentiated in terms of structure from those applied in other sectors. Indeed, in the care sector, as in all other sectors, collective agreements differentiate pay according to professional qualification. As a matter of fact, anti-discrimi-

[71] Giovanni Orlandini and Guglielmo Meardi, "Round Table. Implementing the EU Directive on Adequate Minimum Wages in Southern Europe: The Odd Case of Italy" *Transfer: European Review of Labour and Research* 29 (2023): 253, 255–57.

[72] Camera dei Deputati, "Proposta di legge concernente disposizioni per l'istituzione del salario minimo," *Atti parlamentari* (2023).

[73] CNEL, *Osservazioni e proposte sul salario minimo in Italia* (2023).

nation laws and the principle of equal treatment prohibit income discrimination. Gender-differentiated salaries are not allowed.

11) Have there been any legal disputes or conflicts publicised by the media in your country over "wages" in the care sector and gender discrimination?

Since there is no specific case law on gender discrimination on remuneration, the research unit submitted a questionnaire to the Italian equality bodies (i.e. Equality Councillors) on whether they collected complaints of discrimination by female care workers that did not reach the courts.

Concerning salary-related gender discrimination disputes, a specific question was submitted to the Italian equality bodies (i.e. the Equality Councillors). Only two Councillors declared that they had taken action or assisted workers on the basis of wage discrimination. However, in accordance with privacy laws, Councillors did not disclose any information about these conflicts.

Despite the scarcity of cases, a gender pay gap exists, with female health professionals earning around 12.8% less than men across all contracts (full-time and part-time); however, the gap narrows to 2.6% when just full-time contracts are included.[74]

As part of the data collection process for the Italian National Stakeholder Meeting, the office of the National Equality Councillor and the social partners provided additional input confirming a trend towards a low economic valuation of care services. During the discussion at the Italian National Stakeholder Meeting, FNOPI, trade unions (*Confederazione Generale Italiana del Lavoro* or CGIL, *Confederazione Italiana Sindacati Lavoratori* or CISL, *Confederazione Unitaria di Base* or CUB Sanità, *Confederazione dei Comitati di base* or COBAS, *Sindacato delle Professioni Infermieristiche* or NURSIND) and some employers' organisations (*Unione Nazionale Istituzioni e Iniziative di Assistenza Sociale* or UNEBA) emphasised that the remuneration for all care workers is significantly low and that there are no career prospects with a consequent flattening of the pay curve, especially for care professionals.[75]

The root causes of this wage disparity issue are underscored by several factors, notably the inadequate public investment in the healthcare sector, the transfer of care financial burdens from the public sphere to private entities (families), and the predominant presence of female employees within the sector. Specifically, the feminisation of care work, as highlighted by CGIL, results in a depreciated perception of the profession, leading to inadequate economic recognition. This trend reflects broader societal structures that perpetuate the undervaluation of care work.[76]

[74] FNOPI, "8 Marzo 2022".

[75] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting"; Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CGIL, "Responses to the Questionnaire"; CISL, "Responses to the Questionnaire"; FISASCAT, "Responses to the Questionnaire"; CUB Sanità, "Responses to the Questionnaire; NOSOTRAS, "Responses to the Questionnaire"; UNEBA, "Responses to the Questionnaire".

[76] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

12) Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?

- *Do the legislation or, if applicable, collective agreements make any reference to reconciling work and family life " for women workers" in the care sector in general or in each care sector job? If so, please summarise or comment.*

In recent years, the issue of work-life balance has received particular attention, both from a social and political viewpoint.

From a legislative perspective, Legislative Decree no. 151 of 26 March 2001 regulated parenthood, while Law no. 104 of 5 February 1992 provides for assistance measures for people with disabilities.

Other provisions more strictly concerning the world of work are those on *lavoro agile* (remote working) (Law no. 81 of 22 May 2017) and those on part-time work (Legislative Decree no. 81 of 15 June 2015).

The *lavoro agile* (remote working) is a mode of execution of the subordinate employment relationship characterised by the absence of hourly or spatial constraints and an organisation by phases, cycles and objectives, established by agreement between employee and employer. The remote working aims to help the worker to balance life and work times and to encourage the growth of his or her productivity. Law no. 81/2017 emphasises organisational flexibility, the voluntary nature of the remote working agreement, and the use of equipment that allows remote work (laptops, tablets and smartphones). Remote workers are guaranteed equal economic and regulatory treatment with their colleagues who perform their work in ordinary ways.[77]

In addition to remote working, the legislator provides for teleworking as a form of work-life balance. Teleworking is regulated by Article 2(1)(b) of Presidential Decree no. 70 of 8 March 1999 and by the Framework Trade Union Agreement of 9 June 2004. Teleworking is a mode of performing subordinate work carried out with the prevalent support of information technology.

The regulatory framework has recently been amended by Legislative Decree no. 105 of 30 June 2022 - implementing Directive (EU) 2019/1158 on work-life balance for parents and carers. These provisions, including those relating to compulsory paternity leave, by express legislative provision apply to public sector employees as well, subject to any operational guidance provided by the competent Civil Service Department (see Circ. INPS 122/2022).

Regarding the maternity leave and allowance, the mother is entitled to leave from work during the two months preceding and the three months following the birth. Alternatively, she may abstain from work from the month preceding the presumed date of birth and for the four months following the birth, or exclusively within the five months following the birth, as long as the competent doctor certifies that this option does not prejudice the health of the woman and the child (Article 16(1)(1), and 20 of Legislative Decree no. 151 of 26 March 2001).

[77] Marco Novella e Patrizia Tullini, a cura di, *Lavoro digitale* (Torino: Giappichelli, 2022).

Maternity leave may be suspended, at the mother's request, in the event of hospitalisation of the newborn child, and the mother may enjoy it, in whole or in part, from the date of the child's discharge. Moreover, in the case of early childbirth, the days not taken before childbirth are added to the period of maternity leave after childbirth (even if the sum of the periods exceeds the overall limit of five months) (Article 16-bis Legislative Decree no. 151 of 26 March 2001).

Maternity leave is also granted in the case of adoption, for five months, from the child's entry into the worker's family (in the case of international adoption, the period can be brought forward to allow for the stay abroad preparatory to the child's entry into the family), as well as in the case of fostering (for three months, within the five months following fostering). In general, female workers are entitled to a daily allowance equal to 80% of their salary (or income if self-employed) (Article 26, Legislative Decree no. 151 of 26 March 2001). The allowance in question - paid for the whole period of maternity leave and covered by INPS (Article 23 Legislative Decree no. 151 of 26 March 2001) - is also due to the working father for the whole period of maternity leave or for the residual part which would have been due to the woman, in the event of the death or serious illness of the mother or of abandonment, as well as in the event of the child being entrusted exclusively to the father.

For self-employed women enrolled in a compulsory social security scheme managed by a private law body, maternity leave is granted for the two months preceding and the three months following the date of delivery. In the event of serious complications of pregnancy, leave is also granted for the periods preceding the two months before delivery (Articles 68 and 70 of Legislative Decree no. 151 of 26 March 2001).

The pregnancy of self-employed workers who work continuously for the principal does not entail the termination of the employment relationship, the performance of which, at the worker's request, remains suspended, without the right to remuneration, for a period not exceeding one hundred and fifty days per calendar year, unless the principal's interest ceases to exist. Moreover, subject to the consent of the principal, the possibility of replacement of self-employed women workers by other self-employed workers trusted by the workers themselves is provided for (Article 14 of Law 81/2017).

For self-employed women workers, registered with the INPS Separate Pension Scheme, the maternity allowance is paid for a further three months from the end of the maternity period in the event of an income of less than 8,145 euros per year (Article 1(239), Law no. 234 of 30 December 2021).

Moreover, for female workers enrolled in the INPS Separate Pension Scheme, the allowance in question is also granted in the case of non-payment of contributions by the principal (so-called automaticity of benefits), in the case of adoption or fostering (for 5 months following the child's entry into the family), as well as regardless of the actual abstention from work, as regards the maternity allowance due for the 2 months prior to the date of birth and for the 3 months following (Article 64, Legislative Decree no. 151 of 26 March 2001). The latter

provision also applies to self-employed women (Article 71, Legislative Decree no. 151 of 26 March 2001).

Regarding maternity leave and benefits for home caregivers, please refer to the answer to the question 8, above.Regarding paternity leave, the legal system regulates two types of paternity leave, compulsory and alternative leave.

Compulsory parental leave is available to working fathers from two months before to five months after childbirth and lasts 10 days, increased to 20 days in the case of multiple births. This leave is fully paid and covered by notional contributions (Articles 29 and 30, Legislative Decree no. 151 of 26 March 2001). Compulsory leave is also available to the father during the working mother's maternity leave and even if he takes alternative paternity leave. It is also granted to adoptive or foster fathers, as well as to employees of public administrations, domestic workers and agricultural workers. For domestic and agricultural workers, the contribution requirement for taking alternative maternity or paternity leave does not have to be met, but the existence of an employment relationship in place at the time of taking compulsory leave remains necessary.

For other employees, compulsory paternity leave may also be granted in the event of termination or suspension of employment, provided that no more than 60 days have elapsed between the beginning of the suspension or termination and the beginning of the paternity leave period. Compulsory paternity leave is not due either to working fathers registered with the INPS Separate Pension Scheme or to self-employed fathers.

The alternative paternity leave (Article 28, Legislative Decree no. 151 of 26 March 2001) is payable to the working father for the whole duration of the maternity leave or for the residual part that would have been due to the working woman, in the event of death or serious illness of the mother or of abandonment, as well as in the event of exclusive custody of the child to the father. The allowance is the same as for maternity leave, i.e. 80% of salary if employed, or of income if self-employed, since it is also payable to the self-employed or self-employed father for the period during which the self-employed or self-employed mother would have been entitled to it.

The prohibition of dismissal also applies in the case of compulsory or alternative paternity leave.

Concerning parental leave, the law provides that parents may optionally abstain from work during the first 12 years of the child's life, with a maximum overall limit of 10 months, raised to 11 if the working father exercises his right to abstain from work for a continuous or fractioned period of not less than three months. While on parental leave, an allowance of 30 per cent of pay is paid. The Budget Law for 2023 provided for an increase from 30 per cent to 80 per cent of this allowance for employed mothers and employed fathers, alternatively, up to a maximum of one month to be taken within the sixth year of the child's life with reference to workers who end their maternity or paternity leave after 31 December 2022. For public sector employees, according to the respective collective agreements, the allowance is generally equal to 100 per cent of remuneration for the first 30 days. Periods of parental leave are counted in the length of service

and do not entail a reduction in holidays, rest, 13th month pay or Christmas bonuses, with the exception of additional emoluments linked to actual presence on duty, unless otherwise provided for by collective bargaining.

The allowance for parental leave is also granted to self-employed workers registered with INPS for a period of three months, within the first year of the child's life. This leave is also granted to workers registered in the INPS Separate Pension Scheme, who do not have a pension and are not enrolled in other compulsory social security schemes, for a period of three months for each parent and for a further three months alternatively, within the first 12 years of the child's life. The indemnifiable period may not exceed an overall limit of nine months between both parents (Article 8, Law 81/2017).

A special and less extensive discipline is provided for parents working in domestic and family services (Article 62 of Legislative Decree no. 151 of 26 March 2001). They are entitled to maternity leave and paternity leave, and to the relevant remuneration. Article 25 of the collective agreement for domestic helpers and carers of 8 September 2020 (FIDALDO CCNL) stipulates that it is forbidden to work for women during the two months preceding the presumed date of birth, except for any advance or postponement provided for by the law; for the period between that date and the actual date of birth; during the three months after the birth, except for authorised postponements. These periods must be counted in the length of service for all purposes, including those relating to Christmas bonuses and holidays. Female domestic workers can apply for household allowances only on a deferred basis, with payments made semi-annually (instead of monthly); these allowances are also calculated not on wages received, but on hours subject to insurance (Article 14 Presidential Decree no. 1403 of 31 December 1971).[78]

Domestic workers and home caregivers are excluded from the rules limiting dismissal (Article 62 of Legislative Decree no. 151 of 26 March 2001 and Articles 2240 and 2244 of the Civil Code).

Generally, Italian labour law mandates that employers provide reasons for dismissal, which may include just cause, subjective breaches of contract, and objective reasons related to job duties. Just cause constitutes a severe breach of the worker's obligations, warranting immediate termination without notice. Subjective reasons arise from significant breaches of contractual duties, with examples outlined in collective agreements. Objective reasons pertain to factors inherent to the job's productivity and organization, with the employer required to explore alternative tasks before dismissing for objective reasons. Dismissal procedures must adhere to formal requirements, including written notification and adherence to legal procedures.[79] Moreover, female workers cannot be dismissed from the beginning of the pregnancy period (300 days before the expected date of childbirth) until the end of maternity leave and up to 1 year of the child's age.

[78] Borelli, *Who Care?*, 177.

[79] Del Punta, *Diritto del lavoro*, 693–703; Mazzotta, *Diritto del lavoro*,684–700.

Conversely, domestic workers can be dismissed at will, orally, and without being subject to any specific procedure, even during maternity. However, it should be noted that the FIDALDO CCNL states that

> from the beginning of the pregnancy, provided it occurred in the course of the employment relationship, and until the end of the period of compulsory abstention from work, the female worker may not be dismissed, except for just cause. Resignations by a domestic worker or a home caregiver during this period are ineffective and of no effect if not communicated in writing or if not made in the protected forums provided for by law. Absences not justified within five days, where there are no force majeure reasons, are to be considered just cause for dismissal. In the event of voluntary resignation during the protected period, the employee is not required to give notice.[80]

A particularly significant phenomenon is part-time work. This form of work, although not constituting a separate contractual classification, operates as a flexible arrangement with reduced working hours compared to the standard full-time schedule, usually set at 40 hours per week or as stipulated in collective bargaining agreements.

The regulation of part-time contracts is delineated in Legislative Decree no. 81 of June 15, 2015 (Articles 4–12). The reduction in working time can manifest in several forms:

- Horizontal Reduction: This occurs when the employee works fewer hours each day than the standard daily schedule, encompassing all days of the week.
- Vertical Reduction: In this scenario, the employee maintains a full-time workload but only works certain days of the week, month, or year.
- Mixed Reduction: This type involves a blend of both horizontal and vertical reductions, offering a flexible arrangement that combines elements of the preceding two forms.

Part-time can be a work-life balance solution. However, often in the care sector and especially among domestic workers, part-time is involuntary. This form of contract can hide, as pointed out during the Italian National Stakeholder Meeting, under-declared work. The level of undeclared work in the domestic sector remains a significant concern. The historical trend shows that the majority of domestic workers have been engaged in irregular employment relationships. While there have been efforts to reduce informality through regularisation measures, the sector still exhibits a high prevalence of undeclared work, with the current rate standing at 51.8% in 2021.[81]

The irregularities detected in the sector include, in addition to undeclared work, under-declared work (i.e. declared for fewer hours than those actually

[80] Borelli, *Who Care?*, 177.

[81] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 118–23.

worked or according to a lower professional classification). In both cases, the worker receives all or part of the wages irregularly. The effect of these forms of irregular work is twofold: the employer saves on the cost of care (by not paying taxes and social security contributions and by paying a lower wage than that stipulated by collective agreements), the worker receives a payment on which he/she does not pay taxes and contributions.[82]

- *Have there been any court rulings on this matter? If so, please summarise or comment.*

There are no specific cases concerning work-life balance, however there is an important case concerning the dismissal of an employee who refused to change from full-time to part-time.

In its recent ruling no. 12244 of 9 May 2023, the Court of Cassation dealt with the interpretation of Article 8(1) of Legislative Decree no. 81 of 2015, concerning the transformation of an employment contract from full-time to part-time and vice versa. The Court clarified that the employee's refusal to switch to part-time cannot be the sole reason for dismissal but does not preclude the possibility of dismissal for objective justifications. This ruling reiterates previous case law, emphasising that an employer's decision to terminate a contract after such a refusal must be justified by real economic or organisational needs. The decision emphasises the importance of balancing workers' rights with the employer's legitimate interest in effectively managing its workforce.

Out-of-court cases have been documented by the office of the National Equality Councillor. For insights into discrimination against mothers, specifically regarding work-life balance within the domestic sector, please refer to the response to question 9 above.

- *Do the legislation or, if applicable, collective agreements, provide for different provisions in terms of work-life balance for staff in each of these care sector occupations compared to ordinary workers or workers in other production sectors? If so, please summarise or comment on the case(s).*

These work-life balance measures apply generally to all sectors. However, as far as the care sector is concerned, there are no specific work-life balance measures, and the application of remote working and teleworking contracts are hardly feasible.

- *Have there been any court rulings on differences in conciliation between the care sector and other sectors? If so, please summarise or comment on the case(s).*

While there is no dedicated case law addressing work-life balance, out-of-court cases have been documented by the office of the National Equality Councillor. For insights into discrimination against mothers, specifically regarding work-life balance within the domestic sector, please refer to the response to question 9 above.

[82] Borelli, *Who Care?*, 202.

13) Have statistics or databases been published in your country on occupational accidents or illnesses arising from the work of personnel in the care sector as a whole or in each of the care sector jobs according to the workers' gender?

The National Institute for Insurance against Accidents at Work (*Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro* or INAIL) has a database collecting all information on occupational accidents and illnesses. Both in aggregated form and in the form of microdata. This database is public and freely accessible online (see table). INAIL also periodically publishes a report on occupational diseases by health sector, the most recent being in 2019.

ISTAT publishes reports on the statistical incidence of occupational diseases.

Another useful report is the Quarterly Note on Employment Trends (*Nota trimestrale sulle tendenze dell'occupazione*) which is issued by the Ministry of Labour and describes the data provided by ISTAT, INPS, INAIL and the National Agency for Active Labour Policies (ANPAL). The Higher Institute of Health (*Istituto superiore di sanità*, or ISS) publishes reports on occupational accident trends.

These are the main databases:

Table 2 – Main institutional databases and statistical sources.

Author	Year	Title	Link
INAIL	2023	*Banca dati statistica*	<https://bancadaticsa.inail.it/bancadaticsa/login.asp>
INAIL	2019	*Le malattie professionali nella sanità*	<https://www.inail.it/cs/internet/docs/alg-pubbl-malprof-le-malattie-professionali-nella-sanita.pdf>
ISS	2023	*Salute sul lavoro*	<https://www.epicentro.iss.it/>
INPS, Ministero del Lavoro	2022	*Nota trimestrale sulle tendenze dell'occupazione*	<https://www.inps.it/it/it/dati-e-bilanci/note-trimestrali-sulle-tendenze-dell-occupazione.html>
WHO	2022	*Health and care workforce in Europe: time to act*	<https://www.who.int/europe/publications/i/item/9789289058339>

14) Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.

The WHO has identified a number of issues affecting the care sector, including a lack of health and care workers, insufficient recruitment, inefficient work organisation, unappealing employment and working conditions, a lack of gender-responsive policies to improve gender balance, and insufficient investment.[83]

[83] WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act*, 2.

In a 2019 report, the OECD and the European Commission's European Observatory of Health Policies and Systems highlighted that Italy employs fewer healthcare professionals than most Western European countries. In 2019, there were 5.8 healthcare professionals per 1,000 inhabitants in Italy, in contrast to 8.5 in the EU. Furthermore, the number of healthcare professionals has been consistently declining; Italy had approximately 557,000 healthcare professionals in 2016, which decreased to about 456,000 by 2022. FNOPI estimates that Italy would need between 50,000 and 60,000 additional healthcare professionals to reach the EU average.[84]

During the Italian National Stakeholders Meeting, FNOPI, alongside labour unions and employers' organisations, emphasised the issue of labour shortages. Within this context, several discussions emerged regarding the potential of technology to support healthcare and assistance personnel. The role of platforms as facilitators in matching users' needs with nursing personnel was underlined. In this context, FNOPI stressed the ongoing debate surrounding the possible introduction and dissemination of the community nurse role, as outlined in the Health Pact (*Patto per la salute*), and legislated in Decree-Law no. 34 of May 19, 2020, subsequently converted into Law no. 77 of July 17, 2020 (*Decreto Rilacio*).[85]

The main cause of these labour shortages has been the numerous turnover blocks introduced by legislation to contain public spending on healthcare.[86] Alongside this phenomenon, a trend has emerged in the public health sector to outsource care services using forms of contracting and subcontracting to cooperatives and private companies. This trend is homogeneous throughout the country and concerns both health professionals, social and care workers, and basic care workers. There are two main reasons for this choice:

a) the decision to circumvent public recruitment competition procedures, and
b) the containment of personnel costs and NHS expenditure.

The pandemic crisis has forced a temporary change of course. The *Decreto Rilancio,* provided for the integration of the nursing workforce, initially with temporary contracts, then, from 2021, with permanent contracts.[87] There is no evidence that this is a permanent change of policy.

Throughout the pandemic's years, the WHO has certified that:

> Many countries entered the health emergency with insufficient numbers of HCWs, suboptimal skill-mixes and imbalanced geographical distributions. This was exacerbated during the COVID-19 pandemic as HCWs had higher rates of infection than the general population and experienced the negative impacts of

[84] FNOPI, *Scheda sulla professione infermieristica*.

[85] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

[86] FNOPI, *Scheda sulla professione infermieristica*.

[87] ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." Personale sanitario, 2022. <http://dati.istat.it/Index.aspx?QueryId=31546> (Accessed September 26, 2023); FNOPI, "8 Marzo 2022"; FNOPI, *Stato della carenza infermieristica al 2021*; FNOPI, *Scheda sulla professione infermieristica*.

> burnout and stress. […] High levels of psychological impacts have been reported by several countries in the Region, with over 80% of nurses reporting negative psychological impacts due to the pandemic in some countries (19,20). Up to nine out of 10 nurses had declared an intention to quit their jobs.[88]

The pandemic has caused numerous victims especially among female health professionals. In fact, female health professionals account for 34% of the deaths recorded among Italian health professionals. A further issue concerns gender-based violence. According to FNOPI, about 180,000 health professionals have suffered violence in the workplace during their careers, 100,000 of these violences were physical assaults.[89]

Concerning distribution in the labour market, FNOPI reports that the vast majority of health professionals (more than 75%) work in hospital facilities. Approximately 14% of health professionals have a part-time contract, 98% of them are women. In 2021, there were approximately 37,000 freelance health professionals, while there were approximately 78,000 health professionals employed by private facilities.[90]

Regarding age, most health professionals are between 36 and 55 years old. Health professionals over 65 years of age with professional seniority of more than 30 years account for approximately 13,000, while those with no professional seniority of more than 30 years account for approximately 25,000. Health professionals up to 28 years of age number about 39,000. The average age of all health professionals in Italy is about 46 years old, while that of civil servants alone is about 51 years with marked differences. In the Regions where the turnover block has been completed the age is markedly higher than in the others.[91]

Concerning geographical distribution, the largest number of health professionals is concentrated in the North-West regions. This is followed by the South, the Centre, the North-East and the Islands. This uneven distribution is partially explained on the basis of population, which is larger in the North than in the other areas of the country, and on the basis of remuneration, which is slightly higher in the Northern regions.[92]

According to FNOPI, female health professionals in Italy are about 76% distributed unevenly across the country. In the North-West female health professionals make up 83.83% of the total, while in the North-East they make up 83.28%. The

[88] WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act*, 21.

[89] WHO Regional Office for Europe, *Health and Care Workforce in Europe: Time to Act*, 21; an issue that has been raised also by the media, see Mariavittoria Savini, "Aggressioni personale sanitario, Schillaci: "Numeri allarmanti, le infermiere le più colpite"," *RaiNews*, 12 March 2023, <https://www.rainews.it/articoli/2023/03/aggressioni-personale-sanitario-schillaci-numeri-allarmanti-le-infermiere-le-piu-colpite--480d5bbe-a810-463e-b64b-fe6074b6ca69.html> (Accessed April 29, 2024).

[90] FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri*.

[91] FNOPI, *Scheda sulla professione infermieristica*; FNOPI, *Tutti i numeri degli infermieri*.

[92] ISTAT. "Elaborazione di dati sul personale in attività nel sistema sanitario pubblico e privato." Personale sanitario, 2022. <http://dati.istat.it/Index.aspx?QueryId=31546> (Accessed September 26, 2023); FNOPI, *Scheda sulla professione infermieristica*.

peak of female health professionals is recorded in Trentino-Alto Adige/Süd Tirol with 86.39%. In the Centre, female health care professionals make up 77.64%, in the South 67.37% and in the Islands 64.38%, with Sardinia at 79.23% and Sicily with the lowest figure in Italy at 59.05%.[93] Concerning the pay gap, female health professionals earn about 12.8% less than men considering all contracts (full time and part time); however, the gap drops to 2.6% if only full time contracts are considered.[94]

Work-related stress and burnout were common even before the pandemic, according to the findings of the report *Le malattie professionali nella sanità* (Occupational Diseases in Healthcare). However, the most common occupational diseases in the care sector until 2019 were those affecting the musculoskeletal system. Supporting, lifting, transferring, and repositioning patients were all operations that put healthcare personnel at risk of lower back injuries or other musculoskeletal illnesses. Musculoskeletal diseases were associated with various conditions, including an increase in the number of obese persons, an increase in the average age of carers, and limited access to mechanical aids (lifts).[95]

Regarding social and care workers, data are fragmentary because there is no professional register. Trade unions estimate between 200 and 300,000 workers, 90% of whom are women.[96] Trade unions indicate an average age of around 45 years.[97] The age of the operators ranges from 30 to 60. There are no data available on Social and health workers employed in the private sector (scientific hospitalisation and care institutions or IRCCS, foundations, research institutions, private nursing homes) and in the public sector (prisons, schools, public health facilities), nor on self-employed workers. Furthermore, there is a lack of data on workers employed on a temporary or permanent basis during the COVID-19 pandemic.[98] According to trade unions, social and care workers work a wide range of care duties with very heavy shifts, having to make up for shortages of nursing staff and being burdened with a plethora of tasks that are not provided for in contracts and for which they have no specific training.[99]

During the pandemic, social and care workers and basic care workers experienced a great deal of work-related stress, which led to a significant increase in burnout and occupational accidents and illnesses.

According to data from the INPS Observatory on domestic workers, in 2022, the total number of domestic workers contributing to the INPS was 894,299, reflecting a decrease of 7.9% compared to 2021 (-76,548 workers).[100] This decline

93 FNOPI, "8 Marzo 2022".

94 FNOPI, "8 Marzo 2022".

95 INAIL, "Le malattie professionali nella sanità" (Inail - Dipartimento di medicina, epidemiologia, igiene del lavoro e ambientale, 2019).

96 CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

97 CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

98 Federazione Nazionale Migep, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67".

99 Federazione Nazionale Migep, "Modifiche al Decreto Legislativo 21 Aprile 2011 n. 67".

100 INPS, "Statistiche in breve: lavoratori domestici" (INPS, 2023) <https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013> (Accessed September 26, 2023).

follows increases in the previous years, driven by the regularisation of employment relationships to allow domestic workers to travel to work during lockdown periods and the entry into force of regulations governing the regularisation of irregular employment relationships (Decree Law no. 34 of 19 May 2020). Similar phenomena were observed in the years following 2009 (Law, no. 102 of 03 august 2009) and up to 2012 (Legislative Decree no. 109 of 16 July 2012), during which regularisation of workers, both EU and non-EU citizens, occurred.[101]

The data indicates the dual impact of the COVID-19 pandemic on the increase of domestic workers. The first effect is attributed to the containment measures, which restricted movement to those who could demonstrate a legitimate reason, such as having a regular employment relationship. The second effect, also related to the pandemic, is linked to the regularisation procedure for irregular immigrant workers initiated in 2020. This procedure focused on two sectors (agriculture and domestic work), attracting workers from other sectors as well and resulting in an overrepresentation of domestic work in the years immediately following regularisation. With the easing of containment measures, many regularised workers shifted sectors, returning to their original fields.

Regarding gender and nationality, there are significant differences. The most pronounced decrease in 2022 was observed among foreign male workers (-21.1%), a group that had seen the most significant increase between 2019 and 2021 (+66.6%). Foreign women, despite a slight decrease in 2022 (-5.6%), remain dominant in the domestic sector, constituting 58.7% of the total. The second-largest group comprises Italian women, representing 27.8% of the total.

The category of home caregivers (*assistenti domiciliari*, or *badanti*) among domestic workers is more prevalent among nationals from Eastern European countries, such as Georgia (82.4%), Bulgaria (73.8%), Ukraine (65.7%), and Romania (63.0%). Among workers of Asian origin, the presence of caregivers is less significant, dropping below 20% for Bangladesh, the Philippines, and Pakistan.[102]

Specifically focusing on home caregivers, their average age is slightly higher (51.3 years) compared to other domestic workers (47 years). Moreover, the majority of caregivers are over 50 years old (62.2%), while only a small percentage are under 30 (4.9%). This demographic profile reflects the demanding nature of caregiving roles, often attracting older individuals with more experience.[103]

In terms of hours worked, home caregivers tend to work longer hours on average compared to other domestic workers. Only a small percentage of caregivers (6.1%) work less than 10 hours per week, with a significant portion (42.2%) working over 40 hours per week. This contrasts with the majority of other domestic workers who work fewer hours, with 84% of them working less than 30 hours per week.[104]

[101] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 94 ff.

[102] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 97–102.

[103] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 105.

[104] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 107.

Italian home caregivers, a vital component of the caregiving sector in Italy, represent a noteworthy portion of the domestic workforce. While constituting a minority, their numbers are significant given Italy's ageing population. Unlike foreign caregivers, Italian home caregivers display a diverse range of ages and backgrounds, reflecting various entry points into the profession. With approximately 48% of caregivers being Italian, they contribute substantially to meeting the care needs of families. Despite their local familiarity, Italian home caregivers face challenges such as long hours and low wages, with 42.9% working over 40 hours per week and 60% earning less than 6,000 euros annually.[105]

15) Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.

Occupational safety and health (OSH) is guaranteed by: Article 32 Italian Constitution, that reads "The Republic safeguards health as a fundamental right of the individual and as a collective interest"; Article 2087 Civil Code, that provides for the duty of the employer to protect physical integrity and moral personality of his/her employees; Legislative Decree 9 April 2008, no. 81 (*Testo Unico sulla Salute e Sicurezza sul Lavoro*) implements the employer's OSH obligations. This decree is applied to all workers, with the relevant exception of domestic workers (i.e. home caregivers).

Domestic workers find a specific, although minimal, protection on occupational health and safety at work in Law no. 339 of 2 April 1958.[106]

Indeed, domestic workers are explicitly excluded from the scope of application of Legislative Decree no. 81 of 9 April (Article 2(1)(a)), coherently with Directive 391/1989 (furthermore, Legislative Decree no. 81 of 9 April has repealed Presidential Decree no. 547 of 27 April 1955 that extended several health and safety guarantees to domestic workers). However, the applicable law for domestic workers provides for a guarantee that may be read as extensive, as prescribes the employer's obligation to

> provide the worker [...] with an environment that is not harmful to the worker's physical and moral integrity, as well as healthy and sufficient nutrition; protect his health particularly if there are sources of infection in the family (Article 6, Law no. 339 of 2 April 1958).

In practice, however, a much-reduced scope of the safety obligation has been established compared to what is applicable to the business environment, which

[105] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 110–17.

[106] Sergio Pasquinelli e Giselda Rusmini, a cura di, *Badare non basta.Iil lavoro di cura: attori, progetti, politiche* (Roma: Ediesse, 2013); Gisella De Simone, "I lavoratori domestici come attori della conciliazione," in *Persone, lavori, famiglie. Identità e ruoli di fronte alla crisi economica*, a cura di Maria Vittoria Ballestrero, e Gisella De Simone (Torino: Giappichelli 2009); Luca Nogler, *Lavoro a domicilio. Art. 2128* (Milano: Giuffrè, 2000).

makes its fulfilment less burdensome for the domestic employer, creating an important breach of protection.

In case of illness, the job retention period is established by the applicable collective agreement. In the FIDALDO collective agreement, it is set that the domestic worker is entitled to job retention for 10 days in case of seniority up to 6 months; 45 days in case of seniority between 6 months and 2 years; 180 days in case of seniority longer than 2 years. During these periods, the employer must pay an allowance for a period of, respectively, 8, 10, and 15 days, for one year and an amount equivalent to 50% of pay until the 3rd day and 100% from the 4th day onward. Some CCNLs provide for shorter illness protection periods and lower economic compensations.

In the event of an occupational injury or illness, the FIDALDO collective agreement ensures the same illness protection period seen above. However, in this case, the employer must pay wages only for the first 3 days of leave. Many of the applicable collective agreements reduce the illness protection period.

The collective agreements poorly articulate the health and safety regime for domestic workers, by providing, in the best cases, for norms that entail the employer to inform the worker about possible risks. No duty to train the workers on health and safety procedures is provided for, in violation of ILO Convention 201, no. 19, which has been ratified by Italy. However, as pointed out by stakeholders in the national meeting held in Rome on April 10, 2024, trade unions (*Federazione italiana lavoratori commercio, albergo, mensa e servizi* or CGIL-FILCAMS, *Federazione Italiana Sindacati Addetti Servizi Commerciali, Affini e del Turismo* or CISL-FISASCAT, *Unione Italiana Lavoratori del Turismo, del Commercio e dei Servizi* or UILTUCS, *Federazione Colf* or FEDERCOLF) and employers' organisation (*Associazione Nazionale Famiglie Datori di Lavoro Domestico* or Domina and *Federazione Italiana datori di lavoro domestico* or FIDALDO) established the National Bilateral Body for Employers and Family Collaborators (*Ente Bilaterale Nazionale del Comparto di Datori di Lavoro e dei Collaboratori Familiari* or EBINCOLF) on 23 December 2002. This organisation provides professional training and qualifications for domestic workers, including courses on health and safety.

In the Italian legal system, specific provisions for women in terms of occupational health and safety recur only as concerns pregnancy, and the same applies in the care sector. However, home caregivers have a special regulation concerning parental leaves as proved for by Article 62 Legislative Decree no. 151 of 26 March 2001 see above answer to question 12 on gender.

It is forbidden to employ women: a) during the 2 months preceding the presumed date of delivery, except for any anticipation or postponement provided for by law; b) during any period between that date and the actual date of delivery; c) during the 3 months after delivery. (see, *inter alia*: Article 16, Legislative Decree no. 151 of 26 March 2001; Article 25, CCNL FIDALDO on domestic workers).

Anticipations or postponements are provided for in case of jobs that entail possible risks for the mother or the child, for instance due to exposure to toxic substances or due to tasks that entail lifting of weights (Article 7, Legislative

Decree 26 March 2001, no. 151). Therefore, such special protection applies to care workers, as well, although the specific working conditions must be considered in this respect.

Moreover, a restriction on night work for pregnant women applies, indeed it is forbidden for women to work from midnight to 6 a.m., from the establishment of pregnancy until the child is one year old (Article 11, Legislative Decree no. 66 of 8 April 2003).

Sexual and other forms of harassment are classified as discrimination under Article 26 of Legislative Decree no. 198 of 11 April 2006. A female or male employee's dignity is violated as a result of harassment, which is described as "unwanted conduct on grounds of sex with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment." Sexual harassment, on the other hand, is defined as

> any unwanted conduct of a sexual nature, expressed in physical, verbal, or non-verbal form, with the purpose or effect of violating the dignity of an employee and of creating an intimidating, hostile, degrading, humiliating, or offensive environment (Article 26(2) of Legislative Decree no. 198 of 11 April 2006).

By adding paragraph 2-bis to Article 26 and adding the phrase "less favourable treatment suffered by a worker or employee for the fact that they have refused the conduct referred to in paragraphs 1 and 2 or have been subjected to it," Legislative Decree no. 5 of 2010 expanded the definition of discrimination.

Hence, now It is also forbidden to take any action (such as disciplinary action or dismissal) in retaliation against a worker who files a complaint to have the harassing behaviour substantiated (Article 26(3) of Legislative Decree no. 198 of 11 April 2006).

Harassment is prohibited by law because it is detrimental to the dignity of the victim. In order to repress harassment, it is not necessary to look for a term of comparison (the more favourable treatment given to the employee of the opposite sex), but it is sufficient to prove the fact. Furthermore, it is not necessary to detect the intent of the agent, it is sufficient to verify the effect (of injury to the dignity of the person) produced on the harassed person because there is a form of strict liability.

In order for behaviour to qualify as harassment, it must be undesired. Therefore, the viewpoint of the person who is subjected to the behaviour, rather than the person who engages in it, is crucial.

Discrimination is equated with harassment both in terms of the consequences and the legal process.

The Equal Opportunities Code's emergency procedure, which can be used to combat any form of discrimination ("in all cases of individual legal action," as Article 38(6) specifies), can be used by the harassed person to seek "compensation for damages, including non-pecuniary damages." Moreover, the Equality Councillor is allowed to bring the lawsuit on behalf of the harassed party.

Since the employer has a general duty, under Article 2087 of the Civil Code, to take all necessary measures to preserve, in the workplace, not only

the physical integrity but also "the moral personality of employees," compensation for damages must always be claimed against the employer, even when it is not the harasser.

The option to take direct action against the harasser and claim related non-contractual liability remains available if the harasser is a hierarchical superior or a work colleague.

Following the fulfilment of the required number of ten ratifications, the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) came into force on 1 August 2014. Italy ratified the Convention with Law no. 77 of 27 June 2013 which was important in promoting this Convention.

Directive 2102/29/EU was implemented in Italy by Legislative Decree no. 212 of 15 December 2015. The Decree introduced major novelties to the criminal procedure that granted the victim additional rights, faculties, and powers. Still, it did not change the rights to access to care for the victims.

The law 53/2022 strengthened mechanisms to monitor and assess sexual harassment and gender-based harassment also within the workplace.

According to the 2021 Violence Against Nurses in the Workplace: a Multicentre, Descriptive Analytic Observational Study (CEASE-IT), almost one-third of all respondents experienced verbal or physical harassment in the previous year. This figure is consistent with the Ministry of Health's recently released data. In line with the working realities, there was a definite female predominance in the examined sample (76% of respondents). When interviewees' numbers are compared to workplace harassment statistics, it becomes clear that harassment primarily affects women. The CEASE-IT study also reveals that male aggressors are present in 51.8% of the cases.[107]

16) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

Stakeholders emphasise a problem of awareness-raising and adequate training of workers in occupational health and safety, both in the health sector and in other sectors.[108] With regard to occupational health and safety case law, several decisions have attracted national attention, mainly of a criminal nature. Notable cases include:

- Court of Cassation, 1 June 2021, no. 21521: In this case, a professional nurse working in a hospital contracted hepatitis while performing her duties. The

[107] Gruppo di Studio Italiano CEASE-IT, "Studio multicentrico nazionale. Gli episodi di violenza rivolti agli infermieri italiani sul posto di lavoro" (Università degli Studi di Genova, 2021); Ministero della Salute, "Osservatorio nazionale sulla sicurezza degli esercenti le professioni sanitarie e socio-sanitarie. Relazione attività anno 2022" (Ministero della Salute, 2022).

[108] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting"; Raffaella Maioni, a cura di, *Viaggio nel lavoro di cura: chi sono, cosa fanno e come vivono le badanti che lavorano nelle famiglie italiane* (Roma: Ediesse, 2016).

incident occurred during a venous blood sampling from a patient suffering from HCV and HBV, and the nurse accidentally pricked herself with the needle she was using. The judges at first instance attributed the illness contracted by the worker to the competent doctor, who did not cooperate with the employer in assessing the biological risk of possible infectious diseases for healthcare personnel.

- Court of Cassation, 16 June 2017, no. 14566: In this case, a nurse was assaulted while on duty in the emergency room of a health facility. The Court of Cassation sentenced the employer to pay damages and reiterated that the employer has a legal obligation to protect its employees, as set out in Article 2087 of the Civil Code, which requires it to safeguard the physical and moral integrity of employees during the performance of their duties.
- Court of Cassation, 27 September 2010, no. 34804: A hospital manager was convicted of serious injuries inflicted on an employee. The judgement states that the manager, who was responsible for the procurement and management of goods and services with spending power, failed to provide safe transport trolleys to employees and to ensure adequate training on the safe use of the devices, resulting in the conviction.
- Court of Cassation, 7 June 2010, no. 21519: A mental health department manager was convicted of injuries caused to an employee who tripped over a brick in the hospital yard. The conviction was handed down because the manager neglected to promptly report dangerous conditions to the technical department, thus violating his work safety duties.
- Court of Cassation, 15 May 1998, no. 5689: This case concerns the liability of a department manager for injuries caused by inadequately trained staff. The manager was held liable for failing to ensure that staff received adequate training, resulting in injuries to a professional nurse.

17) Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.

Workers in the care sector are subject to the ordinary rules on dismissal laid down by the general legislation that regulates termination of employment contract.

Therefore, no differentiation is allowed between men and women.

However, among the remedies, the gender factor may play a role an element of discriminatory dismissal. Although in the Italian legal system there are different regimes with regard to protections against unlawful dismissal—depending on the date of recruitment before or after 7 March 2015 and depending on the size of the enterprise—when a discriminatory dismissal occurs, the protections against discriminatory dismissal is the same: the law provides that - in the event of discriminatory dismissal, dismissal during marriage, maternity leave - the court orders the employer to reinstate the employee in the workplace and to pay damages; however, the employee may ask the employer, instead of reinstatement, for an indemnity equal to 15 months' of the last global de facto salary in addition to damages (full reintegration protection).

The gender factor is also relevant in other hypotheses that place specific dismissal prohibitions in favour of women.

It is forbidden to introduce clauses of any kind during the formation of the contract that provide for the termination of the employment relationship of female employees as a consequence of marriage (so-called bachelorette clauses). Any agreements of this kind are void and have no effect.

The provision, now contained in Article 35 of Legislative Decree no. 198/2006, dates back to Law no. 7 of 9 January 1963, which first placed the prohibition with the intention of safeguarding female workers from the risk of being dismissed on account of marriage, considered to be an event that entailed a greater "risk" of incurring a pregnancy, and therefore a source of risk of aggravating the employer's economic and organisational burdens. The special protection has remained circumscribed by the letter of the law to working women for several reasons: because it is for women that the birth of their offspring represents an obstacle to work; because, such an event involves the woman's body, which is entitled to be preserved from the strain of work. The application of this provision to workers involved in family and domestic services is expressly ruled out.

The same Article 35 of Legislative Decree no. 198/2006 sanctions with nullity any dismissal announced on the grounds of marriage. The reinforced protection is addressed to female workers only, as they are the recipients of reinforced protection related to two events, pregnancy and puerperium, which remain a female prerogative.

The reinforced limit to the employer's power to terminate the contract with the worker is circumscribed to a very precise period, which goes from the day of the request for civil marriage banns to one year after the celebration of the marriage.

A special form of protection is also reserved for the worker in the case of maternity.

Article 54 of Legislative Decree no. 151 of 26 March 2001 provides for the prohibition to dismiss the mother worker from the beginning of pregnancy until the child is one year old. The limit also applies in the case of adoption and fostering.

During this "protected" period, there is a real prohibition for the employer to dismiss the employee, the violation of which entails an administrative sanction (Article 54 paragraph 8 of Legislative Decree no. 151 of 26 March 2001) and the nullity of the dismissal, which has no effect on the contract, with the consequence that the employment relationship is reinstated.

The prohibition operates in connection with the objective state of pregnancy, without the employer's knowledge of the employee's condition being relevant, nor even the employee's knowledge of her own state, who in any event has no obligation to communicate her state of pregnancy, except - in due course - in order to be able to take advantage of the leave and permits provided for by law and by collective bargaining.

Domestic workers are excluded from the scope of this provision, and they can be dismissed without the employer having to justify it, even in connection with the events of birth or adoption. The latest *CCNL colf e badanti* signed on 15 January 2019, however, states in Article 25 that

> from the beginning of the pregnancy, provided that it occurred during the course of the employment relationship, and until the end of the period of compulsory abstention from work, the worker cannot be dismissed, except for just cause.

Jurisprudence has been oriented in the same direction, which has held that dismissal during maternity leave is unlawful, pursuant to Article 62 of Legislative Decree no. 151 of 26 March 2001.

There is a specific regulation in place regarding employee resignation. This is a procedural provision that seeks to ensure that the employee's decision to terminate their employment is an expression of their free will and not the result of employer pressure. The employee's resignation does not go into effect during the "protected period" (from the beginning of pregnancy until the child turns three) until it has been approved by the inspection service of the relevant Ministry of Labour.

18) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

While cases of discrimination in labour law remain relatively few, instances specifically concerning discriminatory dismissals on gender grounds are particularly scarce. However, information shared during a Italian National Stakeholder Meeting highlighted the existence of such dismissals, which are often addressed through out-of-court settlements, shielding them from court scrutiny.

A notable exception is the crucial ruling of the Catanzaro Court of Appeal, 6 May 2014, no. 676. The Court of Appeal of Catanzaro held that the dismissal of a female employee of an accredited private clinic in Catanzaro was discriminatory on the basis of gender. The clinic had conducted a collective dismissal procedure for several workers, including nurses, cooks, and socio-sanitary auxiliaries, classifying them according to their level of education, length of service, and other criteria related to the clinic's needs. Despite her qualifications and service, the employee was classified as low and subsequently dismissed. The employee appealed the dismissal, claiming that she had been discriminated against. The Court upheld the worker's appeal, ruling that the criteria used by the clinic were discriminatory and annulled the dismissal. The Court also dismissed the clinic's appeal, upholding its decision.

19) Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).

The essential structure of the Italian social security system is outlined in Article 38 of the Constitution.

The first paragraph deals with social assistance and provides that "Every citizen unable to work and lacking the necessary means to live has the right to maintenance and social assistance".

As far as social assistance is concerned, the Italian system is characterised by the coexistence of a multiplicity of welfare benefits, of a temporary or struc-

tural nature. The protected subjects are first of all those who are in conditions of poverty or with limited income, with a total or partial inability to provide for their needs due to physical or psychic incapacity or who have difficulties in integrating into working or social life. Family and disability support measures are also provided. In relation to welfare benefits, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

The second paragraph of Article 38 deals with social security and provides that "Workers shall have the right to have adequate means provided and insured for their subsistence needs in the event of accident, sickness, invalidity and old age, and involuntary unemployment".

As regards compulsory protection against accidents at work and occupational diseases, it is designed to guarantee the good of health, protected by Article 32 of the Constitution, and to compensate for any damage suffered by workers who fall ill or are injured in the course of their work. In relation to protection against work accidents and occupational diseases, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

As regards invalidity and incapacity protection, it is provided in the event of a long-term illness resulting in a permanent relative or absolute inability to produce income from work; moreover, this protection is intended for both workers and non-workers and for workers who do not meet the minimum insurance requirements, but it is different in nature in the two cases, resulting in a different structure and characteristics. In relation to protection for disability and incapacity, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

As for old age protection, it comes into play when, due to age, work and income from work cease. Compulsory old-age protection is now available to all earners of earned income who meet two main requirements: seniority (the age of old age, determined by law) and contribution seniority (the length of time contributions have been paid in the time specified by law). Only protection for unpaid workers, i.e. voluntary work and family care work, remains voluntary. In relation to old age protection, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study. However, there are some measures that differentiate between men and women for the generality of occupations, for example in relation to particular forms of early retirement (such as the *opzione donna*, which allows women access to early retirement if certain requirements are met).

It is noteworthy that Legislative Decree 21 April 2011, no. 67 delineates a framework for "heavy work" (*lavori usuranti*) classifications and the corresponding benefits extended to individuals engaged in physically demanding tasks, which often lead to a diminished quality of life or premature aging. Workers falling within these categories are afforded facilitated access to pension schemes. However, a significant concern highlighted by stakeholders involved in the CARE4CARE project pertains to the exclusion of certain care workers from

the benefits outlined in the decree, despite their engagement in unquestionably strenuous activities.[109]

Another pertinent issue, particularly relevant to migrant care workers, revolves around the retention of social security rights accrued in Italy upon their return to their country of origin.[110] Existing legislation precludes the reimbursement of contributions upon repatriation, potentially fostering indifference towards fulfilling social security obligations. One potential mitigation strategy lies in international social security conventions between Italy and select non-EU countries. These agreements introduce the concept of aggregation, enabling workers to amalgamate contributions made to both Italy's and their home country's social security systems. This mechanism prevents career fragmentation and ensures entitlement to pension benefits, with contributions distributed proportionally between the respective insurance institutions. However, it is imperative to note that this system's applicability is limited to workers from countries with which Italy has such agreements in place.

Regarding the calculation of social security contributions of domestic workers and home caregivers, the legislator has provided for four bands of conventional hourly wages on the basis of which social security contributions are calculated (Article 1 of Decree-Law no. 155 of 22 May 1993). However, the hourly contribution amount paid for domestic workers and home caregivers employed for more than 24 hours per week (hence full-time) is lower than that paid for domestic workers employed for less than 24 hours per week (hence part-time). Consequently, the pension treatment of domestic workers and home caregivers employed for more than 24 hours may be lower than that enjoyed by other domestic workers and home caregivers. This system, instead of incentivising the declaration of actual working hours, has the effect of incentivising undeclared work; however, the workers, if they are immigrants, can keep their permits. Another problem concerns the modest pension amount calculated according to the contributory method, which, however, affects all workers.

In relation to survivors' benefits, they operate in favour of the worker's (or pensioner's) relatives in the event of his death, in order to cope with the situation of need resulting from the death and concerning the family members for whose support the insured person was providing. In relation to survivor benefits, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

As regards protection against involuntary unemployment, it intervenes—if certain requirements are met—to financially support the person who has lost his/her job, whether employed or self-employed, or who never had one. There are also protections in case of suspension or reduction of work activity and in

[109] CARE4CARE, "Minutes of the Italian National Stakeholders Meeting"; NOSOTRAS, "Responses to the Questionnaire".

[110] William Chiaromonte e Madia D'Onghia, "Migranti, lavoro e pandemia: nuovi problemi, vecchie risposte?" *Rivista giuridica del lavoro e della previdenza sociale* 3 (2021): 521 ff.

case of income discontinuity. As regards protection against involuntary unemployment, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

Domestic workers and home caregivers are penalised in relation to unemployment benefits. Article 5 of Legislative Decree no. 22 of 4 March 2015 conditions access to unemployment benefits to having worked for at least 30 days in the 12 months preceding the involuntary termination of employment. Given the impossibility of ascertaining actual presence at work on each day, 5 weeks of work (conventionally considered to be 6 days each) are required in the case of domestic work. For the coverage of a working week 24 hours are required, so in order to find the number of actual working weeks it is necessary to divide the total number of working hours in the quarter by 24. The calculation system is clearly disadvantageous for domestic workers: In the case of part-time work for less than 24 hours per week, domestic workers are charged with fewer days of actual work than other workers. Also, in this case, the amount of unemployment benefits is affected by the calculation based on the conventional wage. Domestic workers and home caregivers do not qualify for other income support measures (such as, for example, the wage guarantee fund).

As regards protection against employer insolvency (Law no. 297/1982), it intervenes—through a variety of special protections—if the employer does not fulfil the payment due to the employee. As far as protection against employer insolvency is concerned, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study.

Finally, as regards protection of the worker's family, it consists of various benefits (aimed, for example, at protecting the worker's dependent children or parental workers). As far as the protection of the worker's family is concerned, there are no specific provisions for social protection that differentiates between men and women in the occupations covered by this study (for further references see the answer to question 12 and question 15 on gender).

20) Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sex? If so, please summarise or comment on the case(s).

There are no legal disputes concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sex in the main repertoires of case law.

21) If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.

In Italy, two equality bodies were established to implement European directives: the Equality Councillors (*Consigliere di Parità*) and the UNAR. While Equality Councillors deal with preventing and combating gender discrimination, the UNAR deals with discrimination based on race and ethnic origin. In general, these are bodies that have limited powers and mainly deal with alternative

dispute resolution. Equality Councillors are created at the provincial, regional and national levels. Both bodies issue reports on the status of discrimination that are public and available online.

Article 8 of Law no. 125 of 10 April 1991 established the position of Equality Councillors. The law requires Councillors to be present at the national, regional, and provincial levels and to advocate for women's employment rights. The matter was revised by Legislative Decree no. 198 of 2006. The intervention strategy to outlaw discrimination and promote good actions appears to place a significant emphasis on the function of the equality councillors. The Minister of Labour, in coordination with the Minister for Equal Opportunities, appoints the regional and provincial Equality Councillors based on the designation of the institutions that the regions and provinces have designated for this purpose. The Equality Councillors must meet particular competency standards and have extensive knowledge of anti-discrimination laws and the employment of women. The duties of the Equality Councillors are to promote any worthwhile efforts with the goal of upholding the non-discrimination principle and fostering equal opportunities for workers.[111]

In the context of this research, a questionnaire was submitted to the Equality Councillors. The questions covered all aspects of gender discrimination at work and the effective contribution made by equality bodies. Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Only a small number of the answers received are relevant for this research.

The responses reveal a very limited role and power of this figure. Their activity is mainly limited by a lack of resources. In some cases (3 or 4 cases) these bodies have also provided effective assistance in the judicial phase in cases of gender discrimination in the field of care (1 case). Nearly all disputes and controversies did not reach trial.

Regarding the cases of discrimination observed and reported by the office of the National Equality Councillor, please refer to the answer to question 9, above.

22) Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

To answer this issue, please take into account the UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, no. 100; Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, no. 111; the Workers with Family Re-

[111] Ministero del Lavoro e delle Politiche Sociali, "Consigliera Nazionale Parità" (*Pari Opportunità*, 2023) <https://www.lavoro.gov.it/temi-e-priorita/parita-e-pari-opportunita/focus-on/consigliera-nazionale-parita/pagine/default#:~:text=La Consigliera Nazionale di Parità,198%2F2006 e successive modificazioni.> (Accessed September 26, 2023).

sponsibilities Convention, no. 156; the Maternity Protection Convention, no. 183; and the Domestic Workers Convention, no. 189.

At the European level, we refer mainly Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; 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; Directive 2010/41/EU on the application of the principle of equal treatment between men and women who are self-employed.

The care sector in Italy generally complies with international and EU obligations regarding non-discrimination on the basis of sex in employment and social protection. The biggest problems are found in the regulation of domestic workers.

Italy ratified by Law no. 132 of 14 March 1985 the UN Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; by Law no. 186 of 27 July 1956 the ILO Equal Remuneration Convention, no. 100; by Law no. 93 of 06 April 1963 the ILO Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, no. 111; by Law no. 113 of 23 September 2013 the ILO Maternity Protection Convention, no. 183; the ILO Domestic Workers Convention, no. 189 by Law no. 4 of 15 January 2021. Italy has not ratified the ILO Workers with Family Responsibilities Convention, no. 156; however, it has ratified the ILO Violence and Harassment Convention, no. 190 by Law no. 4 of 15 January 2021. Through the Equal Opportunities Code (Legislative Decree no. 198 of 11 April 2006 as amended by Legislative Decree no. 5 of 25 January 2010), Directive 2006/54, Council Directive 79/7/EEC of 19 December 1978 and Directive 2010/41/EU have been implemented.

In order to combat direct and indirect gender discrimination and to ensure legal equality in all spheres of society and the economy, the Equal Opportunities Code (Legislative Decree no. 198 of April 11, 2006, as amended and supplemented) establishes specific regulations with the goal of implementing the principles of European legislation and reforming national law. The first book of the Equal Opportunities Code establishes the prohibition of direct or indirect discrimination and introduces the general principle of equal treatment. The second book of the code concerns instruments aimed at achieving ethical and social equality between men and women. The third book aims to ensure gender equality in economic relations, while the fourth deals with measures to protect political relations.

The most significant provisions of the code, in addition to establishing a general principle of equality, are those that protect equal opportunities at work in the event of maternity or paternity (Article 25(2a) Legislative Decree no. 198 of April 11, 2006) and prohibit wage discrimination (Article 28(1) Legislative Decree no. 198 of April 11, 2006). The legislator puts special emphasis on combating harassment in the workplace by passing a number of restrictive regulations as well as a number of guidelines that support fair treatment.[112]

[112] Frosecchi, "La tutela contro le discriminazioni sul lavoro".

To improve gender equality at work, Law no. 162 of November 5, 2021, was passed. This statute enlarged the definition of direct discrimination by clarifying that it could even happen during the employee selection process. The law expands the list of companies required to create recurring reports on the state of their workforce in an effort to close the gender pay gap. The reform introduces the possibility for enterprises to make a gender equality certification. Enterprises that obtain the certification are rewarded with a waiver of the employer's total social security contributions, with the awarding of an additional score for obtaining funding on national and regional European funds and state aid to co-finance the investments incurred. Moreover, possession of parity certification may result in the award of a bonus score to award contracts for works or services.[113]

All economic sectors, including the care sector, are subject to the Equal Opportunities Code.

However, there are issues with the legislation governing domestic workers' and home caregivers' equal treatment. Although Italy has ratified the Domestic Workers Convention, no. 189, Italian legislation on domestic work has not been updated. Indeed, the law regulating the domestic sector (including home caregivers) is still Law no. 339 of 2 April 1958.[114]

Domestic workers in Italian law have fewer protections in terms of occupational safety and health (OSH), working hours, social security contributions, termination of employment contracts, night work and parental leave, and other work-life balance measures. According to Borelli, the denial of many rights to domestic workers is linked to the need to reduce the cost of care work, which is mostly borne by families and ultimately affects workers.[115]

2. Migrant Status

1) Provide a brief overview of your national legislation on anti-discrimination on the grounds of race or ethnic origin, religion, or belief, in the field of employment or occupation.

Modelled on EU law, Italian labour law provides specific anti-discrimination rules that apply to aspects without a general regulation. [116]

The principle of non-discrimination makes discriminatory acts illegal only when they are contrary to one of the grounds provided for by the legislation, i.e. gender (Legislative Decree no. 198/2006), political opinions and trade union activity (Article 15, Law no. 300 of 20 May 1970), race and ethnic origins (Legislative Decree no. 215 of 9 July 2003), language group and nationality (Article 2(3) and Article 43(2)(e), Consolidated Act on Immigration), religion, belief, disability, age and sexual orientation (Legislative Decree no. 216 of 9 July 2003).

[113] Frosecchi, "La tutela contro le discriminazioni sul lavoro".

[114] Borelli, *Who Care?*, 170.

[115] Borelli, *Who Care?*, 170–71.

[116] Barbera e Guariso, *La tutela antidiscriminatoria*.

Discrimination may be direct or indirect, individual, or collective. Discrimination for purposes permitted by law is considered legitimate (Article 3, para. 4, Legislative Decree no. 215 of 9 July 2003). Discrimination in which the work can only be performed by persons with the protected characteristic if it is proportionate and reasonable is considered legitimate (Article 3, para. 3, Legislative Decree no. 215 of 9 July 2003).

In case of discrimination, Article 28 of Legislative Decree no. 150 of 1 September 2011 provides for a partial reversal of the burden of proof in favour of the worker.

There is little case law on discrimination against migrants, not because of judicial reluctance, but because very few cases have reached courts. This little case law shows the difficulty of intercepting discrimination between individuals (including discrimination at work, for which the prohibition of discrimination has traditionally been born), where the contractual freedom of the individual competes with the principle of equality.

2) Also provide a brief overview of the legislation concerning the rights and duties of "foreigners": third-country nationals in the EU. (by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.) In terms of national legislation on foreigners or migrants, please make a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.

Historically, Italy has been primarily a country of emigration; this is reflected in the Italian Constitution of 1948 (Articles 16(2) of the Constitution). At the same time, only few and generic provisions have been devoted to the right of asylum and the non-nationals' legal status and rights.[117] Conversely, the

[117] Article 10 states that "(2) legal regulation of the status of foreigners conforms to international rules and treaties; [and] (3) foreigners who are, in their own country, denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution, are entitled to the right to asylum under those conditions provided by law." Other pivotal constitutional provisions, nonetheless, contribute to enhancing the national standards of foreigners' rights. In particular, Article 117, through which the EU legislation and international treaties signed by Italy acquire "constitutional relevance"; the "personalist principle" of Article 2, according to which "the Republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity", and the equality clause of Article 3 that forbids unfair discrimination and entrenches substantial equality. And indeed, international conventions and jurisprudence (especially the European Convention on Human Rights (ECHR) and the principle of non-discrimination proclaimed by Article 14 ECHR), equality and the personalist principle have been frequently invoked by the Italian Constitutional Court to secure and extend the fundamental rights of foreigners. In particular, in several decisions the Constitutional Court affirmed that limiting the access to social benefits aimed to satisfy human basic needs only to foreigners with an EC residence permit for long residents entail an "unreasonable discrimination" between Italian citizens and foreigners regularly residing in Italy. See decision of the Constitutional Court no. 187/2010, in which the Court also makes explicit reference to the decisions of the European Court of Human Rights *Gaygusuz v. Austria* 16/09/1996 and *Niedzwieck v. Germania* 25/10/200.5

Constitution has a number of provisions concerning labour rights, which have strongly influenced labour law and its developments. Social rights, recognized in the Constitution alongside civil and political rights, play a fundamental role in enforcing labour-related rights obliging the State to act in favour of workers. Most of these social provisions are limited to the citizens.

Article 4 provides the legal basis for restrictions on the entry of foreign workers in order to protect Italy's national workforce. While confirming the possibility of implementing restrictions on the access of migrant workers (decisions nos. 144/1970 and 54/1979), the Constitutional Court ruled that by virtue of the principle of equality, there can be no restrictions when it comes to protecting fundamental rights (decision no. 249/2010) and "essential social benefits" (e.g., health and healthcare services, cf. decision no. 269/2010).

Interpreting Article 35 of the Constitution, the Constitutional Court granted full equality of treatment between national and non-national workers (decision no 454/1998). With this same reasoning, labour migrants are also granted proportionate and sufficient remuneration (Article 36, Consolidation Act on Immigration), the right to rest and decent working hours, maternity and protections for women and children, social security, trade union rights and enterprise rights.

As far as immigration legislation is concerned, Legislative Decree no. 286 of 25 July 1998 (Consolidation Act on Immigration) is the pivotal piece of legislation in the system that has been constantly and progressively tightened.[118]

Since the 2002, Law no. 189 of 30 July 2002 (*Bossi-Fini*), any new law and regulation in the field of immigration has contributed to the narrowing of access to the country, and making non-nationals legal status increasingly precarious and fragile (see: Law no. 94 of 15 July 2009, Law no. 217 of 17 December 2010; Law no. 46 of 13 April 2017; Law no. 132 of 1 December 2018 and Law no. 77 of 8 August 2019, Decree-Law no. 20 of 10 March 2023 converted into Law no. 50 of 5 May 2023). This process badly impacted labour migration. Indeed, the entry of migrant workers is based on quotas determined annually by law.[119] However, in recent years there has been a drastic decline in the number of work permits issued. Since 2021, a minor inversion of this declining trend occurred. The reduction is complemented with a similarly dramatic increase in

[118] William Chiaromonte, *lavoro e diritti sociali degli stranieri. il governo delle migrazioni economiche in Italia e in Europa* (Torino: Giappichelli, 2013); Michele Colucci, *Storia dell'immigrazione straniera in Italia. Dal 1945 ai giorni nostri* (Roma: Carocci, 2018); William Chiaromonte, Maria Dolores Ferrara e Maura Ranieri, a cura di, *Migranti e lavoro* (Bologna: il Mulino, 2020).

[119] Silvana Sciarra and William Chiaromonte, "Migration Status in Labour Law and Social Security Law," in *Migrants at Work. Immigration and Vulnerability in Labour Law*, edited by Cathryn Costello and Mark Freedland (Oxford: Oxford University Press, 2014); William Chiaromonte, "The Italian Regulation on Labour Migration and the Impact and Possible Impact of Three EU Directives on Labour Migration: Towards a Human Rights-Based Approach?" in *National Effects of the Implementation of EU Directives on Labour Migration from Third Countries,* edited by Roger Blanpain, Frank Hendrickx and Petra Herzfeld Olsson (Alphen aan den Rijn: Kluwer Law International, 2016).

international protection applications, which indicates a distorted use of international protection regimes.[120]

The work permit should be issued in 60 days, provided it does not exceed the annual quota. The work permit being granted, the Consulate of the foreigner's residence or origin country issues an entry visa, and the worker has eight days from her or his arrival in Italy to sign the residence agreement for work reasons at the Sportello Unico. Only after this procedure is completed does the Police Headquarters issue the residence permit for work purposes. The duration of the "residence agreement" cannot exceed nine months for one or more seasonal jobs, one year for a fixed-term employment contract, and two years for a permanent employment contract.

In the event the worker loses his/her job for whatever reason, he/she can register as unemployed to the employment centre for a period that cannot exceed the duration of the residence permit (Article 22(11) Consolidated Act on Immigration). The Law does not provide for the possibility of obtaining a residence permit to actively look for a job; moreover, the complex and lengthy proceedings make it difficult for both job seekers and companies to meet their needs of finding a job on the one hand and ensuring stable workforce on the other.

Beneficiaries of international protection are recognised by unlimited access to the national labour market. On the contrary, asylum applicants are allowed to work only from the sixtieth day from the submission of the application for international protection if the application has not been processed yet and the delay is not due to the applicant. In any case, the residence permits thus granted cannot be converted into a residence permit for work reasons (Article 22, Legislative Decree no. 142 of 18 August 2015).

No specific incentives are provided to access the labour market for: asylum seekers, international protection applicants, refugees, and legal economic migrants (without a long-term residence permit). Furthermore, so far in Italy there has been a lack of specific investment into integration and inclusion programmes, while the relationship between the state and asylum seekers has mainly conformed to welfare assistance types of dynamics.[121]

3) Make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in employment in your country.

Methodological premises:

a) Regarding the presence of employed migrants in Italy we refer to the latest available data, as collected by the Ministry of Labour and ISTAT.

[120] William Chiaromonte, Maria Dolores Ferrara and Francesca Malzani, "The Migration Governance through Labour Law: The Italian Case" *Rivista del Diritto della Sicurezza Sociale* (2019): 367.

[121] Federico Martelloni, "L'accesso al lavoro dei richiedenti e dei titolari di protezione internazionale, tra diritto e prassi," in Chiaromonte, Ferrara e Ranieri, *Migranti e lavoro*.

b) The research unit was unable to identify any report or database offering general information and/or statistics on care workers as understood in the project. The data published by public bodies on the presence of migrant workers in domestic work are aggregated (taking domestic helpers and home caregivers together). Therefore, such data are not useful for the purpose of the project. Conversely, the DOMINA Report[122] is useful to us as it analyses domestic work by distinguishing between domestic helpers and home caregivers. Regarding nurses, we have used the European Union of Cooperatives Uecoop's analysis of OECD data as a point of reference.
c) Regarding health and care workers and basic care workers the research unit did not find any data/statistics.
d) Undocumented migrants are typically not included in official data. However, statistical analyses indicate that a sizeable portion of workers are undeclared or undocumented migrants. The incidence of undocumented work in Italy is estimated to be around 17.2%. For instance, it was determined that 494,899 home caregivers out of an *estimated* total of 946,270 workers are undeclared.[123]

Overall, in 2022, foreign employment amounted to 10.3%. The largest component is represented by the Albanian, Chinese, and Moroccan communities.

In 2022, in personal and collective services, 31.6% of the employed are foreigners; in agriculture, 17.7% of the employed are foreigners; in catering and tourism and in construction the incidence of foreign employees is 17.3% and 15.6% respectively and 15.6%, respectively. In the sectors with the highest incidences of foreign employment, the majority of foreigners have non-EU citizenship: Non-EU employees account for more than 10% in the tourism and catering sector (13.4%) and agriculture (12.4%), while in collective and personal services the incidence rises to 22.6%.

Slightly more than 87% of the foreign employed (2 million), in 2022, have an employee contract; the remaining 12.9% (307,000) have a self-employment contract. Considering the nature of employment, between 2021 and 2022 dependent employment among non-EU foreigners grew both in the permanent component (+5.9%) and in the temporary component (+15.1%). Among EU nationals, over the same period, salaried employment decreased in the permanent component (-2.0%), while it increased slightly for temporary contracts (+0.3%).

The number of self-employed, on the other hand, increases among both EU foreigners (+10.6%) and non-EU citizens (+7.0%).

[122] Osservatorio DOMINA sul Lavoro Domestico. *4° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali.*(2022); Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

[123] INPS, "Statistiche in breve: lavoratori domestici," 68; Fondazione Leone Moressa, *XIII rapporto annuale sull'economia dell'immigrazione "Talenti e competenze nell'Europa del futuro"* (Fondazione Leone Moressa, 2023); Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

The share of employed 15–64-year-olds among non-EU nationals in 2022 is 59.2%, about 1 percentage point below that found among Italians in the same age group (60.1%). Non-EU employment is characterised, however, by much more pronounced gender differences: just under 75% of men with non-EU citizenship are employed; among women, just under 75% are employed; among women, the incidence plummets to 43.6% (-30.7 percentage points). Among employed Italians, the gender differences, although very significant, are less marked: the employment rate for Italian women is 51.5%, some 17 percentage points lower than that of men (68.6%).[124]

Regarding the perception of being victims of discriminations, in 2021 in Italy 835,000 employed persons declare that they feel discriminated against in the workplace, of these 722,000 are Italians, 74,000 are EU foreigners and 40,000 are non-EU foreigners.

The highest percentage of those who feel discriminated against in the workplace is recorded for EU citizens at 5.4%, followed by non-EU citizens at 4.8% and finally by Italians at 3.6%. Gender is a more present reason for discrimination among Italians (33.9%) than among EU foreigners (3.3%) and non-EU foreigners (3.8%), while discrimination on the grounds of foreign origin-religious beliefs involves 91.2% of non-EU foreigners, 87% of those from the EU and 5.6% of Italians.[125]

4) Finally, make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in the care sector in your country.

On the grounds of the statistics available, we can immediately observe the consistent presence of migrant workers in the care sector, especially among homecare givers. However, while the everyday perception would suggest that in the care sector the presence of migrant women is particularly consistent, the databases we were able to access do not allow to scientifically confirm what we can empirically observe.[126]

In 2020, Italy recorded an estimated 3 million undeclared workers, comprising both undocumented migrants and undeclared nationals.[127] This pervasive issue likely extends to the care sector, especially in domestic work. The near absence of administrative oversight in verifying the regularity of employment contracts,

[124] Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, "XIII rapporto annuale: gli stranieri nel mercato del lavoro in Italia" (Ministero del Lavoro e delle Politiche Sociali, 2023) 33–4 <https://www.lavoro.gov.it/temi-e-priorita-immigrazione/focus/sintesi-xiii-rapporto-mdl-stranieri-2023>.

[125] Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*, 44–5.

[126] CENSIS, *56° Rapporto sulla situazione sociale del Paese* (CENSIS, 2022); Claudio de Martino, "Chi bada alle badanti? la specialità del lavoro domestico alla prova del Covid-19," *Giornale di diritto del lavoro e di relazioni industriali* (2021): 53; Sergio Pasquinelli e Francesca Pozzoli, "Badanti dopo la pandemia, quaderno WP3 del Progetto "Time to Care"," (Università di Pavia, 2021); Maria Rosaria Marella e Sveva Stancati, "Donne e migrazioni: il nodo del lavoro di cura," *Genius* (2020): 1.

[127] ISTAT, "L'economia non osservata nei conti nazionali. Anni 2017-2020" (ISTAT, 2022).

compounded by the inherent challenges of monitoring the private-family sphere, suggests that undeclared work is significantly prevalent among home caregivers.

In the public sector, the presence of non-Eu citizens is not relevant, since only Italian and EU citizens can participate to public competitions. However, considering the recurrent use of outsourced labour, via temporary agencies and public procurements, both in hospitals and residencies for elderly, the citizenship requirement can be easily indirectly overcome. Therefore, it would be important to have a collection of data on the presence of immigrant nurses and health carers in the private sector, also as concerns those that are working, in practice, in a public structure.

Overall, the lack, or scarcity, of available data is symptomatic of a lack of attention over the phenomenon of immigrant workers in the care sector, which is even more true in the case of women migrants. Also, the fact that data of health professionals and health carers are collected separately from data on home care givers, while home care givers are included in the domestic work analysis, even if formally consistent with the applicable collective agreement (that is the domestic work collective agreement that provides for the norm that regulate all kind of domestic works), demonstrates a resistance in recognising the peculiar work of home care givers, which, in fact, is analogous to that of health carers in public or private structures, while it is very different from that of a domestic worker or a maid.

Finally, the lack of data that consider the caresector occupations jointly makes it difficult to compare the presence of migrant workers in the various occupations.

5) Have statistics or databases been published in your country on foreigners or immigrants who are part of the personnel providing services in each of these care sector occupations?

(This question includes both EU nationals and third-country nationals in the EU as the object of analysis).

Methodologically, the statistics cited are from multiple sources, and variate depending on the body that issued them, the years considered, and the sample used as a reference. This report favours the most recent statistics and reports available. Consequently, these data do not always refer to 2023.

The National Federation of Nursing Professions, the World Health Organisation (WHO), and the National Institute of Statistics (ISTAT) all have databases that contain information about health professionals. However, data are often aggregated (men and women, Italians, and migrants). The sources consider the years between 2019 and 2023.

In relation to health and care workers and basic care workers, data are not always available. Those that are available come from trade unions, the WHO or research by the National Institute for Public Policy Analysis (INAPP). Data are often aggregated (men and women, Italians, and migrants) and cover a period from 2020 to 2022.

Data on the presence of migrant workers in domestic work are often collected aggregated, i.e. taking all domestic workers together. Data that only consider the work of home caregivers are not always usable. The most important report in relation to the work of home caregivers is the DOMINA 2022 report whose data

are from 2021. This report considers home care workers by merging data both aggregated and disaggregated by occupation, gender and all home care workers.

No report considers health professionals, health and care workers, basic care workers, and home caregivers together. Therefore, the figures refer to the total number of jobs in the domestic sector and the total number of jobs in the health sector, respectively. This is due to the fact that in Italian research, care work is separated into domestic work (home caregivers and domestic workers) and health work (health professionals, health and care workers, and basic care workers).

The table below lists the key databases and links to websites containing reports or data relevant to the research.

Table 3 – Data sources by unit of analysis.

Unit of Analysis	Report and sources			
Health professionals	Elaboration by the European Cooperative Union (Uecoop) on OECD data			
Health and care workers	No data available			
Basic care workers	No data available			
Home caregivers	DOMINA	2023	*Rapporto annuale sul lavoro domestico*	https://www.osservatoriolavorodomestico.it/rapporto-annuale
	Fondazione Leone Moressa	2023	*Rapporto FLM 2023*	http://www.fondazioneleonemoressa.org/2023/09/29/presentazione-rapporto-flm-2023/
	INPS	2023	*Osservatorio lavoratori domestici*	https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464

- *If yes, which care sector occupations are they most employed in?*

It is not possible to make a proper comparison, as the data are not homogeneous and are collected by different institutes, and they appear as follows:

a) Health professionals: According to the Elaboration by the European Cooperative Union (Uecoop) on OECD data, by 2018, the number of foreign nurses in Italian hospitals had grown by +10.4% over the previous 10 years, reaching 22,232. The population of foreign health workers accounts for 5% of the total nursing workforce and is made up of more than half of immigrants from Eastern countries, such as Romanians (11,204), Poles (2,374), and Albanians (1,032), while the other most represented communities include Indians (1,399) and Peruvians (1,080). On the other hand, the "migrants in the ward" arriving from African countries number 433, less than 2% of the total number of employees arriving from abroad.[128]

[128] Ivana Veronese, "Sanità, cresce il numero degli infermieri immigrati negli ospedali italiani," *UIL* (Roma, 27 July 2018) <https://www.uil.it/UfficioStampa/comunicatistampa.asp?ID_NEWS_SX=9622> (Accessed September 26, 2023);*La Repubblica*, "Sanità, cresce il numero

b) Health and care workers: No data available.
c) Basic care workers: No data available.
d) Home caregivers: According to INPS data, 429,426 home caregivers worked in Italy in the year 2022, broken down by origin as follows: Italy (117,309); Western Europe (1,790); Eastern Europe (124,666); North America (123); Central America (8,822); South America 35,550; Middle East Asia (5,574); Philippines (54,981); East Asia (44,212); North Africa (21,571); South Central Africa (12,235); Oceania (75).[129]

- *If there are statistics or databases, do these establish the "nationality" or origin of foreign personnel providing services in these sectors? What nationalities are predominant?*

  See the previous answer.

- *Do databases also distinguish by gender? If yes, please describe what the statistics show.*

There are no databases for any of the 4 units of analysis (i.e. health professionals, health and care workers, basic care workers, home caregivers), which distinguish data by gender. Only DOMINA Report presents some data on female workers; however, these data are not relevant as they consider all domestic workers and not only home caregivers.[130]

- *Do databases exist for each of the occupations, with a distinction between labour migrants, refugees, and other categories of foreigners or migrants?*

There are no databases for any of the 4 units of analysis (i.e. health professionals, health and care workers, basic care workers, home caregivers), which distinguish between labour migrants, refugees, and other categories of foreigners.

The INPS distinguishes between national, EU and non-EU domestic workers.[131]

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  Normally, reports and databases present aggregated data on a national basis.

degli infermieri immigrati negli ospedali italiani," *La Repubblica*, 23 July 2018, <https://www.repubblica.it/solidarieta/immigrazione/2018/07/23/news/sanita_-202469824/> (Accessed September 26, 2023).

[129] INPS, "Statistiche in Breve: Lavoratori Domestici".

[130] INPS, "Cittadini stranieri per condizione prevalente" (*Osservatorio sugli stranieri*, 2023) <https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464> (Accessed September 26, 2023); INPS, "Lavoratori Domestici" (*Osservatorio sui lavoratori domestici*, 2023) <https://servizi2.inps.it/servizi/osservatoristatistici/12> (Accessed September 26, 2023); INPS, "Statistiche in breve: lavoratori domestici"; Fondazione Leone Moressa, *XIII rapporto annuale sull'economia dell'immigrazione*; Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*; Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

[131] INPS, "Cittadini Stranieri per Condizione Prevalente".

- *these databases public and freely accessible to everyone, or only to researchers?*

  Databases and reports are public and freely available.

- *If published databases exist, please provide links and/or how to request them.*

Table 4 – Publicly available databases and reports (links).

Author	Year	Title	Link
DOMINA	2023	*Rapporto annuale sul lavoro domestico*	https://www.osservatoriolavorodomestico.it/rapporto-annuale
Fondazione Leone Moressa	2023	*Rapporto FLM 2023*	http://www.fondazioneleonemoressa.org/2023/09/29/presentazione-rapporto-flm-2023/
INPS	2023	*Cittadini stranieri per condizione prevalente - Osservatorio sugli stranieri*	https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464
INPS	2023	*Statistiche in breve: Lavoratori Domestici*	https://servizi2.inps.it/servizi/osservatoristatistici/api/getAllegato/?idAllegato=1013
INPS	2023	*Osservatorio lavoratori domestici*	https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464
ISTAT	2023	*Personale sanitario*	http://dati.istat.it/Index.aspx?QueryId=31546
ISTAT	2023	*Stranieri e naturalizzati nel mercato del lavoro italiano*	https://www.istat.it/it/files//2023/02/Focus_stranieri-e-naturalizzati-nel-mondo-del-lavoro.pdf

6) Describe any statistics or databases you have encountered:

- *Describe what these statistics show in relation to the nationality of the person working in the care sector and, if applicable, in relation to the gender by nationality of these staff.*

  Please, refer to the answer to question 4 on migrants.

- *If you have found statistics or databases, please describe whether these show a distinction between general migrants, refugees, or other categories of migrants?*

  The research unit did not find any relevant databases or reports.

7) Have statistics or databases been published on people working in the care sector, whether nationals of your country, EU, or non-EU nationals, differentiating them by race or ethnic origin, religion, or language?

(This question concerns both nationals of the country, EU nationals and third-country nationals in the EU.)

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

The research unit was unable to find any databases or reports that contained information on care workers that was broken down by language, religion, or ethnicity. The research unit points out that such a division could conflict with equal treatment legislation.

8) Describe what statistics or databases you have found, i.e., summarise and comment on the data found on participation in the care sector by workers on the basis of race or ethnicity, religion, and language.

The research unit was unable to find any databases or reports that contained information on care workers that was broken down by language, religion, or ethnicity. The research unit points out that such a division could conflict with equal treatment legislation.

9) Have there been any legal disputes or conflicts publicised by the media about the race or ethnicity, religion or language of staff providing services in the care sector? If so, please describe the situation and the solutions provided.

The research unit was unable to locate any legal dispute involving racial, religious, or linguistic discrimination.

However, cases of discrimination without a court's ruling were publicised in the media.[132]

10) Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?

(This question refers to third country nationals of the EU).

- *Do databases exist for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?*
- *Do you know whether these statistics or databases distinguish between work migrants, refugees, or other categories of foreigners or migrants?*
- *Do these databases also distinguish by gender?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*

[132] *La Repubblica*, "Agenzia cerca badante "non di colore". La Protesta Dell'Anpi," *La Repubblica* 6 July, 2020, <https://www.repubblica.it/cronaca/2020/07/06/news/agenzia_cerca_badante_non_di_colore_protesta_l_anpi-261098954/> (Accessed September 26, 2023); Luca Petermaier, "badanti, c'è ancora razzismo. e il caporalato rimane realtà," *Il Trentino*, 18 October, 2019.

- *If published databases exist, please provide links and/or how to request them.*

The DOMINA Report only provides general data regarding undeclared labour in the home care sector (See response to question 3 on migrant, letter d).

11) Describe or comment on any statistics or databases you have found regarding the participation of migrant workers in the care sector in either the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them.

Please refer to the answer to question 3 letter d on migration for a comment on this subject.

12) Have any statistics or databases been published in your country on the possible presence of "undocumented" or "irregular" immigrants (without authorisation to reside or work in your country) who may be providing services in care occupations?

(This question refers to third country nationals of the EU)

- *Do these databases also distinguish by gender?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*
- *Comment on any statistics or databases you have found regarding the participation of irregular or regular migrants in the care sector. Where statistics have been found which differentiate by gender, please comment on the data.*

The research unit was unable to identify data or statistics on the presence of undocumented migrants working as health professionals, health and care workers, basic care workers.

The DOMINA Report[133] only provides general data regarding undeclared labour in the home care sector (please refer to the answer to question 3 letter d on migration for a comment on this subject).

13) Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If yes, please describe them. Also indicate if this sector is understaffed (Are there staff shortages in the sector?).

(This question refers to third country nationals of the EU).

In Italy, at least three types of measures have been taken in recent years to facilitate access to work of migrants in the care sector.

Article 27, paragraph 1, letter r-*bis* of the Consolidated Act on Immigration provides that "professional nurses employed in public and private healthcare

[133] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico: analisi, statistiche, trend nazionali e locali* (2023).

facilities" can enter Italy without having to fall within the quotas set annually by the State (in this context, this is referred to as "out-of-quota" and therefore facilitated, entries into the labour market). Workers who entered Italy "outside the quotas", unlike those who instead followed the procedure set forth in Article 22 of the Consolidated Act on Immigration, remain bound, in the performance of their work, to the qualification by virtue of which they were initially allowed entry.[134]

Secondly, in 2020, following the outbreak of the COVID-19 pandemic, the Italian legislator launched a complex regularisation procedure to encourage the emergence of irregular employment relationships with migrants (Article 103 of Decree-Law no. 34/2020, converted into Law no. 77/2020).[135] This regularisation procedure was limited to only three economic and production sectors: agriculture, personal care for oneself or for family members, even if not cohabiting, suffering from pathologies or handicaps that limit their self-sufficiency, and finally, domestic work to support family needs. Again, the aim was not so much to encourage new entries of migrants into the labour market, but rather to regularise the situation of those who were already working illegally in this sector.

Third, the decree of the President of the Council of Ministers on the "Planning of flows of legal entry into Italy of foreign workers for the three-year period 2023–2025" increased the quotas of workers who will be able to enter Italy regularly for work reasons and extended the professional categories and production sectors involved.[136] In particular, a total of 452,000 new entries are expected over the three-year period (136,000 for 2023, 151,000 for 2024 and 165,000 for 2025), compared to an identified need of 833,000 (274,800 for 2023, 277,600 for 2024 and 280,600 for 2025). In addition to this, new professional categories are added to the sectors addressed by the decree establishing the number of workers admitted to work in Italy in 2022:[137] it will be possible, in fact, to apply for entry into Italy, among others, for the family and sociomedical assistance sector.[138] In relation to the latter sector, the number of planned entries, equal to 9,500 units for each of the three years covered by the programme, seems largely insufficient to meet the care needs of Italian families, given that, according to a recent study, the sector would require between 57,000 and 68,000 migrant workers in the three-year period 2023–2025.[139]

[134] William Chiaromonte, "Sub Artt. 5-7, 21-27 Sexies d.Lgs. 25 Luglio 1998, n. 286 (Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero)," in *Codice commentato del lavoro,* edited by Riccardo Del Punta et al. (Alphen aan den Rijn: Wolters Kluwer, 2020).

[135] Chiaromonte e D'Onghia, "Migranti, lavoro e pandemia".

[136] Decree of the President of the Council of Ministers of 27 September 2023.

[137] Decree of the President of the Council of Ministers of 29 December 2022.

[138] William Chiaromonte, "Una lettura giuslavoristica del d.l. 20/2023: le inadeguate politiche migratorie del governo Meloni," *Giornale di diritto del lavoro e di relazioni industriali* (2023).

[139] Fabio Massimo Rottino e Luca Di Sciullo, "Il bisogno aggiuntivo di manodopera straniera nel comparto domestico. stima e prospettive" (Centro Studi e Ricerche Idos, 2023).

Despite the adoption of these measures, there is still a shortage of staff in the care work sector.

14) Describe whether migrants with residence and work authorisation have the same labour rights as other "national" workers in the care sector.

(This question refers to third-country nationals in the EU.)

Take into account the provisions of European law, according to which third-country national workers enjoy equal treatment with workers who are nationals of the Member State in working conditions or Social Security (Article 12 of Directive 2011/98/EU, of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State). Also, if your country has ratified them, ILO Conventions no. 97 (Revised) on migrant workers, 1949; and Convention no. 143 on migrant workers, 197.

Upon entry into the national territory and authorisation to work in Italy, migrants are entitled to the protection of labour rights, encompassing "all its forms and applications" (Article 35(1) of the Constitution), alongside other constitutional guarantees delineated in Articles 35–40 and legislative provisions favouring workers irrespective of nationality. The principle of equal treatment in labour matters mandates that migrant workers, possessing residence permits and work authorization, receive parity with Italian and European counterparts. This principle is echoed in Article 2(3) of the Consolidated Act on Immigration, extending to the realm of care work.

However, it is essential to clarify the complex application of this principle with regard to migrant workers' access to social security. These considerations apply to all migrant workers, including those working in the care sector.

Despite the long and rich catalogue of national and supranational regulations enforcing the principle of equal treatment between Italian and EU citizens and extra-EU nationals concerning access to social security benefits, the most recent legislation has introduced the condition of residence. This means that welfare benefits may be reserved for those who can prove they have resided for a certain period in each region or in the country. This kind of condition, while not directly discriminatory, can generate indirect prejudice to foreigners' interests.[140]

Similar criteria govern anti-poverty measures, such as the basic income outlined in Law no. 26 of 2019, repealed in 2023. This initiative is aimed at impoverished Italians, EU citizens and third-country nationals with a long-term residence permit, conditional on at least ten years of residence, the last two of which have been continuous in Italy.

[140] William Chiaromonte e Alberto Guariso, "Discriminazioni e Welfare," in Barbera e Guariso, *La tutela antidiscriminatoria*; Alessandro Garilli, "la sicurezza sociale degli immigrati: alla ricerca della solidarietà perduta," *Rivista del diritto della sicurezza sociale* (2020): 247; Maura Ranieri, "La tutela assistenziale dei migranti," in Chiaromonte, Ferrara e Ranieri, *Migranti e lavoro*; Erik Longo, "L'eguaglianza alla prova delle migrazioni: la giurisprudenza costituzionale sulle prestazioni sociali a favore degli stranieri residenti," *Diritto immigrazione e cittadinanza* (2022): 205.

The Constitutional Court's stance on this matter lacks unanimity. The Court distinguishes between services addressing fundamental rights and basic needs, which should remain unaffected by long-term residency requirements, and non-essential services subject to reasonable restrictions. The Court has frequently invalidated laws imposing residency conditions exclusively on foreigners to access services, deeming them unconstitutional (e.g., cases no. 61/2011, 2/2013, 4/2013, 133/2013, 172/2013, 106/2018, 107/2018, 166/2018, and more recently, case 54/2022, which references Article 34 of the Charter of Fundamental Rights of the European Union, as cited in Article 12 of Directive 2011/98).

When services exceed the notion of essential needs, the Court takes into exam, case by case, the existence of a reasonable correlation between the service and the residence requirement. Usually, the Court has considered in breach of the Constitution the requirement of qualified residence when it concerns foreigners exclusively, who are requested by the law to prove the regularity of their permanence in the country to benefit from a given service (*inter alia*, judgments no. 61/2011, 2/2013, 4/2013, 133/2013, 172/2013, 106/2018, 107/2018, 166/2018; more recently, see the important Judgement 54/2022, which also recalls Article 34 of the Charter of Fundamental Rights of the European Union, as referred to in Article 12 of Directive 2011/98).[141]

When the residence requirement concerns both nationals and foreigners, in some cases the Courts has qualified the condition as indirect discrimination, especially if it has an unequal impact on foreigners (judgments no. 168/2014, 172/2013, 107/2018). In other cases, the residence condition has been judged as in line with the constitutional principles (*inter alia*, judgments no. 222/2013, 141/2014, 50/2019).

15) Do the "labour" legislation (i.e., on working conditions) or, if applicable, collective agreements in your country, make any reference to the migrant or foreigner status of the person working in each of these care sector occupations?

(This question refers to third country nationals of the EU).

According to Article 2 of the Consolidated Act on Immigration (Legislative Decree no. 286 of 25 July 1998), the principle of equal treatment prohibits any distinction in treatment between Italian and foreign workers.

However, some measures have been taken in recent years to facilitate access to work of migrants in the care sector.

Article 27(1)(r-bis) of the Consolidated Act on Immigration provides that "professional nurses employed in public and private healthcare facilities" are exempt from the State's annual quota requirements and are therefore eligible to enter Italy (in this context, we refer to "out-of-quota" and "thereby facilitated" entries into the labour market).

[141] William Chiaromonte, "L'estensione agli stranieri degli assegni di natalità e maternità: la consulta chiude il cerchio del dialogo fra corti massimizzando le tutele," *Argomenti di diritto del lavoro* (2022): 733.

Workers who entered Italy "outside the quotas", unlike those who instead followed the procedure set forth in art. 22 of the Consolidated Act on Immigration, remain bound, in the performance of their work, to the qualification by virtue of which they were initially allowed entry.[142]

To address irregular employment relationships involving migrants, the Italian legislator established a difficult regularisation procedure in 2020 as a result of the pandemic emergency (Article 103 of Decree-Law no. 34/2020, converted into Law no. 77/2020).

16) Have there been any court rulings on this matter? If so, please summarise or comment on them.

Despite referring to the Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull'immigrazione* or ASGI) database, which compiles all immigration case law, the research unit was unable to locate any pertinent legal cases.[143]

17) Does the legislation on foreigners or immigration in your country (e.g., on residence or work permits, family reunification, permit renewal, etc.) specifically mention people working in one of these care sector occupations? Have there been any court rulings on this matter? If so, please summarise or comment on them.

(This question refers to third-country nationals in the EU).

In Italy a first example of legislation on foreigners or immigration that specifically mentions people working in a care sector occupation refers to the entry of "out-of-quota" foreigners. As we have seen (see retro, answers to the question 15), the entry of migrant workers is based on quotas determined annually by law.[144] In certain hypotheses peremptorily provided for by the Consolidated Act on Immigration, however, it is possible for foreigners to enter Italy for work purposes regardless of these quotas. The categories exempted from the quotas are peremptorily listed in Article 27, which in paragraph 1, letter r-bis, refers to the category of "professional nurses employed in public and private healthcare facilities".

A second example refers to the regularisation procedure of irregular migrant workers initiated in 2020.[145] This procedure expressly refers to "workers" working in the two sectors that are relevant for the purposes of this study - personal care for oneself or for family members, even if not cohabiting, suffering from pathologies or handicaps that limit their self-sufficiency, and domestic work to support family needs - allowing them access to regularisation measures.

A third example refers to the express provision of the possibility of requesting entry into Italy - within the framework of the planning of legal entry flows

[142] Chiaromonte, "Sub Artt. 5-7, 21-27 Sexies d.Lgs. 25 Luglio 1998, n. 286".

[143] ASGI. "Giurisprudenza" (Banca dati, 2023), <https://www.asgi.it/banca-dati/> (Accessed 16 October 2023).

[144] William Chiaromonte, "Sub Artt. 5-7, 21-27 Sexies d.Lgs. 25 Luglio 1998, n. 286".

[145] Chiaromonte e D'Onghia, "Migranti, lavoro e pandemia".

of foreign workers into Italy for the three-year period 2023–2025 –[146] also to work in the family and sociomedical assistance sector.[147]

18) Do migrants with the corresponding residency permit and authorisation to work in the care sector (in each of these occupations) have access to the same rights as other workers in other production sectors?

(This question refers to third-country nationals in the EU).

Any difference in treatment between Italian and foreign workers is excluded in accordance with the principle of equal treatment laid down in Article 2 of the Consolidated Act on Immigration (Legislative Decree no. 286 of 25 July 1998), so migrants with the corresponding residency permit and authorisation to work in the care sector have access to the same rights as other workers.

19) Have there been any court rulings on this matter? If so, please summarise or comment on them.

Despite referring to the Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull'immigrazione* or ASGI) database, which compiles all immigration case law, the research unit was unable to locate any pertinent legal cases.[148]

20) Have there been any collective bargaining provisions to favour the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnic origin, etc.?

(This question refers to third-country nationals in the EU).

In a small number of collective agreements there are provisions to facilitate visits of migrant workers to their country of origin.

Some contracts—as National collective agreement (CCNL) for non-medical staff employed by IRCCSs and hospital health facilities registered with Aiop and Aris (*CCNL per il personale non medico dipendente degli IRCCS e delle strutture sanitarie ospedaliere iscritte ad Aiop e Aris*) signed by AIOP, ARIS, CGIL, CISL and UIL (T011)—may provide that the migrant worker can request a continuous period of holidays to return temporarily to his/her home country, but in many cases the employer is entitled to refuse.

For the same reason, other collective contracts - as CCNL for employees of nursing homes, analysis centres, outpatient clinics (*CCNL per i dipendenti di case di cura, centri analisi, poliambulatori)* signed by ANPIT, CIDEC, PMI Italia, CISAL and others (T09E) provide that migrant workers can use more days of holidays than what they have accrued (negative balance holidays).

[146] Decree of the President of the Council of Ministers of 29 December 2022.

[147] Chiaromonte, "Una lettura giuslavoristica del d.l. 20/2023," 431.

[148] ASGI. "Giurisprudenza" (Banca dati, 2023), <https://www.asgi.it/banca-dati/> (Accessed 16 October 2023).

Furthermore, some collective agreements - as the already mentioned contract T011 - provide that migrant workers can apply for 1 day of leave specifically in order to carry out the procedures for the renewal of the residence permit.

21) Do you know if there have been any conflicts publicised by media between migrant workers of the care sector and the people they care for in terms of non-discrimination on the basis of ethnicity, religion, or nationality? If so, please explain.

(This question refers to third-country nationals in the EU).

In relation to discrimination on the basis of ethnicity, religion or nationality, the research unit did not find any specific cases. However, there are numerous articles in the media in which discrimination against care workers emerges.[149]

As the research unit did not find any case law in the legal databases on ethnic, national and religious discrimination of migrant care workers, it submitted a questionnaire to the Italian equality bodies (i.e. the Equality Councillors) to investigate whether they collected complaints of discrimination by care workers that had not made it to court.

Out of a sample of 114 Equality Councillors, 19.38% (17 Councillors) responded. Among the responses received, only 1 councillor stated that she had assisted female workers who were discriminated against at the intersectional level at work on ethnic and gender grounds. However, in compliance with privacy legislation, the Councillor has not disclosed any data relating to this dispute.

The responses from the National Equality Councillor in preparation to the Italian National Stakeholder Meeting shed light on instances of intersectional discrimination faced by female social and care workers in Tuscany, where factors such as gender, skin colour, or religion intersect to exacerbate inequality. These issues were confirmed by trade unions and civil society organisations during the Italian National Stakeholder Meeting.[150]

22) Have any statistics or databases been published in your country on migrant workers' salaries in the care sector?

(This question refers to third-country nationals in the EU).

In Italy, there are some reports on the wage level of care workers. The 3 key reports on migrant workers' conditions are:

[149] ASGI. "Giurisprudenza" (Banca dati, 2023), <https://www.asgi.it/banca-dati/> (Accessed 16 October 2023); Michele Varì, "Insulti razzisti a una badante sul lungomare di chiavari, denunciata turista," *Il Secolo XIX* (Genova, 2018) <https://www.ilsecoloxix.it/levante/2018/08/29/news/insulti-razzisti-a-una-badante-sul-lungomare-di-chiavari-denunciata-turista-1.30535008> (Accessed September 26, 2023); ACLI Colf, "Colf e discriminazione razziale: cosa accade a Treviso?" *ACLI Treviso* (Treviso, 2018) <https://www.aclitreviso.it/notizie/item/826-colf-e-discriminazione-razziale-cosa-accade-a-treviso.html> (Accessed 16 January 2024); *La Repubblica*, "Badanti, Il Rischio è Lo Sfruttamento" *La Repubblica, Metropoli* (2008) <https://temi.repubblica.it/metropoli-online/badanti-il-rischio-lo-sfruttamento/> (Accessed September 26, 2023).

[150] Consigliera Nazionale di Parità, "Responses to the Questionnaire"; CARE4CARE, "Minutes of the Italian National Stakeholders Meeting".

- *XIII Rapporto annuale: Gli stranieri nel mercato del lavoro italiano* (Annual report on foreigners in the Italian labour market).[151]
- *XIII Rapporto annuale sull'economia dell'immigrazione "Talenti e competenze nell'Europa del futuro"* (Annual report on the economics of immigration).[152]
- *5° Rapporto annuale DOMINA sul lavoro domestico: Analisi, statistiche, tendenze nazionali e locali* (DOMINA Report).[153]

The first report provides comprehensive coverage of the four analytical units (health professionals, health and care workers, basic care workers, and home carers). This report presents aggregated data at national level and is accessible to everyone. The Report presents data regarding the generality of immigrant workers.

Only home caregivers and domestic workers are covered by the DOMINA Report.

The Ministry of Labour and Social Policies publishes useful information and data on migrant employment on the page *Integrazionemigranti.gov.it - Vivere e lavorare in Italia*. However, this information is often elaborations of ISTAT or INPS data or taken from the Annual Report on Foreigners in the Italian Labour Market.

- *Have any statistics or databases been published in your country on the occupational classification of migrant workers in the care sector?*

The only database on occupational classification is the one published by INPS. However, this database only concerns domestic workers and workers who fall under the legal categories provided for in Article 2095 of the Civil Code (manual workers, clerical workers, middle managers and directors), which are not relevant for care workers.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

  The INPS database presents aggregated data at national level.

- *Are these databases public and freely accessible to everyone, or only to researchers?*

  The INPS database is freely accessible to everyone.

- *If published databases exist, please provide links and/or how to request them.*

Author	Year	Title	Link
INPS	2023	*Cittadini stranieri per condizione prevalente*	<https://servizi2.inps.it/servizi/osservatoristatistici/1059/o/464>

[151] Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*.

[152] Fondazione Leone Moressa, *XIII rapporto annuale sull'economia dell'immigrazione*.

[153] Osservatorio DOMINA sul Lavoro Domestico, *5° Rapporto annuale sul lavoro domestico*, 71 ff.

23) If you have found statistics or databases, please describe what they show in relation to the job classification and wages of migrant workers in the care sector.

According to the XIII Annual Report on Foreigners in the Italian Labour Market, the average annual wage for non-EU workers in 2022 is 31% lower than the average wage for all workers, amounting to 15,707 euros for the former and 23,688 euros for the latter. While this report provides aggregated national-level data and is accessible to the public, there are no specific statistics available on the salaries of migrant workers in the healthcare sector.[154]

However, the same report offers insights into the wages of migrant domestic workers. In 2022, their average annual salary was 11.7 per cent higher than that of most workers, totalling 7,945 euros for domestic workers compared to 7,110 euros for others. The report notes that this disparity could be attributed to the higher number of hours worked per week by domestic workers.

Overall, the wages of Italian and immigrant domestic workers are relatively equal but remain quite low.

24) Are migrants in an undocumented situation (without authorisation to reside or work) entitled to employment rights when working in the care sector in your country? Please outline your views on this issue.

(This question refers to third-country nationals in the EU).

In Italy undocumented migrant workers enjoy certain labour rights. Article 2126 of the Civil Code stipulates that the effects of work performed in violation of the law by an undocumented worker, including those employed in care work, are preserved.

As a result, the employer is required to pay the wage, contributions, and taxes that he would have had to pay in the case of regular employment, presuming the connection lasted at least three months.

25) Have there been any court rulings on this matter? If so, please summarise or comment on them.

Regarding the rights of irregular non-EU workers, the Supreme Court of Cassation issued decision no. 7380 of 26 March 2010 establishing that the employer is always obliged to pay social security contributions, even if already subject to a criminal sanction.

Indeed, on the matter of work performed by a non-EU worker without a residence permit, the Supreme Court ruled that the application of the relevant criminal sanction does not exonerate the employer from the obligation to pay contributions to INPS in relation to the wages due.

By virtue of the joint reading of Article 2126 of the Civil Code together with Article 22 of Legislative Decree no. 286 of 25 July 1998, the obligation to pay contributions is an automatic consequence of the obligation to pay wages that subsists even when the migrant workers is undocumented.

[154] Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *XIII Rapporto Annuale*.

26) With the onset of the COVID-19 pandemic, Were any (structural or extraordinary) measures adopted by the State to allow "undocumented" foreign personnel to obtain residence or work permit, both structural and extraordinary?

(This question refers to third-country nationals in the EU).

There is a high prevalence of irregular migrant workers in the productive sectors that continued to operate throughout all phases of the pandemic. According to the Directorate-General for Immigration and Integration Policies' 10th Report, in the domestic and personal care sector in 2019, 48.3% of the workforce was non-national (primarily non-European),[155] and the irregularity rate was 58.8%, which amounted to roughly 900,000 workers without a contract.[156] Regular employment links in the domestic and care industries have significantly decreased. In particular, the National Association of Domestic Employers (Assindatcolf) calculated that from March to June 2020, there were almost 13,000 fewer employment contracts.[157]

The Italian Government has introduced the measure of regularisation of irregular workers on the territory within a "double amnesty", contained in the broader Decree-Law of 19 May 2020 (*Decreto Rilancio*), which provides for extraordinary measures to deal with the COVID-19 epidemiological emergency.

Article 103, Decree-Law no. 34/2020 established a dual regularisation method for the emergence of atypical employment relationships and the regularisation of workers who are atypically present on the national territory. The procedure was limited to a period of time ranging from 1 June 2020 to 15 July 2020, extended until 15 August 2020 and concerned, among others, precisely personal care activities and domestic work (Article 103, para. 3).

Three different types of regularisations were accessible through the two mechanisms outlined in Article 103 of Law Decree no. 34/2020:

1) signing a new employment contract with foreign nationals already residing in the country, regardless of the regularity or irregularity of their presence.
2) regularising existing employment relationships to the benefit of both foreign nationals and Italian citizens; and
3) obtaining a six-month residence permit for foreign nationals. A total of 207,870 applications for the regularisation of labour relations and 12,986 applications for temporary residence permits were reported in the Ministry of the Interior's updated data as of May 20, 2021.[158]

[155] Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, *X Rapporto Annuale: gli stranieri nel mercato del lavoro in Italia* (Ministero del Lavoro e delle Politiche Sociali, 2020), 96.

[156] *Il Sole 24 ORE*, "Il lavoro irregolare in agricoltura e domestico, elaborata sulla base dei dati ISTAT e IDOS relativi al lavoro irregolare per regione" (2010).

[157] IDOS, "Dossier Statistico Immigrazione 2020" (2020), 9.

[158] Ministero dell'Interno, "Emersione dei rapporti di lavoro: presentate più di 207mila domande" (2020) <https://www.interno.gov.it/it/notizie/emersione-dei-rapporti-lavoro-presentate-piu-207mila-domande> (Accessed September 26, 2023).

Many employers chose not to declare undeclared employment relationships, citing interpretive difficulties and the vagueness of the legal framework. In light of the significant uncertainty surrounding regularisation, they frequently deemed the associated costs and obligations disproportionate. Less than one-fifth (207,870) of the estimated 1 million irregular workers in the two industries covered by the amnesty appear to have applied, which seems to support what has been said.

According to the Ministry of the Interior, the domestic and care sector accounted for 85% of applications (almost 177,000).[159] The reason for this can be attributed to the fact that employment relationships are marked by a higher fiduciary relationship between the employer and the employee and that contracts often have a longer life, allowing the expense of the procedure to be amortised.[160]

27) From the onset of the COVID-19 pandemic to the present day, have measures been taken by the State to allow "undocumented" foreign personnel providing services "in the care sector" to obtain residence or work permits?

The regularisation procedure provided for by Article 103(2) of Law no. 34 of 10 February 2021 concerns the issuance of residency or work permits to undocumented migrant workers. In this case, the procedure was simplified because the applicant could submit the application in person to the Immigration Office of the territorially competent Central Police Headquarters, which is the only body in charge of both the preliminary investigation phase and the issuance of the residency permit.

However, access to the procedure was restricted to non-nationals "with a residence permit that expired on 31 October 2019, which has not been renewed or converted into another residence permit." In essence, only foreign nationals who met the following criteria were eligible to apply for regularisation: a) those who were legally residing on State territory as of October 31, 2019, but whose visa had expired or had not been renewed; b) those who had been present continuously in Italy as of March 8, 2020; and c) those who worked in the fields of agriculture, domestic work and care work.

The number of regularisation applications submitted was far lower than the estimated number of irregular migrant working in the sectors; out of approximately 480,000 workers potentially involved, only 12,986 applications were submitted. the low number of applications might be attributed to the procedure's stringent eligibility conditions. Above all, the National Labour Inspectorate's documentation of prior labour experiences in caregiving, domestic work, and agriculture. For individuals who work in the informal economy, this proof was impossible. As a result, the measure's intended beneficiaries — informal, undocumented migrant workers — were not eligible to seek for a residence permit.

[159] Ministero dell'Interno, "Emersione dei rapporti di lavoro".

[160] Elisa Gonnelli, "La regolarizzazione dei lavoratori migranti come intervento straordinario per far fronte all'emergenza sanitaria da Covid-19," *Labour & Law Issues* 7 (2021): 32.

28) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of migrant workers in the care sector? If yes, please describe this report.

(This question refers to third-country nationals in the EU).

The Italian government has entrusted UNAR with the responsibility for upholding everyone's right to equal treatment, regardless of their age, gender, race, religion, sexual orientation, or identity, or disability status. The Office was established in 2003 (Legislative Decree no. 215 of 9 July 2003) following an EU directive (no. 2000/43/EC), which requires each Member State to activate a body specifically dedicated to combating forms of discrimination. In particular, UNAR is responsible for monitoring causes and phenomena related to all types of discrimination, studying possible solutions, promoting a culture of respect for human rights and equal opportunities and providing concrete assistance to victims.[161]

UNAR has not taken any actions or produced any reports in relation to the rights of migrant workers in the care sector.

29) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of people, whatever their nationality, working in the care sector? If yes, please describe this report.

(This question concerns both nationals of the country, EU nationals and third-country nationals in the EU).

UNAR has not taken any action or produced any reports concerning the rights of people, regardless of their nationality, working in the care sector.

Regarding other activities undertaken to monitor racial, ethnic or religious discrimination, the 2023 report by the Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull'immigrazione* or ASGI) on institutional forms of discrimination is worth noting.[162] The report offers a comprehensive examination of institutional discrimination, delving into its historical roots and contemporary implications related to welfare accessibility. It explores both the legal and socio-economic dimensions, examining inequalities in access to welfare benefits and services, such as citizenship income, universal child benefit, access to housing and various other forms of inequity. The aim is to explore the causes and repercussions of these discriminatory practices, highlighting cases of anti-discriminatory promotion and the consequent implications of such initiatives.

[161] UNAR, "Che cos'è l'Ufficio Nazionale Antidiscriminazioni Razziali" (2023), <https://www.unar.it/portale/che-cos-e-unar> (Accessed September 26, 2023).

[162] L.A.W. - Leverage the Access to Welfare, "Quando discriminano le istituzioni: uguaglianza, diritti sociali, immigrazione" (ASGI, 2023).

30) Comment whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Comment whether the worker's employer (including migrant workers) can be held responsible for such situations.

(This question concerns both nationals of the country, EU nationals and third-country nationals in the EU).

Regarding the subject of sexual harassment, harassment, and discrimination against migrant women at work, please refer to answer 15 on gender.

It is noteworthy that Italian law fails to include any specific provisions for multiple or intersectional discrimination.

31) Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with regard to undocumented or irregular migrant workers (without residence authorisation). Comment on whether in these cases migrants in an irregular situation can denounce or have access to the courts in cases of exploitation and labour exploitation. Also, whether there are cases in the legislation in which they can obtain a residence authorisation.

(This question refers to third-country nationals in the EU).

To answer this issue, please take into account the Directive 2009/52/EU of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Article 22, para. 12 of the Consolidated Law on Immigration imposes criminal sanctions on the employer "who employs foreign workers without a residence permit […], or whose permit has expired and whose renewal, has not been requested by law, or has been revoked or cancelled". Legislative Decree no. 109/2012 provides for the extension of criminal liability to legal persons who are responsible for facilitation of illegal immigration (Article 12, Consolidated Law on Immigration).

Moreover, Article 22, para. 5 *bis* of the Consolidated Law on Immigration authorises the *Sportello Unico* for immigration to refuse the authorization to work to any employer who in the last five years has been convicted for facilitating illegal immigration or emigration, or for crimes related to the recruitment of persons for the purpose of (the exploitation of) prostitution or of minors.

The employer must pay the irregular foreign worker the full wages and social contributions provided for lawful employment for a minimum period of three months, unless the employer or the employee prove otherwise (Article 3, Legislative Decree no. 109/2012). However, due to the undesirable consequences, it is very unlikely for the worker to receive what is due before his/her removal, since the emergence of the unlawful presence of the undocumented worker entails her/his voluntary or forced removal, in accordance with the provisions of the Returns Directive (2008/115/EC).

Yet, in the event of severe labour exploitation, charging files against the employer and collaborating with the prosecuting authority grants the undocumented worker a six-month residence permit, renewable for one year or till

completion of the criminal proceedings (Article 22, para. 12 *quater* and *quinquies*). The provision of a residence permit to the foreigner who is victim of labour exploitation is certainly an important novelty in the Italian legal system, especially in light of her/his subsequent integration into the (regular) labour market. However, Legislative Decree no. 109/2012 has narrowed the typology of "serious labour exploitation".

With regard to the additional administrative and financial sanctions provided by Directive 2009/52/EC against employers who have employed an irregular labour force, no implementation measures are found in the Legislative Decree no. 109/2012. However, precisely these sanctions could potentially play a fundamental deterrent role, since the consequences for employers would be very serious and particularly from an economic point of view. Moreover, Legislative Decree no. 109/2012 does not provide any specific measure against subcontracting, a common phenomenon of the exploitation of undocumented labour.

Concerning the phenomenon of illegally recruiting labour through exploiting the worker's condition of need, a phenomenon particularly rooted in the agricultural sector and, more generally, in the agri-food production chain, known as *caporalato*, Law no. 199/2016, amending Article 603 *bis* of the Penal Code, introduced new provisions aimed to contrast its diffusion.[163]

The *caporalato*, which "succeeds" in keeping foreign labour in Italy that would otherwise be expelled, and intercepts the incoming flows attracting new labour force, often involves undocumented migrants, who are further particularly vulnerable. Since reporting to public authorities would lead to those workers' expulsion—except for the already mentioned very few cases for which the law provides for the possibility of issuing a residence permit—they tend not to criticize their situation of exploitation, confirming the well-known difficulties of access to justice for foreigners (especially the undocumented) also with reference to the most serious cases of labour exploitation (the number of complaints is strongly conditioned by their undocumented status, sanctioned by criminal law, of the worker victim of serious exploitation). Therefore, they accept working and living in situations of particular degradation, as well as precarious health conditions, often with limited access to drinking water, basic medical care and decent housing.

The most relevant innovation of the Law no. 199/2016 consists in the identification (Article 603 *bis*, para. 1) of two distinct criminal conducts: (1) the *caporale*, who recruits workers (often, but not necessarily, undocumented migrants) for third parties in conditions of exploitation, and taking advantage of their state of need (in this case the crime is that of illegal intermediation and exploitation of labour); and (2) the employer, who hires or employs workers, even without

[163] See, among others, the contributions published in "Riflessioni giuslavoristiche sullo sfruttamento del lavoro" (2021) *Lavoro e diritto*; Marco Omizzolo, *Sotto padrone. Uomini, migranti e caporali nell'agromafia italiana* (Milano: Feltrinelli, 2019); Marco Omizzolo, a cura di, *Articolo 1. L'Italia è una Repubblica fondata sul lavoro sfruttato* (Formigine: Infinito Edizioni, 2022).

the intermediation of the *caporale*, subjecting them to conditions of exploitation and taking advantage of their state of need (in this case the illegal intermediation can only potentially occur).

Two elements characterize the criminal conduct of both the *caporale* and the employer: on the one hand, the exploitation of labour: para. 2 of Article 603 *bis* identifies the "legal indices of exploitation", most of which refer to the conduct of the employer only, which are grouped into four categories (remuneration, working hours, safety and hygiene at work, and the general working conditions), which means a systematic violation of the "hard core" labour law conditions. On the other hand, is the exploitation of the state of need of the workers. At stake here is the breach of the fundamental value of the human dignity of the worker. Unless the fact constitutes a more serious crime, the *caporale* or employer is punished with imprisonment from one to six years, and with a fine from 500 to 1,000 euros for each employed worker. Moreover, imprisonment from five to eight years and a fine from 1,000 to 2,000 euros for each employed worker is given when the acts are committed with violence or threat.

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CHAPTER 5

Polish Care Workers' Discrimination Map Report[1]

Agata Ludera-Ruszel, Hubert Kotarski

1. Gender

1) Provide a brief overview of your national legislation on gender discrimination in the field of employment.

The Constitution of the Republic of Poland provides a general principle of equality before the law and prohibits discrimination on various grounds, including gender. It serves as a fundamental framework for antidiscrimination legislation. The specific antidiscrimination legislation in the field of employment differentiating by the employment status of a care worker. For care workers who provide their services on the basis of employment contract the protection against discrimination is provided by the labor law, in particular by the Labor Code. In relation to care workers who perform their work under other personal work relations (on the basis of a contract of mandate, a contract for the provision of services, a contract for a specific task, as well as so-called self-employed persons), gender discrimination is regulated by the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment (referred to as Equality Act).[2] The provisions of both Equality Act and Labor Code on gender discrimination related to employment imple-

[1] The contents of this report were finalized on June 28, 2024.

[2] *Journal of Laws* item 970 (2023).

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ment the EU Equality Directives. Both Labor Code and the Equality Act prohibit direct and indirect discrimination, harassing and sexual harassing. In case of gender discrimination, victim of discrimination has the right to compensation. Moreover, who alleges a violation of the principle of equal treatment only substantiates the fact of its violation, while the person accused of violating this principle is obliged to prove that he has not violated it. The exercise of rights arising from violation of the principle of equal treatment cannot be the basis for unfavorable treatment and cannot cause any negative consequences for the person who exercised them. The same also apply to the person who provided any form of support to the person exercising the rights resulting from the violation of the principle of equal treatment.

2) Make a brief social commentary on the presence of women workers in the care sector.

Since the insufficient supply of institutional care in Poland, the care system in Poland is characterized by strong reliance on family commitment.[3] The care sector is highly women dominated. This is confirmed by a statistical data provided by GUS (the Central Statistical Office) with regard to paramedic, nurses and midwifes (as indicated in the further paragraph). Caregiving and nurturing that encompasses various roles and professions, were traditionally considered as abilities "inherent" to the worker (women). Domination of women in the care sector in Poland is strongly rooted in society, with a vital role of the views of the Polish Catholic Church, and this trend continues to be prevalent in Poland. This made a vicious circle effect, since the overrepresentation of women in the care sector in Poland reinforce gender stereotypes, limiting both men and women's career choices and perpetuating the idea that caregiving is primarily a women's responsibility.

There can be identifies several factors that contribute to the overrepresentation of women in the care sector in Poland.

1) Traditional gender roles that are shaped by societal norms and societal expectations that often steer women toward careers that involve caregiving and nurturing. The perception that women are more suited for such roles can influence their career choices.
2) Jobs in the care sector may offer more flexible working hours compared to other industries, making them attractive to women who seek to balance work with family responsibilities. At the same time, the informal care sector based on family commitment plays a vital role in supplementing the formal (institutional) care system, but also generates additional challenges for caregivers, usually for women in balancing their care responsibilities with the employment and in the access to high quality employment opportunities on the same basis as workers which are not subject to such a care responsibility (an "equity" aspect of care in a positive and negative correlation).

[3] Oliwia Beck, Kornelia Kędziora-Kornatowska, Michał Kornatowski, "Long-term home care in Poland – framework, problems, prospects" *Hygeia Public Health* 49, 2 (2014): 193.

3) Wage disparities between gender that are fueled by socially undervaluation of care work and greater openness of women to accept lower wages due to limited opportunities in other fields.

Education and training that are historically patterned by the assumption that care work is something inherent to women, who were then encouraged to pursue career in caregiving and nurturing.

3) Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?

The available data provided by the Central Statistical Office (GUS) on the persons entitled to practice medical profession focus on a particular occupation within care: nurses, midwifes, paramedic. GUS has indicated on the feminization of medical professions, noting that this trend is the most visible for nurses and midwifes. This is confirmed by databases on the presence of nurses, midwifes and paramedics are differentiated by gender. There are no statistical data on the presence of women in other care professions. Databases produced by GUS are aggregated data at national and regional (voivodeship) level. These data are differentiating by age and education level.

The databases of GUS are public and freely accessible to everyone. These are available under: <https://stat.gov.pl/en/topics/health/health/health-and-health-care-in-2020,1,13.html>.

4) Describe or comment on what the statistics or databases you have found show in relation to the participation of male and female workers in the care sector workforce, either taking this sector as a whole, or in relation to each of the occupations that make up this sector.

Since, as mentioned above, the available GUS databases on the presence of nurses, midwifes and paramedics are not differentiated by gender, there not possible to provide any specific comment related to this databases. There can be provided only a general comment on the participation of both genders in the care sector workforce in Poland based on trends that can be observed in that point. Poland has historically seen a gender imbalance in the care sector. Nursing and healthcare professions in Poland have traditionally been female-dominated. Nurses, midwifes and caregivers have primarily been women. While there are men in these roles, they have been in the minority.

5) If legislation exists on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of the workers, or whether it makes any reference to the presence of women in this sector or these occupations (e.g. acknowledging the majority presence of women in the sector, or granting them any special attention in terms of rights, etc.). If special reference is made to women, please specify.

In Poland there is no one specific regulation addressed exclusively to workers in the care sector. Consequently, care work is the subject of the regulations

that are addressed generally to healthcare sector and to employment in general. This observation also applies to domestic work, including domestic care work, that is not a subject to any specific regulation, since Poland does not adopt ILO Domestic Workers Convention 189. Under the Healthcare Institutions Law, a person practicing a medical profession is a person authorized under separate regulations to provide health services and persons who have acquired professional qualifications to provide health services in a specific scope or in a specific field of medicine (article 2(1)(2)). Among the medical professionals who provide a care work, only a part of them is the subject of a specific statutory regulations. These are: nurse and midwife, paramedic. Currently the Parliament is working on the general statutory regulation on medical professions, that will also cover: occupational therapist and medical caregiver. These statutory regulations are designed to cover all relevant issues related to the occupations concerned, including the rules and conditions of performing the professions. However, in the area of employment the regulation of this specific law is limited only to the general issues, therefore for a specific issues related to the employment status and working conditions, the relevant provisions of Labour Code and Civil Code (depending on a form of employment and consequently employment status: employee or nonemployee), will be appropriate, in the same way as to the workers in the care sector that are not the subject of a specific statutory regulations.

Only the definition of a person practicing a medical profession under the Healthcare Institutions Law has been developed as gender-neutral. It refers general to any "person" meaning as a women or men. The other specific statutory regulations are not gender-neutral in terms of the workers in the care sector. Under the Act on the paramedic and under draft of the Act on medical professions, the name of occupations of paramedic, occupational therapist and medical caregiver have been determined by a male form. The name of the Act on the occupations of nurse and midwife has been determined by a female form. Moreover, the name of occupation of nurse and midwife in the provisions of this act have been determined by a female form. Exceptionally, when referring to the name of the professional title of nurse and midwife, the name of these occupations have been determined by both male and female form (article 8(1)). This means that name nurse and midwife is associated by a female form regardless of whether it is used by a women or men, while professional title meaning as a nursery or midwifery is gender neutral. Therefore nurse has a professional title in nursery and midwife in midwifery.

The provisions of specific regulation that provides for the catalogue of occupations and specialties for the job matching and occupational guidance as an instrument for employment promotion, that allows for the identification of a particular occupations in the care sector, is generally based on a rule that occupation has no gender—traditional masculine occupations and feminine occupations used only in occupations clearly dominated by women should not affect the classification of person.

There is no special reference to women is made in above mentioned legislation related to care sector acknowledging the presence of women in the care sector.

6) Does the legislation or, if applicable, collective agreements provide for occupational classification system in care sector? If so, do you consider any gender bias in this occupational classification (if so, please explain).

In Poland the occupations in the care sector can be divided into medical professions and non-medical professions. In Poland the is no one statutory catalogue of occupations in the care sector. Particular occupations may be identified based on the provisions of specific regulation that provides for the catalogue of occupations and specialties for the job matching and occupational guidance as an instrument for employment promotion. Based on this catalogue, in Poland care work, including domestic care work (meaning as a work provided at home of patient, since no statutory definition of domestic care work), can be divided into two main categories: basic care work and socialized care work.

Basic care work can be provided by: 1) technicians and associate professionals; 2) service providers; 3) basic workers. The first category includes: associate professionals for social issues, that are: workers for social assistance and support for family (assistant for disabled person; care worker in social home; environmental care worker; care worker for elderly). The second category includes: personal care workers in health services that are: healthcare assistants (medical caregivers); home based personal care workers (domestic caregivers; PCK nurse); other personal care workers (hospital orderly). The third category includes: cleaning staff (hospital ward)

Specialized care work is provided by health professionals that are: (1) specialists for health protection (nurses with specialization; nurse without specialization; midwife with specialization; midwife without specialization); (2) technicians and associate professionals that are associate professionals for health protection (paramedic; occupational therapist); environmental workers for health protection (environmental therapist; environmental nurse).

Most abovementioned occupations in the care sector are determined by a male form. Only occupations in care work related to nursing have been determined by a female form. As indicated in the provisions of regulation that provide for the classification of occupations in care work, it is generally based on a rule that occupation has no gender—traditional masculine occupations and feminine occupations used only in occupations clearly dominated by women should not affect the classification of person.

7) Have there been any legal disputes or conflicts publicised by the media in your country over "job classification" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

We did not identify any specific legal disputes or conflicts publicized by the media in Poland over "job classification" and gender discrimination in the care sector.

8) Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain).

As mentioned earlier, in Poland there is no one specific regulation addressed exclusively to workers in the care sector. Consequently, care work is the subject of the regulations that are addressed generally to healthcare sector and to employment in general. The Healthcare Institutions Law,[4] applies to any person practicing a medical profession defining as a person authorized under separate regulations to provide health services and persons who have acquired professional qualifications to provide health services in a specific scope or in a specific field of medicine (article 2(1)(2)). Among the medical professionals who provide a care work, only a part of them is the subject of a specific statutory regulations. These are: nurse and midwife,[5] paramedic.[6] Currently the Parliament is working on the general statutory regulation on medical professions, that will also cover: occupational therapist and medical caregiver.[7] These statutory regulations are designed to cover all relevant issues related to the occupations concerned, including the rules and conditions of performing the professions. However, in the area of employment the regulation of this specific law is limited only to the issues related to wage and benefits, working time (Health Institutions Law), training and competence development (Act on nurses and midwifes, Act on paramedic and Draft of the Act on medical professions). For other issues related to the employment status and working conditions, the relevant provisions of Labour Code[8] and Civil Code[9] (depending on a form of employment and consequently employment status: employee or nonemployee), will be appropriate, in the same way as to the workers in the care sector that are not the subject of a specific statutory regulations.

The analysis of these specific provisions did not reveal any direct gender bias in relation to employment in the care sector.

Collective agreements in the care sector covering care workers are concluded at the company and workplace level. Collective bargaining concentrated mostly on wages and other benefits. Collective agreements at sectoral (multi-employer) level in Poland are very rare. There is no multi-level collective agreement exclusively for a care sector.[10] The provisions of collective agreements may not be less favorable for workers than statutory regulations, and may not be constructed using discriminatory provisions.

[4] Act of 15 April 2011, *Journal of Laws* item 991 (2023).

[5] Act of 15 July 2011 on the occupations of nurse and midwife, *Journal of Laws* item 2702 (2022).

[6] Act of 1 December 2022 on the paramedic and the professional self-government of paramedic, *Journal of Laws* item 2705 (2022).

[7] Draft of the Act on medical professions, <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=3183> (Accessed July 10, 2023).

[8] Act of 26 June 1974, *Journal of Laws* item 1510 (2022).

[9] Act of 23 April 1964, *Journal of Laws* item 1360 (2022).

[10] The Ministry of Family and Social Policy <https://archiwum.mrips.gov.pl/gfx/mpips/userfiles/_public/wykaz_zbiorowe.pdf> (Accessed July 08, 2013).

9) Have there been any legal disputes or conflicts publicised by the media in your country over "employment contracts" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

We did not identify any specific legal disputes or conflicts publicized by the media in Poland over "employment contracts" and gender discrimination in the care sector.

10) Do the legislation or, if applicable, collective bargaining agreements make any provision for wages in each of the care sector occupations, differentiating them in terms of their structure or amount from workers in the general or other production sectors?

Wages and benefits for care workers in Poland can vary depending on factors such as the form of employment (whether it is employment contract or other work relation), specific occupation, experience, level of qualifications, location, and type of employer (public or private). Care workers who provide their work through employment contract have the right to the statutory minimum wage and have the access to the widest range of employment benefits on the same basis as to the other employees. The statutory, and considered as mandatory, common benefits, includes, among others, paid annual leave, paid maternity and parental leave, paid sick leave, paid overtime, compensation for night shifts and work on Sunday, old-age pension insurance, disability and survivors' pension insurance, sickness insurance, and work accident insurance, that include occupational disease insurance, and occupational medicine, that include the pre-employment health examination, periodic health examination and of necessary control health examination, workplace risk assessment, prevention and addressing of occupational diseases, workplace injury management, health and safety training.

Workers who provide their work as self-employed based on civil law contracts are not entitled to such a wide range of benefits as employees. As a service provider, workers are entitled to receive a minimum hourly rate of 23.50 PLN in July 2023 (around 5.20 euros). They are also entitled to certain statutory, mandatory benefits, that include: maternity and parental benefits at the time of inactivity due to childbirth and bringing up children, old-age pension insurance, disability and survivors' pension insurance, work accident insurance, that include occupational disease insurance. They are not entitled to mandatory occupational medicine that include pre-employment health examination, periodic health examination and of necessary control health examination. However, due to the general duty of employer to provide to health and safety working conditions to every worker, an employer must in every case assess whether such an examination may be necessary. The same apply to health and safety training. A service provider may be—at its request—covered by sickness insurance, and therefore have the right to sickness benefit for the time of inactivity due to disease. However, ss a contractor in the contract for a specific task, worker is not entitled to receive a minimum hourly rate, as well as he is not covered by social insurance nor compulsorily neither voluntarily. Therefore, he has not the right to benefits related to sickness, maternity, parental and occupational accidents.

The statutory minimum wage for employees in the health sector in general, is stipulated in the Act on the method of determining the basic remuneration of certain employees employed in healthcare entities.[11] For all other care employees not employed in healthcare entities, the minimum wage is regulated in the Act on minimum remuneration, that since July 2023 shall be monthly 3,600 PLN (amount 807 euros).[12]

The minimum wage in care sector in healthcare entities, broken by occupational groups, will be:

1) Physiotherapist and other medical professional with the required higher education at the master's level and specialization, a nurse with the professional title of Master of Nursing or a midwife with the title of Master of Midwifery with the required specialization in the field of nursing or in the field applicable in health care—8,186.53 PLN (around 1,839 euros).
2) Physiotherapist and other medical professional with the required higher education at the master's level, a nurse or midwife with the required higher education (first degree studies) and specialization or a nurse or midwife with the title of Master of Midwifery with secondary education and specialization—6,473.07 PLN (around 1,454 euros).
3) Physiotherapist, nurse, midwife, paramedic, other employee performing a medical profession specified in 1–2 point, with the required higher education (first degree studies), physiotherapist, paramedic with the required secondary education, or a nurse or midwife with the required secondary education, who does not have the title of specialist in nursing or in the filed applicable in health care—5,965.38 PLN (around 1,340 euros).
4) Other employee performing a medical profession specified in points 1–3, with required secondary education and medical caregiver—5,457.69 PLN (1,226 euros).
5) Employee of basic activity (including hospital orderly and hospital ward) other than an employee performing a medical profession with the required education below secondary—4,125 PLN (around 926 euros).

The average remuneration for work in Poland in April 2023 was 7,430.65 PLN (around 1,669 euros).

The Healthcare Institutions Law contain a provision that provide care workers with a specific benefit. These benefits are given to employees, and only with one exception to persons who provide work under other personal work relations. Under the Health Institutions Law, an employee practicing a medical profession in healthcare entities is entitled to:

- The remuneration for a standby duty outside healthcare facilities that provides a medical activity that require round-the-clock coverage in the amount of 50% of the hourly rate of basic remuneration that is calculated by dividing

[11] Act of 8 June 2017, *Journal of Laws* item 2139 (2022).

[12] Act of 10 October 2022, *Journal of Laws* item 2207 (2020).

the amount of the monthly basic salary resulting from the employee's personal classification by the number of working hours to be worked in a given month.
- The compensation to shift work in the amount of at least 65% of the hourly rate basic remuneration, calculated as indicated above, for each hour of night work and at least 45% of the hourly rate of basic remuneration, calculated as indicated above, for each hour of daytime work on Sundays and public holidays as well as non-working days during an average five-day working week.
- Compensation for a members of an emergency medical teams, as indicated in the provisions of the Act of 8 September 2006 on the National Medical Emergency Service, for every hour of work in the amount of 30% the hourly rate of basic remuneration, calculated as indicated above. Exceptionally the right to this compensation is also guaranteed to the members of an emergency medical teams who provide their work outside the employment relationship, on other personal work relations, in the amount 30% the hourly rate of salary resulting from the contract under which they work.
- Compensation for on-call duty work in the amount of 100% of his normal remuneration for work during night, Sunday and holidays and day off for work during those days and 50% of his regular remuneration for work during any other day.
- Compensation for work exceeding an average of 48 hours per week in the adopted reference period in the amount of 100% of his normal remuneration for work during night, Sunday and holidays and day off for work during those days and 50% of his regular remuneration for work during any other day.
- Compensation for each hour of being on standby in the amount of 50% of the hourly rate of basic remuneration that is calculated by dividing the amount of the monthly basic remuneration resulting from the employee's personal classification by the number of working hours to be worked in a given month.

11) Have there been any legal disputes or conflicts publicised by the media in your country over "wages" in the care sector and gender discrimination?

We did not identify any specific legal disputes or conflicts publicized by the media in Poland over "wages" and gender discrimination in the care sector. However, generally in Poland in 2021 has been reported a wage gap between women and men, that although one of the lowest in EU, has slightly increased. From the report of the European Institute for Equality between Women and Men concerning equality between women and men shows that, Poland is at the forefront of European Union countries in terms of speed closing the wage gap since 2010.[13] The difference in average salaries awarded to women and men in Poland reaches nearly 4.8% according to the information provided in the "Structure of salaries by occupations in October 2022", published by the Central Statistical Office. In

[13] European Institute for Equality Between Women and Men, "Gender Equality Index 2020: Digitalization and the future of work, European Institute for Equality between Women and Men" s. 33 (2020).

the public sector, women earned 2.3% less per hour worked than men, whereas in the private sector their remuneration was up to 12.9% lower. In all major groups of occupations, men's hourly wages were higher than those of women.[14] It has to be indicated that in the sector of human health and social work activities the wage gap was nearly 15%.[15]

Among the factors that increase the wage gap are indicated above all sectoral (horizontal) segregation, i.e. segregation based on the overrepresentation of women, primarily in professions characterized by low wages, but also on the responsibilities that women face in relation to taking care of children and close family members (resulting, for example, in fewer hours at work than men, and thus lower pay) or vertical segregation, i.e. a small number of women in jobs managerial positions or women occupying positions where they have less promotion opportunities.[16]

12) Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?

No, in case of reconciliation of work and family life care workers are the subject to the same rules as workers in other sectors.

13) Have statistics or databases been published in your country on occupational accidents or illnesses arising from the work of personnel in the care sector as a whole or in each of the care sector jobs according to the workers' gender?

The available data provided by the Central Statistical Office (GUS) on the occupational accidents are given for medical care and social assistance in general. There are no specific data addressed to care workers and particular occupations within this category. According to GUS in 2022 there were registered 6892 cases of occupational accidents among medical care and social assistance in general while 2 were fatal accidents. Out of the overall number of affected, 5564 were women. Databases produced by GUS are aggregated data at national and regional (voivodeship) level.

The databases of GUS are public and freely accessible to everyone. These are available under: <https://stat.gov.pl/obszary-tematyczne/rynek-pracy/warunki-pracy-wypadki-przy-pracy/wypadki-przy-pracy-w-2022-roku-dane-wstepne,3,50.html>.

[14] Urząd Statystyczny w Bydgoszczy. *Struktura wynagrodzeń według zawodów w październiku 2020 r. / Structure of Wages and Salaries by Occupations in October 2020*. (Bydgoszcz–Warszawa, 2022), <https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5474/4/10/1/analiza_statystyczna_struktura_wynagrodzen_wedlug_zawodow_w_pazdzierniku_2020_r.pdf> (Accessed July 10, 2023).

[15] Urząd Statystyczny w Bydgoszczy. *Struktura wynagrodzeń według zawodów w październiku 2020 r.*, 37.

[16] Ministry of Family, Labour and Social Policy, "Sytuacja kobiet i mężczyzn na rynku pracy w 2019r." (2019), 9.

The databases on occupational illness are in general addressed to medical care in general. According to data provided by the Professor J. Nofer Occupational Medicine Institute in Lodz in 2022 there were registered 1072 cases of occupational illness. Out of the overall number of affected, 961 were women, while most of cases concerned nurses—696, that was 67.2%. Databases produced by are aggregated data at national and regional (voivodeship) level.

The databases of GUS are public and freely accessible to everyone. These are available under:

<https://www.imp.lodz.pl/pliki/9ab760430e9bd04e49de1f90cb4dd25e50624/chorobyzawodowe2022.pdf>.

14) Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.

The presented data on the occupational accidences and occupational illness in care sector that reveal that the majority of affected are women, are the consequence of feminization of care sector in general.

15) Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.

No, in case of occupational safety and health there are no specific rules that would apply solely to women specifically in the care sector. In this regard women in the care sector are the subject to the general rules that apply to women in general that protect women health. These general rules include: Labour Code provisions on protection of women health in case of maternity and pregnancy and more specifically Regulation of 3 April 2017 on the list of work that is burdensome, dangerous or harmful to the health of pregnant women and women who are breastfeeding (Journal of Laws from 2017, item 796).

16) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

We did not identify any specific legal disputes or conflicts in Poland over occupational safety and health in the care sector.

17) Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.

No, the rules of termination of employment contract are not specific for care sector. Care workers are subject to general rules on termination of employment contract that apply to workers in general. In this regard, Labor Code provides for the protection against termination by notice and termination without notice in case of pregnancy and in the period of maternity leave and parental leave. The termination by notice is forbidden, while termination without notice is conditioned on the consent of company trade union organization. It has to be noticed, however, that the protection in case of maternity leave and parental leave apply also to men.

18) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

We did not identify any specific legal disputes or conflicts in Poland over termination of employment in the care sector, in particular such rulings that refer specifically to women or men.

19) Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).

There are no specific regulations for social protection that would apply specifically in the care sector. Care workers are subject to the same provisions for social protection as workers in general. In terms of pension benefit Act of 17 December 1998 on pensions from the Social Insurance Fund—the so-called Pension Act[17] differentiates between women and men as regards the eligibility age that for women is 60 age, while for men 65 age.

20) Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sector? If so, please summarise or comment on the case(s).

We did not identify such specific legal disputes or conflicts in Poland.

21) If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.

Poland had equality bodies and institutions responsible for promoting and protecting equal treatment and non-discrimination, including gender equality. Tis include: Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), an independent institution tasked with safeguarding the rights and freedoms of individuals, including addressing issues related to discrimination and gender equality and The Plenipotentiary for Equal Treatment (*Pełnomocnik Rządu ds. Równego Traktowania*), the governmental body in Poland responsible for the implementation of government policy on equal treatment, including gender equality, and is appointed and dismissed by the Prime Minister of the Republic of Poland. The Plenipotentiary for Equal Treatment is responsible to develop and submit to the Council of Ministers the National Action Program for Equal Treatment, specifying the goals and priorities of actions for equal treatment. We do not find any action, report and judicial activity in relation to the rights of women workers specifically in the care sector. In particular, any part of the National Action Program for Equal Treatment has been not devoted to equal treatment in care sector.

[17] *Journal of Laws* 504 (2022).

22) Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

Firstly, it should be note that in Polish legislation any regulations that express the principle of equal working conditions under Labor Code or Equality Act, are not provided for specifically in the care sector. Since, lack of specific regulations regarding non-discrimination on the grounds of sex in the care sector, the analysis can only refer to general regulations that apply to all workers in general.

Polish general regulations regarding non-discrimination on the grounds of sex in the field of employment that apply to all workers, including care workers, comply with obligations arising from EU legislation.

Polish regulations comply with ILO Equal Remuneration Convention No 100, ILO Discrimination Convention No 111.

Poland has not yet ratified ILO Workers with Family Responsibilities Convention No 156, ILO Maternity Protection Convention No 183 (breaks for breastfeeding applies only to women who have a status of employee under Polish legislation) and ILO Domestic Workers Convention No 189 (under Polish legislation there are no legal definition of "domestic worker"—for more information see point 30 below.

2. Migrant Status

Authors' note:

a) General information on migrants in the care sector is requested in this section; broadly speaking, these are non-EU third country nationals (where appropriate, EU nationals will be included). In some questions, nationals of the countries covered by the report will also be included.
b) Some questions refer to undocumented migrants (or irregular migrants): See notions defined above. In general terms undocumented migrants are those who do not have a residence and work permit in the host country, while documented migrants (or regular migrants) have been granted a residence permit.
c) Some of the questions refer to legislation on foreigners or immigration: by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.
d) Some questions may be answered not only by referring to the specific legislation on aliens, but also to other legislation, such as, for example, the legislation established by each country in the field of human rights or labour rights.

1) Provide a brief overview of your national legislation on anti-discrimination on the grounds of race or ethnic origin, religion, or belief, in the field of employment or occupation.

The Constitution of the Republic of Poland provides a general principle of equality before the law and prohibits discrimination on various grounds,

including race, ethnic origin, religion and belief. It serves as a fundamental framework for antidiscrimination legislation. The specific antidiscrimination legislation in the field of employment differentiating by the employment status of a care worker. For care workers who provide their services on the basis of employment contract the protection against discrimination is provided by the labor law, in particular by the Labor Code. In relation to care workers who perform their work under other personal work relations (on the basis of a contract of mandate, a contract for the provision of services, a contract for a specific task, as well as so-called self-employed persons), gender discrimination is regulated by the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment (referred to as Equality Act). The provisions of both Equality Act and Labor Code on discrimination on grounds, such as race, ethnic origin, religion and belief. related to employment implement the EU Equality Directives. Both Labor Code and the Equality Act prohibit direct and indirect discrimination, harassing and sexual harassing. In case of discrimination, victim of discrimination has the right to compensation. Moreover, who alleges a violation of the principle of equal treatment only substantiates the fact of its violation, while the person accused of violating this principle is obliged to prove that he has not violated it. The exercise of rights arising from violation of the principle of equal treatment cannot be the basis for unfavorable treatment and cannot cause any negative consequences for the person who exercised them. The same also apply to the person who provided any form of support to the person exercising the rights resulting from the violation of the principle of equal treatment.

2) Also provide a brief overview of the legislation concerning the rights and duties of "foreigners": EU third country nationals (by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.).

The legal framework governing the rights and duties of foreigners in Poland, requirements for entry and work, and family reunification is primarily defined by several key pieces of legislation. The main laws and regulations related to immigration in Poland include:

1) The Act on Foreigners:[18] the primary piece of legislation that governs the legal status of foreigners in Poland. It outlines the procedures for obtaining various types of visas and residence permits, including work permits and residence cards. It also includes provisions related to deportation, humanitarian visas, and family reunification. The main provisions include:
   - Visas and Residence Permits,
   - Entry into Poland,
   - Residence Regulations,

[18] Act of 12 December 2013, *Journal of Laws* item 519 (2023).

- Work and Employment,
- Asylum and Protection,
- Deportation and Removal,
- Detention and Accommodation,
- Appeals and Legal Procedures,
- Family Reunification,
- Rights and Obligations of foreigners in Poland, including their entitlement to education, healthcare, and social benefits,
- Penalties and Enforcement: provisions related to penalties for non-compliance with immigration regulations and the enforcement of immigration laws.

2) The Act on Employment Promotion and Labor Market Institutions[19] (*Ustawa o promcji zatrudnienia i instytucjach rynku pracy*): regulates employment-related matters, including the employment of foreigners. It defines the conditions under which foreigners can work in Poland, such as obtaining work permits and fulfilling labor market tests.
3) The Act on Granting Protection to Foreigners within the territory of the Republic of Poland:[20] key piece of legislation in Poland that governs the procedures and legal framework for granting protection to foreign nationals seeking asylum or others forms of international protection within the country. The act outlines the rights and obligations of both asylum seekers and those who are granted protection.

3) Make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in employment in your country.

The presence of migrant populations, including EU and non-EU nationals, in employment in Poland has been a topic of social commentary and discussion in recent years. Poland has experienced an increase in the number of migrants coming to the country for work and other reasons, and this has brought about various social, economic, and cultural implications. Here is a social commentary on some key aspects of this phenomenon:

1) Economic Contribution: Many commentators acknowledge that migrant workers, especially from neighboring EU countries like Ukraine, have played a significant role in filling labor gaps in various sectors of the Polish economy. They have contributed to economic growth by working in industries such as construction, agriculture, manufacturing, and services.
2) Labor Market Dynamics: Some discussions revolve around how the presence of migrant workers impacts the domestic labor market. While migrants often take on jobs that locals may not be willing to do, concerns have been

[19] Act of 20 April 2004, *Journal of Laws* item 735 (2023).
[20] Act of 20 June 2003, *Journal of Laws* item 1504 (2023).

raised about potential exploitation, wage suppression, and competition for employment opportunities.
3) Cultural Diversity: The increasing diversity resulting from the presence of migrants has led to discussions about the enrichment of Polish society through the exchange of cultures, traditions, and languages. This diversity can contribute to a more cosmopolitan and multicultural society.
4) Integration and Social Inclusion: Social commentators often highlight the importance of integration and social inclusion for migrant populations. Integration efforts, such as language courses and cultural awareness programs, are seen as vital to ensuring that migrants can fully participate in Polish society.
5) Challenges and Discrimination: Discrimination and xenophobia are concerns raised by some commentators. Reports of discriminatory practices, hate crimes, and prejudice against migrants have sparked discussions about the need for greater tolerance and anti-discrimination measures.
6) Social Services and Infrastructure: There have been debates about the strain on social services and infrastructure due to the increasing number of migrants. This includes access to healthcare, education, and housing. Balancing the needs of both the local and migrant populations is a challenge.
7) Policy Responses: Social commentary often revolves around the effectiveness of government policies in managing migration. Discussions may cover issues such as border control, visa policies, work permits, and the overall regulatory framework for migrants.
8) Remittances: Migrant workers often send remittances to their home countries, which can have significant economic impacts on both Poland and the countries of origin. Remittances are sometimes viewed as a positive aspect of migration, as they contribute to economic development in the migrants' home countries.
9) Future Trends: Commentators may also speculate on future trends in migration to Poland. Factors such as political developments, economic conditions, and changes in labor demand can shape the future of migrant populations in the country.

In summary, the presence of migrant populations in employment in Poland is a multifaceted issue that generates a wide range of social commentary. It involves economic, cultural, social, and policy-related aspects that continue to evolve as Poland's demographic landscape changes. Public discourse on this topic often centers on striking a balance between the benefits of migrant labor and the challenges associated with integration and social cohesion.

The presence of migrant populations, including EU and non-EU nationals, in employment in Poland has been a topic of social commentary and discussion in recent years. Poland has experienced an increase in the number of migrants coming to the country for work and other reasons, and this has brought about various social, economic, and cultural implications. Here is a social commentary on some key aspects of this phenomenon:

1) Economic Contribution: Many commentators acknowledge that migrant workers, especially from neighboring EU countries like Ukraine, have played

a significant role in filling labor gaps in various sectors of the Polish economy. They have contributed to economic growth by working in industries such as construction, agriculture, manufacturing, and services.

2) Labor Market Dynamics: Some discussions revolve around how the presence of migrant workers impacts the domestic labor market. While migrants often take on jobs that locals may not be willing to do, concerns have been raised about potential exploitation, wage suppression, and competition for employment opportunities.
3) Cultural Diversity: The increasing diversity resulting from the presence of migrants has led to discussions about the enrichment of Polish society through the exchange of cultures, traditions, and languages. This diversity can contribute to a more cosmopolitan and multicultural society.
4) Integration and Social Inclusion: Social commentators often highlight the importance of integration and social inclusion for migrant populations. Integration efforts, such as language courses and cultural awareness programs, are seen as vital to ensuring that migrants can fully participate in Polish society.
5) Challenges and Discrimination: Discrimination and xenophobia are concerns raised by some commentators. Reports of discriminatory practices, hate crimes, and prejudice against migrants have sparked discussions about the need for greater tolerance and anti-discrimination measures.
6) Social Services and Infrastructure: There have been debates about the strain on social services and infrastructure due to the increasing number of migrants. This includes access to healthcare, education, and housing. Balancing the needs of both the local and migrant populations is a challenge.
7) Policy Responses: Social commentary often revolves around the effectiveness of government policies in managing migration. Discussions may cover issues such as border control, visa policies, work permits, and the overall regulatory framework for migrants.
8) Remittances: Migrant workers often send remittances to their home countries, which can have significant economic impacts on both Poland and the countries of origin. Remittances are sometimes viewed as a positive aspect of migration, as they contribute to economic development in the migrants' home countries.
9) Future Trends: Commentators may also speculate on future trends in migration to Poland. Factors such as political developments, economic conditions, and changes in labor demand can shape the future of migrant populations in the country.

In summary, the presence of migrant populations in employment in Poland is a multifaceted issue that generates a wide range of social commentary. It involves economic, cultural, social, and policy-related aspects that continue to evolve as Poland's demographic landscape changes. Public discourse on this topic often centers on striking a balance between the benefits of migrant labor and the challenges associated with integration and social cohesion.

4) Finally, make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in the care sector in your country.

The presence of migrant populations, including both EU and non-EU nationals, in the care sector in Poland is a complex and multifaceted issue that warrants social commentary:

1) Workforce Diversity: The inclusion of migrants in the care sector has diversified the workforce. Migrants often fill critical roles in healthcare, elderly care, and childcare, addressing labor shortages and maintaining essential services.
2) Contributions to Caregiving: Migrant care workers, particularly those from non-EU countries, play a significant role in caring for Poland's aging population. Their dedication and hard work have been crucial in ensuring the well-being of elderly and vulnerable individuals.
3) Challenges and Integration: Migrants in the care sector face unique challenges, including language barriers and cultural differences. Integration efforts that promote language proficiency and cultural sensitivity are essential to improving the quality of care and fostering social cohesion.
4) Protection of Rights: Ensuring the rights and fair treatment of migrant care workers is crucial. Adequate labor protections, fair wages, and safeguards against exploitation must be in place to prevent the mistreatment of vulnerable workers.
5) Family Separation: Some migrant care workers may experience family separation due to work opportunities in Poland. This separation can be emotionally challenging and highlights the importance of family reunification policies.
6) Cultural Exchange: The presence of migrant care workers offers an opportunity for cultural exchange and learning. Polish families and care recipients can benefit from exposure to different cultures and perspectives.
7) Policy Considerations: Policymakers must strike a balance between addressing labor shortages and safeguarding the rights of both migrant workers and local populations. Comprehensive immigration policies that consider the specific needs of the care sector are essential.
8) COVID-19 Pandemic: The COVID-19 pandemic underscored the vital role of migrant care workers in healthcare and eldercare. It also highlighted the need for better protection and support, including access to vaccines and healthcare services. Long-Term Planning: As Poland's population ages, long-term planning for the care sector is crucial. This includes workforce development strategies, investment in training programs, and ensuring sustainable and equitable care services.

5) Have statistics or databases been published in your country on foreigners or immigrants who are part of the personnel providing services in each of these care sector occupations?

(This question includes both EU nationals and third-country nationals in the EU as the object of analysis).

We did not find any statistics or databases that focus specifically on the employment of foreigners and immigrants in the care services in Poland. There are available only a general statistics on the employment of foreigners on the labour market in Poland. According to GUS foreigners working in 2022 came from over 150 countries. The most numerous the group were citizens of Ukraine. Both in January and in the following months, i.e. after Russian invasion of Ukraine, their share in the total number of foreigners performing work oscillated around 73%.

The second largest group of foreigners working in Poland were citizens of Belarus. At the end of December 2022, they constituted 10.1% of the analyzed population. Citizens of each of the other countries (Georgians, Hindus, Moldovans, Russians), constituted less than 3% of the total group described foreigners. Among citizens In Ukraine, men dominated in the gender structure, although their share was lower. At the end of January 2022, men constituted 61.0% of working Ukrainian citizens, while among the remaining foreigners were 74.6%. In the following months in the group of foreigners who are not citizens of Ukraine, the gender structure did not change significantly, while in the case of Ukrainian citizens, from the end of March 2022, the participation of men was getting lower and lower. At the end of December 2022, it amounted to 51.4%, i.e. by 9.7 percentage points. less than at the end of January 2022.

Databases produced by GUS are aggregated data at national level. The databases of GUS are public and freely accessible to everyone. These are available under: file:///Users/agatalr/Downloads/cudzoziemcy_wykonujacy_prace_w_polsce_w_2022_roku%20(1).pdf.

6) Describe any statistics or databases you have encountered:

The databases produced by GUS made no distinction between general migrants, refugees, or other categories of migrants.

7) Have statistics or databases been published on people working in the care sector, whether nationals of your country, EU, or non-EU nationals, differentiating them by race or ethnic origin, religion, or language?

(This question concerns both nationals of the country, EU nationals and EU third country nationals).

We have not found such a statistics or databases.

8) Describe what statistics or databases you have found, i.e., summarise and comment on the data found on participation in the care sector by workers on the basis of race or ethnicity, religion, and language.

We have not found such a statistics or databases.

9) Have there been any legal disputes or conflicts publicised by the media about the race or ethnicity, religion or language of staff providing services in the care sector? If so, please describe the situation and the solutions provided.

We have not found any information on legal disputes or conflicts.

10) Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?

(This question refers to third country nationals of the EU).
We have not found such a statistics or databases.

11) Describe or comment on any statistics or databases you have found regarding the participation of migrant workers in the care sector in either the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them.

In terms of employment structure in the care sector in Poland, care workers are distributed across formal and informal work arrangements. Informal employment is prevalent in the care provided by family members, but also by migrants.[21] Formal work arrangements in the care sector are allocated to employment contract or other personal work relations, that include different forms of paid and unpaid work relations. This can be bipartite work relations or tripartite work relations through temporary work agencies, where the agency is the employer, and the care worker is temporarily assigned to work at various care settings. Among other than employment contract, personal work relations a prevalent is self-employment where work is provided on a basis of civil law contract, in particular contract of services (*umowa zlecenia*) or contract for specific task (*umowa o dzieło*) concluded directly with the client (or member of his family) or with healthcare facilities. In the health sector the common is the medical service contract, as a type of contract of services, that defines the terms and conditions under which medical (including care) services will be provided and outlines the rights and responsibilities of the parties.

In the first quarter of 2022, economically active persons accounted for 58.0% of the population1 aged 15–89 years. The dominant among the employed were still men, who constituted 54.6% (i.e. 9127 thousand) of this population. In the first quarter of 2022, 15641 thousand persons performed full-time work, while 1073 thousand worked parttime. Compared with the fourth quarter of 2021, the number of persons employed full-time decreased by 154 thousand, i.e. by 1.0%, while the number of persons employed part-time increased by 88 thousand, i.e. by 8.9%. Over the year, a growth by 293 thousand, i.e. by 1.9% was observed in the number of persons employed full-time, while the number of persons employed part-time stayed at a similar level. Whereas, the share of self-employed persons increased over the quarter as well as over the year: respectively by 0.2 percentage point and 0.3 percentage point and it comprised 18.7% (3,125 thousand persons).

[21] Alexandra Levitas, "Understanding health-seeking behaviors and barriers to healthcare access among Ukrainian migrant women working in the domestic sector in Warsaw, Poland (a qualitative study)," *CMR Working Papers, Centre of Migration Research* 122/180 (2020): 1; Jan B. Klakla et al., *In the Shadows: Ukrainian Domestic Workers in Poland* (Warsaw: Care International Poland, 2023).

12) Have any statistics or databases been published in your country on the possible presence of "undocumented" or "irregular" immigrants (without authorisation to reside or work in your country) who may be providing services in care occupations?

(This question refers to third country nationals of the EU).

We have not found such a statistics or databases.

13) Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If yes, please describe them. Also indicate if this sector is understaffed (Are there staff shortages in the sector?).

(This question refers to third country nationals of the EU).

The care sector in Poland, particularly the healthcare and elderly care sector, was facing staffing challenges and shortages driven by such a factors: aging population, emigration, insufficient training capacity, workload and challenging working conditions, COVID-19 pandemic.

To facilitate access to work for migrants there were introduced a simplified procedure for employing a foreigner involves a cases where either the work permit is not necessary at all or the issuance of such a permit or a common residence and work permit is possible without the opinion of the district starost (job market test). The opinion of the district starost conforms that on the local labour market there is any unemployed person, who is already registered in a district labour office, that having an adequate qualifications, can exercise a particular kind of work—that will be exercised by a migrant.

The resolution of the Minister of Labor and Social Policy of 21 April 2015 on cases in which entrusting the performance of a job to a foreigner within the territory of the Republic of Poland is permitted without an obligation to obtain a work permit,[22] provides a cases in which performing work is possible without holding a work permit. This include, among others citizens of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation or Ukraine, performing work for a period not exceeding 6 months within 12 consecutive months, irrespectively of the number of entities entrusting them with performing work, if before undertaking work by the foreigner, the county labour office adequate for the place of residence or registered office of the entity entrusting performance of work, registered this entity's written statement on the intent of entrusting this foreigner with the performance of work, specifying the job title, the place of work, the commencement date and the period of performing work, the type of contract as grounds for the performance of work, as well as the amount of gross remuneration. The statement also stated that the employer was informed also about the impossibility of satisfying his staffing needs from the local labour market and that he has become acquainted with regulations concerning foreigners' residence and work. The work has to be performed on the basis of a written contract on the condi-

[22] *Journal of Laws* item 2291 (2021).

tions specified in the declaration (par. 1 section 20). The Act of 20 April 2004 on employment promotion and labour market institutions, provides a further cases when a foreigner is authorised to perform work within the territory of the Republic of Poland without a work permit. These cases does not apply specifically to care sector.

According to the announcement of the Minister of Labour and Social Policy of 30 December 2014 on the publication of a consolidated text of the resolution of the Minister of Labour and Social Policy on determining cases in which a work permit for foreigners is issued regardless of detailed conditions concerning issuance of a work permit for foreigners, the work permit will be issued without the obligation to apply for a district starost's opinion, among others, for a foreigner who is a citizen of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation or Ukraine, performing nursing and care work or working as domestic help in behalf of natural persons in a household (par. 3 section 2) (concerns domestic help, nannies, senior care assistants, etc.).This means that in these cases taking up such kind of work will be easier for migrants.

After Russian invasion to Ukraine, in March 2022, the government, introduced a simplified procedure for Ukrainians to take up work in Poland. Rather than having to seek a work permit, their employer would simply have to notify the authorities of their employment.

14) Describe whether migrants with residence and work authorisation have the same labour rights as other "national" workers in the care sector.

(This question refers to third country nationals of the EU).

In Poland migrants with residence and work authorization generally have the same labor rights as Polish nationals and other "national" workers. This principle is consistent with European Union regulations on the rights of third-country nationals legally residing and working in EU member states.

15) Do the "labour" legislation (i.e., on working conditions) or, if applicable, collective agreements in your country, make any reference to the migrant or foreigner status of the person working in each of these care sector occupations?

(This question refers to third country nationals of the EU).

Any such a reference is made.

16) Have there been any court rulings on this matter? If so, please summarise or comment on them.

We do not find such a court ruling.

17) Does the legislation on foreigners or immigration in your country (e.g., on residence or work permits, family reunification, permit renewal, etc.) specifically mention people working in one of these care sector occupations? Have there been any court rulings on this matter? If so, please summarise or comment on them.

(This question refers to third country nationals of the EU).

Such mention is made only in relation to cases where issuance of a work permit for foreigners, the work permit will be issued without the obligation to apply for a district starost's opinion s indicated in point 13 of this report.

We did not find any court rulings on this matter.

18) Do migrants with the corresponding residency permit and authorisation to work in the care sector (in each of these occupations) have access to the same rights as other workers in other production sectors?

(This question refers to third country nationals of the EU).

As indicated in point 14 of this report.

19) Have there been any court rulings on this matter? If so, please summarise or comment on them.

We did not find any court rulings on this matter.

20) Have there been any collective bargaining provisions to favour the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnic origin, etc.?

(This question refers to third country nationals of the EU).

No there is no such a provisions.

21) Do you know if there have been any conflicts publicised by media between migrant workers of the care sector and the people they care for in terms of non-discrimination on the basis of ethnicity, religion, or nationality? If so, please explain.

(This question refers third country nationals of the EU).

We did not find any information on such a conflicts on this matter.

22) Have any statistics or databases been published in your country on migrant workers' salaries in the care sector?

(This question refers third country nationals of the EU).

We did not find any statistics or databases that focus specifically on the employment of foreigners and immigrants in the care services in Poland.

23) If you have found statistics or databases, please describe what they show in relation to the job classification and wages of migrant workers in the care sector.

No such a statistics.

24) Are migrants in an undocumented situation (without authorisation to reside or work) entitled to employment rights when working in the care sector in your country? Please outline your views on this issue.

(This question refers third country nationals of the EU).

Theoretically migrants in an undocumented situation are entitled to the same rights as other workers, since labour law make any difference based on legal position of migrant worker. This means that migrant workers are the subject to the same regulations as other workers. Polish labour law (applying to

employment contract) and civil law (applying to civil law contract of services and contract for specific task) make any difference as regards nationality, provided that work is performed on the territory of Poland. However, since their unclear legal position they are in practice employed illegally, therefore they labour rights are not respected.

25) Have there been any court rulings on this matter? If so, please summarise or comment on them.

We did not find any court rulings on this matter.

26) With the onset of the COVID-19 pandemic, measures were adopted by the State to allow "undocumented" foreign personnel to obtain residence or work permit, both structural and extraordinary?

(This question refers third country nationals of the EU).

Any measures that were then adopted were applied only to legal migrants and allow them to extend their legal stay at the territory of Poland without the risk to become undocumented (illegal) migrant. This means that these measures do not apply to migrants who were undocumented migrants at the with the onset of the COVID-19 pandemic.

27) From the onset of the COVID-19 pandemic to the present day, have measures been taken by the State to allow "undocumented" foreign personnel providing services "in the care sector" to obtain residence or work permits?

As above.

28) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of migrant workers in the care sector? If yes, please describe this report.

(This question refers third country nationals of the EU).

As above.

29) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of people, whatever their nationality, working in the care sector? If yes, please describe this report.

(This question concerns both nationals of the country, EU nationals and EU third country nationals).

Poland had equality bodies and institutions responsible for promoting and protecting equal treatment and non-discrimination, including gender equality. This include: Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*), an independent institution tasked with safeguarding the rights and freedoms of individuals, including addressing issues related to discrimination and gender equality and The Plenipotentiary for Equal Treatment (*Pełnomocnik Rządu ds. Równego Traktowania*), the governmental body in Poland responsible for the

implementation of government policy on equal treatment and is appointed and dismissed by the Prime Minister of the Republic of Poland. The Plenipotentiary for Equal Treatment is responsible to develop and submit to the Council of Ministers the National Action Program for Equal Treatment, specifying the goals and priorities of actions for equal treatment. We do not find any action, report and judicial activity in relation to the rights of migrant workers specifically in the care sector. In particular, any part of the National Action Program for Equal Treatment has been not devoted to equal treatment in care sector.

30) Comment whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Comment whether the worker's employer (including migrant workers) can be held responsible for such situations.

(This question concerns both nationals of the country, EU nationals and EU third country nationals).

To answer this issue, please consider the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; or Convention (Council of Europe) on preventing and combating violence against women and domestic violence, adopted on 7 April 2011 (Istanbul Convention)

Polish labor laws on harassment apply to all workers in the country, regardless of their immigration status and sector where they work. However, since there is no provision in the Polish legal system is a regulation addressed directly to domestic workers, taking into account special the nature of domestic work that distinguishes it from a "typical" employment relationship, the existing regulation does not guarantee effective protection of employees' employment relationships homework, regardless of the fact that this employment is currently often gray zones and, at best, domestic workers are employed on the basis of civil law contracts, including as self-employed. Domestic workers when provide their work on the basis of employment contract are subject to labour law on the general conditions (as other workers), but this is rather rare as regards migrant workers, more common to Polish nationals working in public care sector. In addition to Poland's ratification of Convention no. 189, it would be advisable to take into account standards specific to the work of domestic workers, applicable to all cases of provision of this type of work. In the above respect it is necessary, among others: guaranteeing the rights of domestic workers living at home employers to decent living conditions, taking into account respect for their right to privacy by granting the right to a separate room for exclusive use employee and the appropriate quality of meals.

31) Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with regard to undocumented or irregular migrant workers (without residence authorisation). Comment on whether in these cases migrants in an irregular situation can denounce or have access to the courts in cases of exploitation and labour exploitation. Also, whether there are cases in the legislation in which they can obtain a residence authorisation.

(This question refers third country nationals of the EU).

To answer this issue, please take into account the Directive 2009/52/ of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Poland, like other European countries, had mechanisms in place to address cases of exploitation in the workplace, including those involving undocumented or irregular migrant workers. Here are some key mechanisms and considerations related to this issue in Poland:

1) Labor Laws and Rights: Polish labor laws apply to all workers in the country, regardless of their immigration status. These laws provide basic rights and protections for all employees, such as minimum wage, working hours, rest periods, and safety regulations.
2) Reporting Exploitation: Workers, including undocumented migrants, can report cases of exploitation, workplace abuse, or unsafe conditions to relevant authorities. This often includes the National Labor Inspectorate (*Państwowa Inspekcja Pracy*) and the police.
3) Non-Discrimination: Polish labor laws prohibit discrimination on the grounds of nationality, which means that employers cannot discriminate against or exploit migrant workers based on their immigration status.
4) Social Security: Poland, social security contributions are generally required from both employees and employers. This provides social security coverage to employees, including healthcare and retirement benefits, irrespective of their immigration status.
5) Migrant Workers Support Organizations: Various organizations and NGOs in Poland work to support the rights and well-being of migrants, including undocumented workers. They can offer legal advice, guidance, and assistance in cases of exploitation.
6) Border Guards and Immigration Authorities: If an undocumented worker is discovered, the Border Guard (*Straż Graniczna*) or immigration authorities may become involved. They have the authority to detain and deport undocumented migrants.
7) Legal Aid and Assistance: Migrant workers, even those without proper documentation, have the right to legal representation. Organizations and legal aid providers may assist them in understanding their rights and options.
8) EU Regulations: Poland is a member of the European Union (EU), and EU laws and directives related to labor rights and the treatment of migrants apply in the country. These regulations aim to ensure fair treatment and equal opportunities for all workers, regardless of their nationality.

It's important to note that while these mechanisms exist, the practical enforcement and protection of undocumented or irregular migrant workers can be challenging. Many undocumented workers may fear reporting exploitation due to their immigration status. Additionally, immigration policies and enforcement practices may change over time.

Undocumented or irregular migrant workers in Poland typically faced significant challenges when seeking to obtain a residence authorization. Poland, like many countries, has immigration policies and regulations that prioritize documented and legal immigration. However, there may be certain exceptional cases where undocumented or irregular migrant workers could potentially apply for a residence authorization in Poland. Such cases often revolve around specific humanitarian or exceptional circumstances. These include:

1) Humanitarian and Compassionate Grounds: In some situations, undocumented migrants may be considered for a residence permit on humanitarian grounds, especially if they can demonstrate that returning to their home country would result in severe hardship or danger.
2) Family Reunification: If an undocumented migrant has immediate family members with legal residence in Poland, they may be eligible for family reunification, allowing them to regularize their status.
3) Victims of Trafficking and Exploitation: Victims of human trafficking or labor exploitation may be eligible for special residence permits designed to protect them from further harm and assist them in their recovery.
4) International Protection: If an undocumented migrant qualifies as a refugee or asylum seeker under international law, they may be eligible for residence permits or international protection.

It's important to note that these provisions are typically exceptional and require a thorough assessment by the appropriate immigration authorities. The ability to obtain a residence authorization in such cases will depend on the specific circumstances, documentation, and the discretion of the relevant authorities.

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CHAPTER 6

Spanish Care Workers' Discrimination Map Report[1]

Ferran Camas Roda, Andrea Cano Redondo, Anna Molina García,
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1. Description of WP3 Based on the Project Report

1.1 Objectives

WP3 intends to map patterns of discrimination in the care sector, focusing on two factors: gender and migrant status.

The objective of WP3 is to offer a comparative analysis of how anti-discrimination legislation and case law in the six countries member of the Consortium impact on care workers. WP3 will also examine collective bargaining in order to verify the existence of anti-discrimination practices and will study in a comparative perspective the contribution of equality bodies at the national level in the care sector.

Through case law and dialogue with equality bodies, the investigation of national contexts will be conducted in the light of EU anti-discrimination legislation in order to verify gaps in the implementation of EU relevant legislation.

1.2 Description of Work, Lead Partner and Role of Participants

UdG is lead partner for WP3 and will conduct work in Tasks 3.1–3.3, with specific responsibility for Task 3.2 and the comparative analysis. Academic part-

[1] The contents of this report were finalized on June 28, 2024.

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ners (UNIFI, UNI Lund, EUV, RU, UdB, UdS) from the six countries involved in the project will conduct work in Tasks 3.1 and 3.3 EFFE and EFSI will be more actively engaged in Task 3.3.

WP3 is focused on mapping and addressing discrimination in the care sector, on two grounds, gender and migratory status and, in particular, to investigate substantive issues such as: types of employment contracts, wage remuneration (recognition of the principle of equal pay for equal work or work of equal value); staff classification criteria; work-life balance rights for workers in the care sector; health and safety at work in a gender perspective; dismissal regime; social security registration, access to social security measures, in particular with regards to unemployment benefits and retirement regime; rights of migrant workers in the care sector in comparison to other sectors (e.g., in terms of renewal of work permits or family reunification); the intersectionality between gender and nationality as a driver for inequalities in the care sector.

The analysis of these issues will provide relevant structural variables needed to conduct the activities of Task 4.1 in WP4.

The main methodology to be used in WP3 is socio-legal research methodology in a comparative and EU/international perspective.

- Task 3.1 Data collection and research and analysis in various national contexts within the EU (M03-M08).

Socio-legal analysis of existing statistics and data concerning discrimination in the care sector.

Legal analysis of antidiscrimination legislation and case law at the national level referring to care sector; legal analysis of collective bargaining agreements in the care sector in order to detect measures to contrast discrimination; investigation of the role played by equality bodies in the care sector through review of legislation, practices and consultation to gather information on the sector (D3.1). Partners will circulate internally a first draft of a report—"Discrimination Map" (DM)—on discrimination and on the role of equality bodies in the care sector from six EU Member States (France, Germany, Italy, Poland, Spain, Sweden), including the interplay between national and EU/international law and policy to allow the WP leader to proceed with Task 3.2.

- Task 3.2 Data collection and research and analysis in a comparative and EU/international context (M08-M13).

Legal analysis of relevant antidiscrimination provisions and case law at EU/international level to assess the contribution of such body of legislation and jurisprudence in tackling discrimination in the care sector.

Comparative analysis of information collected at national level by the six EU Member States (France, Germany, Italy, Poland, Spain, and Sweden - Task 3.1) also to highlight potential gaps in implementing EU legislation at the national level (D3.1).

- Task 3.3 Dialogue with stakeholders aimed at research dissemination, exchange of best practices, and policy development (M14-M16).

Each national partner will organise a seminar at the national level with national stakeholders to discuss findings of the research activities conducted both in WP2 and in WP3.The leaders of WP2 and WP3, thanks to the organisational support of TOUR4EU, will organise a seminar at EU level involving all partners and representatives of stakeholders (trade unions, families' and employers reps, civil society organisations, governments, EU/international organisations: approximately 50 participants) collaboration with WP8 for the promotion on social media (D3.2).

- Task 3.4 Definition of final draft of national and comparative reports (M16-M18).

Further consultation with stakeholders, academic law partners will revise national and comparative reports in order to complete the final draft (D3.3).

The purpose of the questionnaire in this document is to provide information for conducting the tasks 3.1 and 3.2.

2. Explanatory Note on of the Concepts that will be Used in the Questionnaire

2.1 Notion of Discrimination (and Harassment)

Please consider that in this concept we include the notions of direct discrimination, indirect discrimination, and harassment (including sexual harassment).

These concepts are based on European Union Directives. In general terms, direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of gender, race or ethnic origin, religion, or belief. On the other hand, Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin, gender, religion or belief at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (as you have seen, motives related to gender or to characters that migrants may have—race or ethnicity or religion—are chosen).

The concept of harassment is related with an unwanted conduct related to the sex, or ethnic origin, or religion […], of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment; or in case of sexual harassment, where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person.

2.2 Notion of Equality Bodies (or Entities for the Promotion of Equal Treatment)

This notion refers to entities that are entrusted with a range of powers (amicable settlement (e.g., mediation or conciliation), litigation, investigations, binding decision-making), depending on the State concerned. These powers, when

combined, can sometimes imply a different role: impartiality for some of the powers, and partiality for others (when the equality body sides with the victim).

For instance, in the area of discrimination on the grounds of ethnic origin or race, the legal basis of equality bodies is to be found in Art. 13 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

This article states that:

> BODIES FOR THE PROMOTION OF EQUAL TREATMENT
> Article 13
> 1) Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
> 2) Member States shall ensure that the competences of these bodies include:
> – without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,—conducting independent surveys concerning discrimination,
> – publishing independent reports and making recommendations on any issue relating to such discrimination.

2.3 Notion of Undeclared Work (UDW)

It is a general and all-inclusive concept to define any paid activities performed by any worker (national or non-national, documented or undocumented) that are lawful as regards their nature but not declared to public authorities, taking account of differences in the regulatory systems of the Member States.

Within the general notion of "undeclared work" other, more detailed, notions can be identified:

- Under-declared employment: when formal employers pursue the illegal practice of reducing their tax and social security payments, and therefore labour costs, by under-declaring the remuneration of employees. This occurs when employers pay their formal employees two salaries: an official declared salary and an additional undeclared ('envelope') wage which is hidden from the authorities for tax and social security purposes. Alternatively, an employer can under-declare the number of hours an employee works, such as to evade paying the minimum wage.
- Envelope wages: often used in the context of under-declared employment, an envelope wage is a cash-in-hand wage paid by a formal employer to a formal employee in addition to their official declared salary, to reduce their tax and social security payments and therefore labour costs. It arises from an agreement between the employer and employee, and additional conditions may be attached to its payment, which are not in the formal written contract or terms of employment.

- Undeclared self-employment: paid activity conducted by the self-employed where income is not declared for the purpose of evading either tax and/or social insurance contributions owed. The self-employed may not declare either some or all their income.
- Bogus self-employment: often referred to as false self-employment or dependent self-employment, this is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are de facto dependent employment. National legislation and/or court decisions determine this status. This employment status is used to circumvent tax and/or social insurance liabilities, or employers' responsibilities.

2.4 Notion of Informal Economy

Covers all economic activities that are—in law or in practice—not covered or insufficiently covered by formal arrangements (e.g., unlawful temporary agencies; cooperatives not formally established as legal entities; etc.).

2.5 Undocumented Migrants (or "Irregular Migrants")

A non-national (or a third-country national) who enters or stays in a country without the appropriate documentation. Migrants can find themselves as undocumented in one of the following two ways.

First, they have documentation that acts as proof of identity, but they do not have documentation that proves their right to enter and stay in the country, or such documentation is fraudulent or no longer valid. In this meaning, this expression is used as a synonym of "irregular migrant" (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ((adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, Art. 5(b)).

Secondly, they do not hold any form of documentation that proves their identity, nor do they have any other proof of their right to enter and stay in the country. Undocumented migrants who lack any identity document usually experience more difficulties in accessing services, in obtaining permits to reside or work, or in returning to their countries of origin. Undocumented migrants may even, in the long term, be at risk of statelessness if it becomes impossible for them to obtain any evidence of their nationality.

4. Gender

1) Please provide a brief description of your national legislation on gender discrimination in employment.

In the Spanish State, the legislation to guarantee a fairer egalitarian society is found in the Magna Carta of the rights of Spaniards, specifically in the constitution. The most important precept on which the conception of non-discrimination

rests is found in article 14 of the same constitution, which reads as follows: "Spaniards are equal before the law, without any discrimination on grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."

Thus, not only do we find that the principle of non-discrimination is within the norm with the highest rank of law of the State, but it also makes it clear that the State and consequently the government of the State must guarantee legislation in accordance with this principle to guarantee its implementation in society.

Based on the obligation on the part of the state to carry out this principle, state legislation has been developed in this regard. In relation to labour matters, the most important legislation is the Workers' Statute Act, article 4 of which states that workers have the right not to be discriminated against directly or indirectly in employment or, once employed, on grounds of sex, including the unfavourable treatment given to women or men for the exercise of the rights to conciliate or co-responsibility for family and work life.

On the other hand, also Royal Decree-Law 6/2019, of March 1, 2019, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation. This royal decree modifies different legal precepts, including an Organic Law, specifically Law 3/2007, of 22 March, for effective equality between men and women. This reform has boosted aspects such as the implementation of an equality plan within companies; anti-discrimination measures, including pay discrimination; birth leave for the birth of a child, as a measure towards co-responsibility in the upbringing or the attribution of new rights in the Workers' Statute Law in matters of conciliation.

Finally, the report of Spain states that Spanish law has developed the principle of equal treatment in various legal fields, mainly labor and criminal law. The main labor legislation is Royal Legislative Decree 2/2015 of 23 October 2015, approving the consolidated text of the Workers' Statute, which establishes that discriminatory legislative provisions, clauses of collective agreements, individual agreements and unilateral managerial decisions are considered as null and void, and discriminatory acts by employers are specified as very serious offences. Under the criminal law, racism or xenophobia is an aggravating circumstance in the commission of a crime, and several provisions specify racist offences and consider serious discrimination in employment as an offence.[2] There are also anti-discriminatory measures in the administrative, civil and educational spheres. The transposition of Directives 2000/43 and 2000/78 was made in Chapter III of Title II of Law 62/2003,[3] on fiscal, administrative and social measures. Articles 27-28 contain a general transposition of the definitions of direct and indirect discrimination, harassment and instructions to discriminate. Law 62/2003

[2] Ferran Camas Roda, *Country Report of Non Discrimination- Spain* (European network of legal experts in gender equality and non-discrimination), <https://www.equalitylaw.eu/downloads/5976-spain-country-report-non-discrimination-2023> (Accessed September 4, 2024).

[3] Law 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures (*Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y de orden social*) *Official State Bulletin* (*Boletín Oficial del Estado, BOE*), 31 December 2003.

was amended in 2014 in relation to the independent body, the Council for the Elimination of Racial or Ethnic Discrimination.[4] Following Law 62/2003, EU directives have been implemented in various other laws and have influenced policy changes in Spain on anti-discrimination legislation for different grounds and in different fields. In any case, the main law in this area is the Law no. 15/2022 Law 15/2022, of July 12, 2022, comprehensive for equal treatment and non-discrimination. As established in article 2 of Law 15/2022, what this new law does is regulate the rights and obligations of natural or legal persons, public or private, establish principles for the action of the public authorities and provide for measures aimed at preventing, eliminating, and correcting all forms of discrimination, direct or indirect, in the public and private sectors. The subjective scope of application of the law is established in art. 2 of Law 15/2022. On the one hand, it recognizes the right of everyone to equal treatment and non-discrimination regardless of their nationality, whether they are minors or adults, or whether or not they enjoy legal residence. This is an expansive clause on the holders of the right, as it would include immigrants in an irregular situation (without a legal residence permit), who will subsequently be subject to treatment. In any case, after this recognition, the first paragraph of article 2 establishes that

> no one may be discriminated against on the basis of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, disease or health condition, HIV status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance.

As can be seen from the reading of this provision, the grounds of discrimination prohibited by Article 14 of the Constitution are now added in Article 2.1 of Law 15/2022 to the grounds of "disease or health condition", "HIV status and/or genetic predisposition to suffer pathologies and disorders", "sexual identity", "gender expression", "language" and "socio-economic status".

In any case, the Spanish Report provides the adoption by the Spanish Government of the "State Strategy for a new model of care in the community - A process of deinstitutionalisation (2024-2030)".[5] This is a political strategy promoted by the Spanish Government in the field of care for the coming years. It should be mentioned that one of the principles of this Strategy is respect for dignity and good treatment, which implies avoiding any form of abuse, discrimination or restriction. The aim is to create care and support environments that

[4] Law 15/2014 of 16 September 2014 on the rationalisation of the public sector and other measures of administrative reform (*Ley 15/2014, de 16 de septiembre, de racionalización del Sector público y otras medidas de reforma administrativa*), *BOE*, 17 September 2014, <https://www.boe.es/boe/dias/2014/09/17/pdfs/BOE-A-2014-9467.pdf> (Accessed July 18, 2024).

[5] Gobierno de España, "Estrategia para un nuevo modelo de cuidados en la comunidad: un proceso de desinstitucionalización (2024-2030)," <https://www.dsca.gob.es/es/publicacion/estrategia-estatal-nuevo-modelo-cuidados-comunidad-proceso-desinstitucionalizacion-2024> (Accessed September 17, 2024).

are safe, respectful, nurturing and restorative for people with support and care needs. To achieve this, the Strategy assumes the need for a gender perspective in care, i.e. an approach that identifies the differences, inequalities and discriminations that exist between women and men in terms of access, use and control of social resources and services and deploys concrete actions and measures to break down these existing barriers.

It also assumes the perspective of intersectionality, which is understood as the situation in which the same person can suffer discrimination as a consequence of multiple social categories that converge simultaneously, such as gender, socio-economic class, disability, place of origin or migrant status, among other factors. Adopting an intersectional approach helps to articulate measures taking into account factors that impact on people's lives and the exercise of their rights in different ways, i.e. belonging to a vulnerable population group that faces other vulnerabilities at the same time, such as gender, disability, LGBTIQ+ status, socio-economic class, educational level, being born in another country, among other factors that can increase vulnerability and discrimination.

2) Make a brief social comment on the presence of women workers in the care sector.

Historically, from the modern age onwards, work was differentiated into two main areas, productive work (dedicated to the production of material goods, characterized by being located outside the home) and reproductive work (within the home, dedicated to the maintenance of the home and the care of people). In this great dichotomy of division of labour, the role of women was anchored to reproductive work, while that of men was relegated to productive work outside the home. In today's contemporary society, however, many factors have changed that have transformed and determine care work today.

On the one hand, it must be said that regarding the different types of care (paid or unpaid) that can be included within the care sector, it is worth mentioning two aspects:

1) On the one hand, in relation to carers of people in a situation of dependency, the "XXIII Opinion of the Dependency Observatory, of the State Association of Directors and Managers in Social Services",[6] published in April 2023, states that

> The profile of family carer in terms of age, sex and kinship is defined as follows. 74% are women and 26% are men. 28.4% were 16-49 years old, 46.8% were 50-66, 17.8% were 67-79, 6.1% were 80-89, and 0.9% were 90 years of age or older. 34% are children, 24.6% mothers, 19.7% spouse, 4.7% sibling, 3.3% father, 1.8% son-in-law/daughter-in-law, 1.7% grandchildren, 1.4% partners and 8.8% other people.

[6] Directores Sociales, "XXIII Opinion of the Dependency Observatory, of the State Association of Directors and Managers in Social Services," <https://directoressociales.com/xxiii-dictamen-del-observatorio-de-la-dependencia/> (Accessed September 17, 2024).

Subsequently, the opinion develops this key by emphasizing the result of these percentages that the data confirm annually, with hardly any variation, that the role of caregiver falls mostly on women.[7]

Of great interest is the statement on page 42 of the opinion that many women become carers not by free choice, but by economic and social imposition; also, that the potential (highly feminized) workforce that is being diverted to care without coverage or consideration is enormous; and finally, that men do not equitably assume the role of caregivers, which results in a discriminatory assignment of care functions, feeding back into inequality.

2) On the other hand, in relation to family domestic work, according to data from the Ministry of Labour, in 2019 (data will be discussed later, as of 2022) the number of 402,500 people affiliated to the Special System for Domestic Employees was reached, of which 18,000 are men and 384,500 are women.[8] These figures allow us to visualize how this social protection system is intensely feminized, whether we are talking about Spanish nationals or foreigners. In this regard, if we review the statistics corresponding to foreign workers affiliated to Social Security who are registered as workers,[9] it turns out that out of a total of 170,444 affiliated to the Special Family Home System, 10,251 are men and 160,179 are women.

As can be seen, the work of domestic workers confirms the increasing presence of migrant workers in the context of a process of progressive replacement of native women, as will be demonstrated later with the data on this subject recorded to date. This, by the way, has had positive effects on the latter, since the fact that many Spanish women were able to delegate, in terms of work, the tasks of domestic service to other personnel, especially foreigners, has allowed them to access the labour market and thus increase their activity rate in the labour market.[10]

The fact that we find ourselves in a profoundly globalized society, with a large movement of people, greater than at any other time in history, which favours mobility between the north and the south. This new paradigm has meant that

[7] Ferran Camas Roda, "El diario de Ferran Camas. Blog sobre Cuidemos a las personas que cuidan," "Para leer sobre la dependencia: el XXIII Dictamen del Observatorio Estatal de la Dependencia," <https://www.ferrancamas.com/cuidemos-a-las-personas-que-cuidan/dependencia-informe/ia576> (Accessed September 23, 2024).

[8] See: Ministry Of Inclusion, Social Security And Migration, "Afiliación de trabajadores al sistema de seguridad social" (Social Security Affiliations), <http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/AFI/AFI.pdf> (Accessed September 24, 2024).

[9] See Ministry of Inclusion, social Security and Migration, "Trabajadores extranjeros afiliados a la seguridad social en alta laboral" (social security affiliations), <http://www.mites.gob.es/ficheros/ministerio/estadisticas/anuarios/2019/AEX/AEX.pdf> (Accessed September 24, 2024).

[10] See the monograph included in the Defensor del Pueblo, *Informe annual 2019 (Ombudsman's 2019 Annual REPORT): The contribution of immigration to the Spanish economy*, <https://www.defensordelpueblo.es/wp-content/uploads/2020/05/II_Estudios_documentos_de_trabajo_2019.pdf> (Accessed September 24, 2024).

most people who have migrated from south to north have taken on many jobs that were not well regarded either economically or socially in Western society. As M. Ángeles Durán says, care work generates powerful migratory flows.[11]

Thus, we find that today, most people who work in the care of people (especially the elderly) are migrant women, many of them without training, without higher education or economic possibilities.

3) Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?

- *In the case of databases, do they present aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?*
- *Are these databases public and freely accessible to all, or only to researchers?*
- *If databases exist, provide links and/or how to request them.*

A search for statistics yielded the following results:

We include the main statistical data on the care sector, although it must be said that the data refer to different situations or are scattered, for example, data on people who care for others in the family sphere; people employed to care for others in the dependency sector (i.e. who are paid through State aid or by the family that receives recognition of a situation of dependency); or above all in the domestic sector. In fact, the best statistics can be found in this sector, where a clear delimitation by gender and even by the migrant's status is reflected. In all cases, access is free of charge.

1) IMSERSO provides data related to non-professional carers of dependent people (non-professional carers), differentiating them on the basis of gender.[12] In this regard, as of May 32, 2023, 71,745 non-professional caregivers were detected in Spain, of which 88.50% were women, and 62.40% were 51 years of age or older.[13]
2) Regarding the INE, there is the statistic: Total number of people (aged 18 and over). Care activities and household chores.[14] It should be mentioned that according to this data the percentage of women, aged 18 and over, who

[11] María Ángeles Durán, *La riqueza invisible del cuidado* (*The Invisible Wealth of Care*) (Universitat de València, 2020).

[12] Instituto de Mayores y Servicios Sociales (IMSERSO). "Histórico. Datos cuidadores no profesionales," <https://imserso.es/el-imserso/documentacion/estadisticas/sistema-autonomia-atencion-dependencia-saad/estadisticas-mensual/historico-datos-cuidadores-no-profesionales> (Accessed October 16, 2024).

[13] Instituto de Mayores y Servicios Sociales (IMSERSO). "Convenio especial de cuidadores no profesionales (31/05/2023)," 31 may 2023, <https://imserso.es/documents/20123/3515245/cecuidadores20230531.pdf/bcada0b2-38f8-d227-89ff-14fdd53fdfb9> (Accessed October 16, 2024).

[14] Instituto Nacional de Estadística (INE), "3.12 Indicadores de participación cultural," <https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259950772779&p=%5C&pagename=ProductosYServicios%2FPYSLayout&param1=PYSDetalle&param3=1259924822888> (Accessed September 30, 2024).

in 2016 spend at least several days a week caring for or raising children, cooking or doing housework, caring for family members, neighbours or friends with disabilities is higher in all cases than the percentage of men aged 18 and over who perform these same tasks. The percentage of those who dedicate at least several days a week to the care or education of grandchildren is very similar, 32% of women and 33% of men.

Also, it should be noted that the number of hours per week that women dedicate to childcare or education, cooking or housework, and caring for sick or disabled family members, friends, or neighbours is also higher. On the other hand, the number of hours per week dedicated to the care or education of grandchildren is equal (16 hours per week) for men and women aged 18 and over.

There is the data statics on the study of INE: 43.7% of children under the age of three attend childcare centres 54.6% pay these services in full, while 22.2% attend free of charge 32.9% of households that use health services do not pay for them. Three out of 10 households with dependent persons who would need to receive home care are not covered for it.[15]

According to this study, in more than three million Spanish households (16.4% of the total) there lived at least one dependent person in 2016.In 14.4% of those households, that person received care at home. By income level, among the households with dependent persons, 23.2% of households with higher income level had home care services, as compared with 9.1% in households with lower income level.

Also, 36.6% of households with dependent persons that receive home care services paid them with "difficulty" or with "great difficulty". In turn, 21.0% had this service free of charge. And we can read in the statistics that three out of 10 households with dependent persons who needed to receive home care (30.8%) were not covered for it. The main reason was that they could not afford it.

3) Statistics are published on one of the occupations in the care sector, namely, the special employment relationship for the provision of services for the family home. These statistics are derived from the Ministry of Labour.[16]

According with the comments of the Government of these data statistics,[17] the Social Security registered 21,073,339 affiliates in April 2024. In the month

[15] "43.7% of children under the age of three attend childcare centres, 54.6% pay these services in full, while 22.2% attend free of charge 32.9% of households that use health services do not pay for them. Three out of 10 households with dependent persons who would need to receive home care are not covered for it", see Instituto Nacional de Estadística (INE), "43.7% of children under the age of three attend child care." Living Conditions Survey (LCS). Module on Access to the Services. Year 2016 (press release), <https://www.ine.es/en/prensa/ecv_2016_m_en.pdf> (Accessed June 19, 2024).

[16] Tesorería General de la Seguridad Social. "Afiliaciones en alta laboral," *Seguridad Social* (España), <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST10> (Accessed June 19, 2024).

[17] España (Gobierno de España), La Moncloa, "España supera en abril los 21 millones de afiliados a la Seguridad Social y crea empleo durante 48 meses seguidos," *La Moncloa* (nota de pren-

of April, the sector with the greatest growth in the General Social Security Scheme (which includes all salaried workers) was the Hotel and Catering sector, with 91,913 more members, 6.5%. It is followed by Administrative Activities and Auxiliary Services (15,074). In year-on-year terms, the growth in Education stands out, with 153,891 more enrolled (13.8%). There were also increases in Transport and Storage (4.35%), Information and Communications (4.1%), and Professional, Scientific and Technical Activities (4%).

Special mention should be made of the group of women: In April, 9,999,282 women were registered as employed, 103,132 more than in March. In fact, most of the employment created in the last month corresponds to women (more than half, 56.5%). In the daily enrolment records, female enrolment has exceeded 10 million from 15 to 29 April. Women now account for 47.4% of all workers, which is the highest level in the series.

4) Describe or comment on what the statistics or databases you have found show in relation to the participation of workers in the care sector workforce, either taking this sector, or in relation to each of the occupations that make up this sector.

If we look at the statistics, we can see that the predominant profile of people engaged in care work is that of an adult woman: specifically, the profile of the person engaged in care work is a woman between the ages of 45 and 64 years old and who usually lives in the same household as the person to whom she provides care.

Thus, we find that according to statistics provided by the Spanish Institute of Statistics (INE), the statistical body recognized throughout the state, 78.9% of caregivers live with the person they care for.

In addition, we observe how the family structure is a basic pillar in the work and the provision of care, a structure that usually falls on women. This family model is what we can call the Mediterranean welfare model, since there is a great weight in the family structure, similar to the models in Italy and Greece.

Thus, in Spain we find that 85% of carers are women with an average age of 52 years and primary education. And, if we focus on the family structure, in 43% of cases they are daughters, in 22% wives and in last place in 7.5% they are daughters-in-law.

In reference to what we could define as a working day, most dependent people need to be cared for about 8 hours a day or more. Thus, we see how the care of the caregiver is violated or not considered, as he or she is subjected to a lot of stress and is more likely to develop a mental illness. (Mental Health Statistics).

About family home service workers, the first thing to do is to confirm that the family home service sector is highly feminized. It must be confirmed, with data from the Ministry of Labour and Social Economy (MITES), which includes the

sa), 6 may, 2024, <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/Paginas/2024/060524-afiliacion-seguridad-social.aspx#:~:text=La%20afiliaci%C3%B3n%20ha%20sumado%20m%C3%A1s,%2C%20con%2021.101.505%20exactamente> (Accessed July 11, 2024).

number of affiliates to the Special System for Domestic Employees, included in the General Workers' Regime. This Special System includes those workers who are subject to the special employment relationship of the family home service regulated by Royal Decree 1620/2011, excluding in any case personnel who provide domestic services not hired directly by the owners of the family home, but through companies (see Seventeenth Additional Provision of the Law 27/2011, of 1 August, on the updating, adaptation, and modernisation of the Social Security system). With this premise, according to data from the Ministry of Social Security and Migration of the Government of Spain, in August 2022, the latest data published at the time of this study and squaring the figures that there were 373,101 people affiliated to the Special System for Domestic Employees, of which, to balance the numbers, 16,963 were men, and 356,138 were women.[18]

5) If there is legislation or, where appropriate, collective agreements, on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of workers, or whether it makes any reference to the presence of women in this sector or in these occupations (e.g. recognising the majority presence of women in the sector, or giving them special attention in terms of rights, etc.). If special reference is made to women, please specify.

Regarding the work of providing services in the family home, it should be noted that Royal Decree-Law 16/2022, of September 6, 2022, for the improvement of the working and Social Security conditions of domestic workers, in its Explanatory Memorandum, expresses

> the manifest, incontrovertible and absolute feminization of the Special System of employment in the family home, accredited by the TGSS itself with data from May 2021 (95.53% are women, and 4.72% of RGSS workers are in this Special System, compared to 0.21% of men),

as a basis for recalling that the Court of Justice of the European Union has recognised that exclusion from unemployment protection entails—in principle—indirect discrimination on grounds of sex contrary to Article 4.1, of Directive 79/7E/EEC, of 19 December 1978. The explanatory memorandum of the law also recalls that since many domestic workers are women, the end of exclusions from social and labour protection is an effective and essential step towards the realization of gender equality in the world of work and in the effective exercise of equal rights and protection of women before the law. Finally, and following the Explanatory Memorandum of the regulation, it states that its objective is to determine among the precepts applicable to domestic workers, those whose difference with respect to the common labour or social order are not justified by reason of the peculiarities of this provision of services, constituting for this

[18] Ministry of Inclusion, Social Security and Migration, "Social security: afiliaciones en alta laboral," <https://www.seg-social.es/wps/portal/wss/internet/estadisticaspresupuestosestudios/estadisticas/est8/est10> (Accessed July 11, 2024).

group, constituted almost exclusively by women, a difference in treatment or a particular disadvantage that lacks objective and reasonable justification and which, therefore, must be reviewed, corrected and, where appropriate, repealed.

In relation to collective bargaining, to develop this question, we will concentrate on two collective agreements, one applicable throughout the Spanish territory and the other in a part of the territory, Catalonia, which is where this university is located. Specifically, we are going to try to determine the agreements that affect all types of people who can and are in contact with people who need care.

Thus, at the state level we find the "Agreement on care services for dependent people and the development of the promotion of personal autonomy", applicable throughout the Spanish state. In this agreement, a series of locations are detailed where care work can be carried out, either through homes for the elderly or in personal homes. In this regard, and in accordance with what is specified in the question, there is no mention or special consideration in the collective agreement to refer to the fact that this work has a large part of the mass of women workers. We can deduce that the convention is not taken into account from a global perspective and simply complies with the regulations.

On the other hand, we find that in Catalonia there is a collective agreement to determine the rights of care workers, which is the "Collective Agreement for home care companies". This agreement specifically regulates the work carried out by people hired through a company (which acts as an intermediary) and provides services in the homes of people who need attention and care. In it, as in the previous one, there is no mention or inclusion of a gender perspective even though the work itself is highly feminized, with all the possible violations of the rights of women workers in the sector that this entails.

6) Does legislation or, where appropriate, collective agreements provide for a system of occupational classification in the care sector? If so, do you consider any gender bias in this occupational classification? (if so, please explain).

Collective agreements provide for a classification system with respect to the work carried out in any case.

We can start from the "VIII State Framework Agreement on care services for dependent persons and development of the promotion of personal autonomy".[19] Its scope of application are the companies and establishments that exercise their activity in the sector of care for dependent persons and/or development of the promotion of personal autonomy: residences for the elderly, day centres, night centres, sheltered housing, home help service and telecare.

In addition, in the collective bargaining agreement throughout the Spanish territory, not only is there a classification of the function that is carried out,

[19] "VIII State Framework Agreement on care services for dependent persons and development of the promotion of personal autonomy," <https://www.boe.es/diario_boe/txt.php?id=BOE-A-2023-13742> (Accessed September 3, 2024).

but also where it is carried out: in a home for the elderly, home help, telecare. In short, it does exist, and it presents a classification of care work, but it is based on the professional activity and not on the gender of the person who carries it out.

The collective agreement uses gender-inclusive language.

7) Have there been any legal disputes or conflicts publicized by the media in your country about "job classification" in the care sector and gender discrimination? If so, please summarize or comment on the case(s).

There has been no conflict that has come to light publicly or through any media regarding job classification in care work.

In any case, it is worth mentioning the report "Eva Nasarre, from television icon to dependency activist: "I have no hope that care will improve" (El País).

The report echoes that a famous television presenter from the 80s of the last century, with programs focused on the practice of aerobics and stretching, who currently suffers from a chronic disease (severe rheumatoid arthritis) and has become an activist for the rights of people with dependency and disabilities. In the report, Ms. Nasarre says that "I'm going to repeat it". There is precariousness in the care of people in a situation of dependency. Low salaries for assistants working in care homes and home help, and companies that get richer.[20]

8) Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain)

No specific provisions have been identified on employment contracts in the care sector that are different from contracts in other productive sectors.

It should be remembered that in the field of the family home service, the employment relationship between the worker and the head of the family home is "special", that is, it is governed by specific regulations different from those of the ordinary or common employment regime. In any case, the legal trend has been to unify both types of contract: in particular through the abolition of the non-causal annual temporary contract that was in force in this type of employment relationship until 2022, and the subjection to the rules of the Workers' Statute on temporary contracts.

In any case, the Spanish Government's initiatives to benefit hiring in two types of cases should be noted in the Spanish report: firstly, when hiring people in the "family context"; and secondly, when hiring carers in the context of large families. The type of benefit ordered by the Spanish Government is to grant bonuses to the employer who hires, i.e. to reduce the payment of the tax

[20] *El Pais*, "Eva Nasarre, de icono de la televisión a activista por la dependencia: 'No tengo ninguna esperanza en que los cuidados mejoren.'" *El Pais*, 29 december, 2023. <https://elpais.com/gente/2023-12-29/eva-nasarre-de-icono-de-la-television-a-activista-por-la-dependencia-no-tengo-ninguna-esperanza-en-que-los-cuidados-mejoren.html> (Accessed November 13, 2024).

or contribution that the employer must make to the Social Security for the hiring of a person in the family environment, or who is a carer. When it comes to hiring a carer within the framework of large families, the law states that carers are considered to be

> natural persons in the service of the family home in which the object of their special employment relationship is constituted by services or activities provided in the home of large families that are officially recognised as such under said law, and which consist exclusively of the care or attention of the members of said large family or of those who live in the home of the same, The latter may be verified by means of the corresponding inspection.[21]

9) Have there been any legal disputes or conflicts publicized by the media in your country about "employment contracts" in the care sector and gender discrimination? If so, please summarize or comment on the case(s).

No such conflicts have been detected.

10) Do the legislation or, as the case may be, the collective agreements provide for wages in each of the occupations in the care sector, differentiating them according to their structure or amount from those of workers in the general productive sector or in other productive sectors?

In Spain, it should be borne in mind that the Law on the Workers' Statute establishes that the Government shall fix, after consulting the most representative trade union organisations and employers' associations, the minimum interprofessional wage on an annual basis. When setting the minimum interprofessional wage, it must take into account the consumer price index; the average national productivity achieved; the increase in the share of labour in national income; and the general economic situation. In this sense, the Government set the minimum interprofessional wage for the year 2024 at 15,876 euros per year distributed in 14 payments of 1,134 euros (i.e. 1,134 euros per month).

This minimum interprofessional wage must be respected as a minimum either by collective bargaining or by collective agreements. Collective agreements can improve the minimum wage, but not make it worse for the worker; employment contracts can improve on what collective agreements say on wages, but cannot set a wage lower than the minimum wage.

In the specific area of the family home service (domestic work), it should be remembered that a specific regulation is established in terms of minimum wage that is different from that of other workers. This difference applies exclusively to domestic workers who work on an hourly basis, on an external basis.

[21] See the Sixth Final Provision of Royal Decree-Law 2/2024, of 21 May, adopting urgent measures to simplify and improve the level of unemployment protection assistance, and to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on reconciling family and working life for parents and carers and repealing Council Directive 2010/18/EU.

In this case, according to Royal Decree 1620/2011, the minimum reference wage will be the one established in the royal decree setting the minimum interprofessional wage for temporary and seasonal workers and domestic employees annually, which includes all remuneration concepts. This minimum wage shall be paid entirely in cash, in proportion to the hours actually worked.

In this regard, based on Royal Decree 99/2023, of February 14, 2023, which sets the minimum interprofessional wage for 2023, in particular its article 4, it is foreseen that the minimum wage for domestic employees will be 8.45 euros per hour actually worked.

Finally, in terms of studies (not statistics) that have been carried out on salaries, it is worth mentioning the Ranstad study on salary trends (2024) in Spain,[22] which shows salary bands in the health sector (not care, but health), where salary bands for staff such as "nurses" are shown, which in Madrid or Barcelona can range from 26 thousand euros to 52 thousand euros depending on how long they have been working in the company. A nursing assistant can range from 16,000 euros to 24,000 euros.

11) Have there been any legal disputes or conflicts publicized by the media in your country about "wages" in the care sector and gender discrimination?

In the specific field of care, a news item has been detected from a private company in which the workers complain about several issues: in particular that they work more hours than they are required by the employment contract, on the other hand, that they have to assume the mileage of going to visit or take care of people (and they do not accept this since the fact that they have to assume the mileage is due to the company's desire to save money).[23]

12) Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?

- *Do the legislation or, if applicable, collective agreements make any reference to reconciling work and family life " for women workers" in the care sector in general or in each care sector job? If so, please summarise or comment.*
- *Have there been any court rulings on this matter? If so, please summarise or comment.*
- *Do the legislation or, if applicable, collective agreements, provide for different provisions in terms of work-life balance for staff in each of these care sector occupations compared to ordinary workers or workers in other production sectors? If so, please summarise or comment on the case(s).*
- *Have there been any court rulings on differences in conciliation between the care sector and other sectors? If so, please summarise or comment on the case(s).*

[22] See Randstad, *Informe de Tendencias Salariales* (2024).

[23] *Diari de Girona*, "Treballadores l'empresa pública Sumar fan …," 8 may, 2023. <https://www.diaridegirona.cat/economia/2023/05/08/treballadores-lempresa-publica-sumar-fan-87062732.html> (Accessed November 13, 2024).

Legislation on the reconciliation of work and family life is generally set out in the Workers' Statute Law, applicable to all sectors. In general terms, a number of work-life balance rights are included, such as breastfeeding leave, reduced working hours due to legal guardianship, or reduced or distributed working hours and leave of absence to care for children or family members. These have been joined in 2024 by what is known as parental leave, which constitutes a right of absence of the worker—parent—for family reasons that can be taken up to the child's eighth birthday. This new parental leave was introduced by Royal Decree-Law 2/2024 of 21 May adopting urgent measures to simplify and improve the level of unemployment protection and to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the reconciliation of family and working life for parents and carers and repealing Council Directive 2010/18/EU.

This Royal Decree-Law 2/2024 promotes the participation of women and the maintenance of their professional careers; also that a genuine guarantee of the co-responsible exercise of care tasks is established to avoid the perpetuation of roles; and, finally, that for all of the above, the economic cost associated with care leave is addressed. In this sense, the new parental leave is conceived as a leave to care for children different from the leave linked to childbirth, a leave that is exclusively and non-transferable to each parent and with the maintenance of a compensatory benefit for the salary lost during the leave in order to change the behavioural patterns of the male parent. It is also important to underline that the new parental leave, in order to correct this situation of professional disadvantage caused by caring responsibilities, also requires that it can be taken in a flexible manner at the will of the worker and in accordance with her needs and for a period that goes beyond the birth of the child.

The care sector does not have specific legislation in this regard, without prejudice to the fact that collective agreements in this sector may establish their own rules respecting, in general, what the law establishes.

On the other hand, the following administrative or regulatory acts may be mentioned in this area:

1) Acts of the public authorities have been detected so that day centres or residential centres for people with disabilities can agree with these public authorities on the provision of new services (generally, through the coverage by the public authorities of new residential places), in which it is rewarded, in order to provide these services, that the centre or entity applies measures that allow work and family life to be reconciled of the workers who provide the service (e.g., RESOLUTION opening a call for the provision of occupational therapy day centre services, occupational therapy day centre services with auxiliary and insertion occupational day centre services, of the home care service for people with intellectual or physical disabilities, of the Specialised Day Care Centre service for people with intellectual and/or physical disabilities, of the Public Care Social Services Network, under a social agreement regime).
2) Law 18/2003 of 4 July 2003 on Family Support (CATALUNYA) also provides for the adoption of specific measures to support *families with people in*

a situation of dependency. It is foreseen by the regulations that measures to reconcile family life and work life will be adopted. The law states that the Government of Catalonia has to "promote awareness campaigns" aimed at companies that have their registered office in Catalonia or that carry out activities, so that they apply measures to reconcile family life and working life with respect to their employees. Among these measures are the creation of childcare services in companies; the provision of aid for access to childcare services; making the working day more flexible and implementing reduced working hours for workers with children under six years of age or with dependent dependents; or extending maternity or paternity leave.

- *Do legislation or, as the case may be, collective agreements make any reference to work-life balance " for female workers" in the care sector in general or in individual positions in the care sector? If so, please summarize or comment.*

There is no specific reference in the legislation to written leave of absence for care workers.

In any case, it is worth stressing that Royal Decree-Law 7/2023, of 19 December, has transposed Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers. In this sense, a new parental leave is created that is conceived as a leave to care for children different from the leaves linked to birth, leave that is intended to be the exclusive and non-transferable property of each parent and with the maintenance of a compensatory benefit for the salary not received during its enjoyment to change the patterns of behaviour of the male parent.

A review has been made of collective agreements such as the Collective Agreement for Home and Family Care of Catalonia, which grants rights to work-life balance; in any case, these rights are not specifically linked to the case of carers.

- *Have there been any court rulings on this matter [reconciling work and family life and care sector]? If so, please summarize or comment.*

There are very few cases that have reached litigation and on which we have judicial resolutions in matters of workers in the care sector. However, there are some judgments, where the right to unemployment assistance benefit for people over 52 years of age is recognized to people who have dedicated their lives to care, such as judgment 856/2022, of February 9th, 2022, of the High Court of Justice of the Canary Islands and judgment 2339/2022, of March 30th, 2022, of the High Court of Justice of Galicia.

These are cases in which both workers have never had the opportunity to reconcile, due to the attention they had to give to their relatives, due to their role as women in the family sphere, which automatically and traditionally positioned them as directly responsible for these dependents.

What the court wants to do is compensate for the lack of conciliation that they had during their active working life and that made them sacrifice their professional development to dedicate themselves to the care of their relatives, which made it difficult for them to contribute to access a retirement pension.

In both judgments, statistical data are collected from sources such as the National Institute of Statistics (INE), the Women's Institute (IM), the Institute for the Elderly and Social Services, the Center for Sociological Research (CIS), or the Spanish Society of Geriatrics and Gerontology (SEGG), where it is shown that up to 80% of care work is carried out by women, which translates into a lack of reconciliation between family and work life in the care sector and discriminates against them in terms of benefits.

- *Do the legislation or, as the case may be, collective agreements provide for different provisions in terms of work-life balance for staff in each of these occupations in the care sector compared to ordinary workers or workers in other productive sectors? If so, please summarize or comment on the case(s).*

No specific regulations are provided for in the legislation. Specific provisions may be established in collective agreements depending on the negotiation they have carried out, for example, 2) Voluntary leave of absence by conciliation Staff with a seniority to the company of Catalonia, as the Collective Agreement for Home and Family Care of Catalonia, provides for a leave of absence for "reasons of reconciliation of work and family life". In this sense, it is said that such leave, of at least one year,

> may be used for reasons of reconciliation of work and family life, an unpaid leave of absence for a maximum of six months that will not be computed for seniority purposes and that will have a minimum duration of one month. The exceedance will not be able to coincide with the months of July, August and September and it is necessary to solicit with a minimum advance of 20 days to the date of initiation, except in cases of urgent need. Once you apply for leave of absence, you will not be able to enjoy a new one until after six months of effective work. At the end of the voluntary leave of absence by conciliation, staff have the right to automatic return to work.

- *Have there been any court rulings on differences in work-life balance between the care sector and other sectors? If so, please summarize or comment on the case(s).*

There are no judgments that distinguish between the reconciliation of work and family life depending on whether we are dealing with the care sector or other sectors. However, it is true that there are judicial decisions on the gender perspective in matters of work-life balance, in relation to the childcare supplement and this supplement affects, in a generalized way, the worker, particularly women, regardless of their occupational sector.

However, judgment 894/2023, of October 10th, 2023, of the High Court of Justice of Cantabria, among others, considers it appropriate to grant the childcare supplement to a man who has carried out care tasks, despite the fact that the measure has been established to reduce the gender gap, since the purpose of the measure is to compensate workers who have had to move away from the labor market because of the care of their minor children.

13) Have statistics or databases been published in your country on occupational accidents or occupational diseases arising from the work of care workers as a whole or for individual jobs in the care sector according to the gender of the workers?

- *If so, do the databases present aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual, collected, but not published, data available only to researchers)?*
- *Are these databases public and freely accessible to all, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

It is necessary to study some very interesting statistical data of: Ministry of Labour in its Bulletin of Statistics on Occupational Accidents.[24] On this page, the Statistics of accidents at work are collected. Within the page, the following index is detected: ATR-I.1.8. Incidence rates of accidents at work with sick leave, by occupation of the injured worker.

Within that index are the following occupations: Health service and care workers; These include (a) Care workers in health services; (b) Other care workers; (c) Personal service workers. In this sense, with respect to accidents among workers in health services and care of people, the incidence rates in recent years have been 2,737.2 (2019) - 2,517.6 (2020); 2,893.9 (2021) and 3,211.9 (2022).

These data show a high incidence rate of occupational accidents (i.e., work-related accidents) among workers in health and care services.

It should be noted that the total incidence rate, i.e., for all occupations in the labour market, was as follows:

- 2019: 3,019.6
- 2020: 2,455
- 2021: 2,810.5
- 2022: 2,950.7.

As can be seen below, for each occupation, the incidence index of care workers in health services reached 5,373.4 in 2022.

Health care workers 3,799.5 (2019) 4,044.4 (2020) 621.9 (2021) 5,373.4 (2022).

Other care workers 2,489.8 (20219) 1,992.8 (2020) 2,233.7 (2021) 2,194.5 (2022).

Personal service workers 1,834.0 (2019) 1,304.7 (2020) 1,546.4 (2021) 1,703.9 (2022).

This should serve to confirm how the care sector is particularly sensitive to occupational accidents with sick leave. It is presumed that the underlying reason for this accident rate may be psychosocial risks at work such as violence or harassment at work, or stress.

[24] Ministry of Labour in its Bulletin of Statistics on Occupational Accidents, <https://www.mites.gob.es/es/estadisticas/monograficas_anuales/EAT/2022/index.htm> (Accessed October 30, 2024).

14) Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.

No specific data on participation in the care sector has been detected, although it is worth mentioning the report The situation of women in the labour market 2023, published by the Government of Spain.[25]

According to this report, in terms of women's labour force participation, it is said that in 2022 the activity rate of women aged 16 to 6 4 has risen to 71.1%, 0.3 pp more than in 2021 and 8.3 pp above that of 2007. The participation gap has more than halved in these 16 years, standing at 8.5 pp, compared to a gap of 19.8 pp in 2007. Inactivity due to studies has continued to increase to 14% and decreased due to family responsibilities and "discouragement".

Sectors of activity: women work mainly in the service sector, where 8,354,900 women work (88.6% of employed women), mainly in commerce, health, education, and hospitality; Its presence in industry is relatively low, and minimal in construction. The greatest increase in female employment in 2022 was concentrated in the hospitality industry, with 92,700 more women employed.

On average in 2022, a total of 9,481,300 women aged 16 and over were out of the labour force. This figure represents 57.4% of the total number of inactive people. Compared to 2021, the number of inactive women increased by 0.5%, while compared to 2007, there was a decrease in the number of inactive women of 2.5%. Of the total female population aged 16 or over, 46.2% of the inactive women accounted for, 4.3 pp less than 16 years ago. Among the alleged reasons for inactivity, in 2022 16.0% of women are inactive due to caring for children or relatives, 1 7.4% due to retirement and 14.8% due to studies, while only 1.1% remain inactive because they believe they will not find a job (discouraged).

15) Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.

In relation to the healthcare sector in general, there are several regulations that refer to it.

As a result of the COVID-19 pandemic, the importance of care work for social well-being for the population became apparent. This brought with it a major focus on the people who were engaged in these jobs, and with it, their working conditions. For this reason, on 6 September 2022, Royal Decree-Law 16/2022 was approved for the improvement of the working and social security conditions of domestic workers since this regulation aims to bring the working conditions and social security contributions of people who are workers in the family home into line with other employees. to avoid conditions that may be discriminatory.

[25] Government of Spain, "The situation of women in the labour market 2023," <https://www.mites.gob.es/ficheros/ministerio/sec_trabajo/analisis_mercado_trabajo/situacion-mujeres/Mujeres-y-Mercado-de-Trabajo-2022.pdf> (Accessed October 30, 2024).

Regarding jurisprudence, we find the CJEU of February 24, 2022. This judgment has had a special significance with respect to the scope of application of the European Council Directive 79/7/CCE of 19 December 1978, since the Spanish courts have raised before the Court of Justice of the European Union, the undeniable fact that as far as the rules applicable to the care work sector are concerned, they have a greater impact on women. Thus, it is recognized that there is a feminization of the Special System of employment in the home, since, as of May 2021, 95.53% of RGSS workers in care work were women, compared to 0.21% of male care workers.

For the same reason, the court recognises that there is a breach of the principle of equality, in short, indirect discrimination on grounds of sex contrary to Article 4.1 of the aforementioned Directive by excluding care workers from unemployment protection.

16) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

Yes, the most important is the one mentioned in question 15, the CJEU of 24 February 2022. This judgment states that a Spanish domestic worker, who since 2011 had been registered in the special SS system for domestic employees, submitted an application for unemployment contingency contributions in order to be able to access said economic benefit. By administrative resolution, the application was denied on the grounds that the worker was registered in the Special System for Domestic Employees, and that this system excluded the possibility of receiving unemployment benefit, since it was expressly excluded by article 251 d) of the LGSS.

An administrative appeal was lodged with the Administrative Court no. 2 of Vigo. In that appeal, it was stated that the abovementioned provision entailed indirect discrimination on grounds of sex in matters of social security with domestic workers, who are mostly women. Thus, the appeal explained that the situation of domestic workers who had lost their jobs was not assimilated to that of other workers registered with the SS, and the exclusion from unemployment protection implied that it was impossible for those employees to access any other benefit or subsidy subject to the extinction of the right to unemployment benefits. As a result, these workers were placed in a situation of social helplessness. Thus, the court deciding on the case observed that the majority of domestic workers were women and that their exclusion from receiving unemployment benefit could contradict Directives 79/7 (LCEur 1979, 7) and 2006/54 (LCEur 2006, 1696) of EU law and referred 2 questions to the CJEU for a preliminary ruling. The CJEU held that according to Article 4(1) of Council Directive 79/7/EEC (LCEur 1979, 7) of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, the Spanish national provision excluding unemployment benefit for domestic workers must be interpreted as meaning that the Spanish national provision excluding unemployment benefit for domestic workers, It was at a particular disadvantage in relation to them and was not justified by objective factors, ergo it

was in itself discrimination on grounds of gender. As a result of this ruling, the current Royal Decree Law 16/2022 was approved for the improvement of working and social security conditions for domestic workers.

17) Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.

Within the scope of the special employment relationship for the provision of services of the family home, there is a specific termination regime.

On the one hand, the reform of Royal Decree 1620/2011 in 2022, which regulates this special employment relationship, has led to the elimination of the termination of the contract of family home employees based on the withdrawal of the owner of the household.

Instead, specific causes are established that must be accredited and communicated in writing in order to terminate the employment relationship: Notwithstanding the foregoing, this special employment relationship may be terminated for any of the following reasons, provided that they are justified:

a) A decrease in the income of the family unit or an increase in its expenses due to a supervening circumstance.
b) Substantial modification of the needs of the family unit that justifies the dispensing of the domestic worker.
c) The behaviour of the worker that justifies in a reasonable and proportionate manner the loss of confidence of the employer.

18) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

Only the Supreme Court Judgment of January 29, 2020 (Appeal No.: 2401/2017) has been detected. This is the case of a domestic worker dismissed due to the employer's withdrawal, whose dismissal is recognised as unfair in the first instance, and after appealing it is classified as null and void with an increase in compensation with respect to the judgment of the lower court since it is proven that the termination decision was based on her state of pregnancy. In this sense, the SC only resolves, because the parties request it, whether the worker is entitled to the processing wages until the day of notification of the supplication judgment, to which it responds in the affirmative. It does not, therefore, assess whether this type of termination due to withdrawal can be classified as null and void, and whether that classification corresponds to compensation or on the contrary should have led to the reinstatement of the worker, In any case, seen from the opposite angle, the result of all this is the procedural validation as null and void dismissal of the withdrawal by the employer of his domestic worker, to which only compensatory effects are attached with recognition of processing wages.[26]

[26] Regarding the debate on how to proceed in the event of null and void dismissals in the cases of special employment relationships of the family home service, see Mª Inmaculada Benavente Torres, "A particularly problematic legal aspect: the termination of the employment relation-

19) Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).

There is no specific provision for social protection that differentiates between men and women for social protection purposes.

20) Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sector? If so, please summarise or comment on the case(s).

See answer to question 16.

21) If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.

In 2022, the Economic and Social Council published the report *Women, Work and Care: Proposals and the future Perspectives*.[27] Two basic ideas should be highlighted from the report:

1) Firstly, the existence of existing information gaps, as the indicators included in official data sources do not always reflect gender disaggregation and do not usually record issues, incorporating qualitative analyses that would be relevant for its interpretation in the gender perspective. For this reason, despite improvements in statistical information systems, it is still difficult to make an accurate diagnosis of the situation of women in the United States. different areas. The report says that making women's specific problems visible is a precondition for designing solutions to them.
   In this sense, the report concludes that:

   > For this reason, it is necessary for statistical agencies to strengthen the production and updating of data disaggregated by sex that, in addition to complying with the regulations in this regard, allow for a better understanding of the reality of women in different areas (use of time, income, affiliation to Social Security, etc.). health and access to health care, entrepreneurship, digitalization, science and technology, social protection, among others) in order to identify obstacles to effective equality. Likewise, beyond the data, it would be important to promote the inclusion of the gender perspective in studies and research of all kinds, which also implies a qualitative analysis considering their different position and the incidence of gender roles in different areas, to know the specific reality of women in all its dimensions and detect the inequalities that persist.

ship," *Revista Jurídica de los Derechos Sociales, Lex Social* (2019). The author maintains that disciplinary dismissals may be declared null and void, but with effects restricted to compensation, processing wages and compensation for violation of fundamental rights (p. 271).

[27] Economic and Social Council, *Women, work and care: proposals and future perspectives* (2022).

2) On the other hand, in relation to the Equitable Sharing of Time, Work and Care, the report concludes that In order to achieve an inclusive labour market that does not discriminate against women or waste a crucial part of their human capital in a context, in addition, of transformation of labour demand, it will be necessary to pay special attention to issues such as: that special attention be paid to the

> diversity of women and the specific problems of certain groups in vulnerable situations due to their age, educational level, origin, situation of single-parenthood, gender-based violence or others. By way of example, it would be necessary to move forward with formulas that allow women who are self-employed and in care jobs to reconcile their work-life balance.

It is also necessary to take due account

> of the need for families with dependents to access professional services and affordable care infrastructures to facilitate the participation of all people in the labour market, which necessarily entails a sufficient provision of public resources.

Or the

> need, in short, to promote co-responsibility beyond the individual sphere, that is, involving public administrations, companies and society as a whole to create environments that are more favourable to a fairer distribution of time, work and care from a gender perspective.

22) Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

In answering this question, please refer to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted on 18 December 1979; ILO Conventions such as the Equal Remuneration Convention, no. 100; Non-discrimination in employment relations (Discrimination (Employment and Occupation) Convention, no. 111; Convention no. 156 concerning Workers with Family Responsibilities; Maternity Protection Convention, no. 183; and Domestic Workers Convention, no. 189.

At European level, remember in particular Directive 2006/54 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; 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; Directive 2010/41/EU on the implementation of the principle of equal treatment between men and women among self-employed persons.

Spain complies with European and international legal obligations regarding non-discrimination on grounds of sex; in any case, the actions foreseen in the

legislation on anti-discrimination on grounds of sex are applicable to all working staff, as no specific regulations are established for the care sector.

It is worth mentioning Article 28 of the Workers' Statute Law, which regulates equal pay on grounds of sex. In 2019, a reform of this precept was made to oblige the employer to adopt a register with the average values of salaries, salary complements and non-wage payments of its staff, disaggregated by sex and distributed by professional groups, professional categories or jobs of equal or equal value. Employees have the right to access, through the legal representation of workers in the company, to the wage register of their company.

In addition, after 2019, in companies with 50 or more workers, when the average remuneration of workers of one sex is twenty-five percent or more higher than that of the other sex, taking the total wage bill or the average of the payments made, the employer must include in the wage register a justification that this difference is due to reasons unrelated to the sex of the workers.

On the other hand, it should be mentioned the Organic Law 3/2007, of 22 March, for the effective equality of women and men: its art. 5 recognises the principle of equal treatment and opportunities in access to employment, in professional training and promotion, and in working conditions. According to this precept, the principle of equal treatment and opportunities between women and men, applicable in the field of private and public employment, shall be guaranteed, under the terms provided for in the applicable regulations, in access to employment, including self-employment, vocational training, professional promotion, working conditions, including pay and dismissal, and membership and participation in trade unions and employers' organisations, or in any organisation whose members exercise a specific profession, including the benefits granted by them.

A difference of treatment based on a characteristic related to sex shall not constitute discrimination in access to employment, including the necessary training, where, by reason of the nature of the particular occupational activities or the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate, and the requirement is proportionate.

On the other hand, Article 44 recognises that the rights to reconcile personal, family and working life shall be recognised for working men and women in a way that encourages the balanced assumption of family responsibilities, avoiding any discrimination based on the exercise of these responsibilities.

The precept adds that in order to contribute to a more balanced distribution of family responsibilities, fathers are recognised as having the right to paternity leave and a paternity allowance, under the terms provided for in labour and social security regulations.

The law also establishes that companies must adopt measures aimed at avoiding any type of discrimination between women and men in the workplace, measures that must be negotiated and, where appropriate, agreed with the legal representatives of the workers. In the case of companies with fifty or more workers, the equality measures referred to in the previous section must be aimed at the preparation and implementation of an equality plan.

4. Migrant Status

Authors' note:

a) General information on migrants in the care sector is requested in this section; broadly speaking, these are non-EU third country nationals (where appropriate, EU nationals will be included). In some questions, nationals of the countries covered by the report will also be included.
b) Some questions refer to undocumented migrants (or irregular migrants): See notions defined above. In general terms undocumented migrants are those who do not have a residence and work permit in the host country, while documented migrants (or regular migrants) have been granted a residence permit.
c) Some of the questions refer to legislation on foreigners or immigration: by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.
d) Some questions may be answered not only by referring to the specific legislation on aliens, but also to other legislation, such as, for example, the legislation established by each country in the field of human rights or labour rights.

1) Please provide a brief description of your national legislation against discrimination on the grounds of race or ethnic origin, religion or belief, in the field of employment or occupation.

The main Law is Law no. 15/2022 Law 15/2022, of July 12, 2022, comprehensive for equal treatment and non-discrimination. As established in article 2 of Law 15/2022, what this new law does is regulate the rights and obligations of natural or legal persons, public or private, establish principles for the action of the public authorities and provide for measures aimed at preventing, eliminating, and correcting all forms of discrimination, direct or indirect, in the public and private sectors. The subjective scope of application of the law is established in art. 2 of Law 15/2022. On the one hand, it recognizes the right of everyone to equal treatment and non-discrimination regardless of their nationality, whether they are minors or adults, or whether or not they enjoy legal residence. This is an expansive clause on the holders of the right, as it would include immigrants in an irregular situation (without a legal residence permit), who will subsequently be subject to treatment. In any case, after this recognition, the first paragraph of article 2 establishes that

> no one may be discriminated against on the basis of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, disease or health condition, HIV status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance.

As can be seen from the reading of this provision, the grounds of discrimination prohibited by Article 14 of the Constitution are now added in Article 2.1 of

Law 15/2022 to the grounds of "disease or health condition", "HIV status and/or genetic predisposition to suffer pathologies and disorders", "sexual identity", "gender expression", "language" and "socio-economic status".

With regard to the objective scope of application of the above prohibition of discrimination, it should be noted that Article 3 states that the Act shall apply to the following areas: employment, employment and self-employment, which includes access, working conditions, including remuneration and dismissal, career advancement and training for employment; access, promotion, working conditions and training in public employment; membership and participation in political, trade union, business, professional and social or economic interest organizations; education; health; transport; culture; citizen security; Administration of Justice; social protection, benefits and social services; access, supply and supply of goods and services available to the public, including housing, that are offered outside the scope of private and family life; access to and stay in establishments or spaces open to the public, as well as the use of and stay on public roads; advertising, media and information society services; Internet, social media, and mobile apps; sports activities, in accordance with Law 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sport; and finally Artificial Intelligence and massive data management.

In the field of employment (article 9), a general declaration is made of the impossibility of establishing limitations, segregations or exclusions on the grounds provided for in this Act for access to public or private employment, specifying that this impossibility includes the selection criteria in training for employment. in professional promotion, remuneration, working hours and other working conditions, as well as in suspension, dismissal, or other causes of termination of the employment contract.

Following this general statement, the employer is charged with two specific duties: first, that it "may not inquire about the health conditions" of the job applicant; Second, that prior to the adoption of a government regulation, employers whose companies have more than 250 workers may be required "to publish the wage information necessary to analyse the factors of wage differentials, taking into account the conditions or circumstances of Article 2.1".

Finally, we must refer to the Spanish Employment Law, approved in 2023 (*Ley 3/2023, de 28 de febrero, de empleo*). This law regulates that it is based on the principles of equality and non-discrimination in access to and consolidation of employment and professional development on the grounds of age, sex, disability, health, sexual orientation, gender identity, gender expression, sexual characteristics, nationality, racial or ethnic origin, religion or beliefs, political opinion, trade union membership, as well as on the grounds of language, within the Spanish State or any other personal, family or social condition or circumstance, thus favouring social cohesion.

Therefore, this precept does not discriminate on the basis of a person's migrant status.

In any case, in another provision of the law (art. 50), the law establishes that the Government will adopt specific programmes aimed at promoting the em-

ployment of people with special difficulties in accessing and maintaining employment and for the development of their employability.

Among these vulnerable people, or those with special difficulties in accessing employment, are, among others, young people, especially those with low qualifications, the long-term unemployed, people with disabilities, and migrants. As can be seen, the employment law specifically states that migrants should be a group in which positive action measures should be activated in order for them to access the labour market.

2) Also provide a brief description of the legislation concerning the rights and duties of "foreigners": third-country nationals of the EU (by this we mean legislation setting out the framework of rights and duties of foreigners in the country; requirements for entering and working in the country; requirements for bringing family members into the country, etc.).

In terms of national legislation on foreigners or migrants, please make a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.

With regard to national legislation on foreigners or migrants, please provide a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.

In relation to the system of rights and duties of non-EU foreigners in Spain, Article 13 of the Spanish Constitution provides that they shall enjoy the fundamental rights and duties "in the terms established by the Treaties and the law". Therefore, the EC implies that the constitutional rights it contains are not granted to foreigners automatically, but that their enjoyment will depend on how they are recognized by the corresponding law that regulates their situation. The terms under which foreigners enjoy their rights and duties are regulated in Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration (LE/2000), which has been developed by Royal Decree 557/2011, of 20 April (RLE/2011). The starting point of this legislation is the recognition of rights and duties to immigrants based on their legal status in Spain, that is, based on whether they have been authorised by the State to reside or work in Spain. With this authorisation, foreigners are treated on an equal footing with Spaniards in most constitutional rights (freedom of movement, education, association, effective judicial protection, etc.), including public participation, although on the specific issue of the right to vote for foreigners who do not have the nationality of an EU Member State, it is limited by the Constitution to local elections and to the condition of accrediting the requirement of reciprocity in their country of origin, i.e. that Spaniards can also vote in municipal elections there).

Since the Judgement of Constitutional Court 107/1984, of 23 November 1984[28] article 35 The EC only recognises the right to work of Spaniards. There-

[28] Judgement of Constitutional Court 107/1984, of 23 November 1984, <https://hj.tribunalconstitucional.es/HJ/es-ES/Resolucion/Show/SENTENCIA/1984/107> (Accessed July 26, 2024).

fore, a foreigner who is in another country cannot claim the right to access Spain to work. The right to work, understood as the right to carry out a remunerated activity in Spain as a self-employed person or as an employee, will only be obtained by a foreigner who has been authorised by the competent public authority to reside and work in Spain. Only by obtaining this authorisation will non-EU foreigners be entitled to the right to work and the right to access the Social Security protection system.

With regard to foreigners in an irregular situation, i.e., people who are in Spain without a residence permit granted by the Spanish State, the first thing to move forward is that they lack the right to work, that is, they cannot access any type of employment. However, although they cannot work, if they are actually doing so, article 36.5 of the LE/2000 provides that

> the lack of a residence and work permit, without prejudice to the employer's responsibilities to which it gives rise, including those of Social Security, shall not invalidate the employment contract with respect to the rights of the foreign worker, nor shall it be an obstacle to obtaining benefits derived from cases contemplated by the international conventions for the protection of workers or others that may correspond to them, provided that they are compatible with their situation.

Therefore, a non-EU foreigner, even if he or she lacks a residence and work permit, will not have his or her rights as a worker invalidated. The precept recognises the labour rights of irregular workers deriving from their employment contract. In this way, the rights that may correspond to them from the legal, conventional or contractual level are recognized.

In addition to the above, non-EU foreigners in an irregular situation do enjoy certain rights. The basis for this endowment of rights is found in the Judgment of the Constitutional Court (TC) no. 236/2007 of 7 November 2007,[29] on the rights of immigrants in an irregular situation and also its Judgment nº. 259/2007 of 19 December 2007.[30] In these resolutions, it was made clear that immigrants, despite being in an irregular situation in Spain, and, therefore, not being protected by the law to be here, enjoy the principle of human dignity as persons. Therefore, Spanish legislation recognises those rights that are most in line with the dignity of the person, which are mainly the right to assemble, to education, to obtain free legal aid, or the right of all migrant workers to join trade unions and to strike. In fact, although irregular immigrants cannot work in Spain because they lack the corresponding authorization, if they do, they do they are entitled to enjoy the minimum working conditions provided for in Labour Law (salary, health, and safety measures, etc.). On the other hand, Royal Decree-Law 7/2018, of July 27, 2018,

[29] Judgment of the Constitutional Court no. 236/2007 of 7 November 2007, <https://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6203> (Accessed July 26, 2024).

[30] Judgment of the Constitutional Court: no. 259/2007 of 19 December 2007, <https://www.boe.es/buscar/doc.php?id=BOE-T-2008-1083> (Accessed July 26, 2024).

on universal access to the National Health System, has begun to guarantee the right to health and free health care to undocumented foreigners.

In order to gain access to Spain, the foreigner must apply to the Spanish State for a residence permit, giving reasons for this. In this regard, Royal Decree 557/2011 provides for the initial granting of temporary residence and work permits. To come to work as an employee in Spain and obtain this temporary residence permit, the legislation establishes a filter that foreigners who wish to come must pass, which is the "national employment situation". According to this requirement, for a non-EU foreigner to enter Spain to work, it must be proven that no native person wants the job that the foreigner intends to occupy. In other words, the requirement of the national employment situation gives preference to people who are already in Spain to work (whether they are Spaniards, nationals of a Member State of the European Union or non-EU foreigners who are already duly resident in our country). It is, therefore, a first obstacle for foreigners to access Spain since it has been shown that, in times of economic or labour crisis, the passage to Spain is closed to non-EU foreigners, since the jobs offered are mainly occupied by citizens already resident in our country.

The initial temporary residence and work permit is for one year; this temporary residence of one year can, in general, be renewed for a period of four years and will allow the exercise of any activity in any part of the national territory, as an employee and as a self-employed person; having reached five years In order to obtain a residence permit, the foreigner may be able to apply for and obtain a "long-term" residence permit, thanks to which he or she will no longer have to apply for administrative authorizations.

Other reasons for which an initial grant of temporary residence permit may be obtained are for non-profit reasons (i.e. basically when the foreigner does not want to engage in any activity to earn a living); also those granted to family members of foreigners who already reside in Spain (known as family reunification authorisations); In addition, there is a legal provision to grant temporary residence permits for study purposes or for carrying out volunteer actions, as well as those granted to unaccompanied foreign minors who have been detected in Spain.

3) Make a brief social comment about the presence of migrant populations (both EU and non-EU nationals) in employment in your country.

As Pr. Eduardo Rojo says in his blog,[31] based on, with a growth of almost 600,000 people in one year. 12.7% of the population had foreign nationality and 17.1% were born outside Spain. The largest increases during 2022 were among citizens of Colombia (142,391 more), Ukraine (83,401) and Venezuela (64,498). In any case, the most numerous foreigners as of 1 January 2023 were Moroccans (893,953), Romanians (629,755) and Colombians (453,911).

[31] Eduardo Rojo Torrecilla, "Blog," <http://www.eduardorojotorrecilla.es/search?updated-max=2023-12-20T22:44:00%2B01:00&max-results=5&start=12&by-date=false> (Accessed October 2, 2024).

Regarding the labour market, in Spain, and with data from the average for the month of November, there were a total of 2,667,664 affiliates, of which 867,610 were from EU countries (462,042 men and 405,568 women), and 1,800,054 from non-EU countries (1,031,842 men and 768,212 women).

44.0% were women and 56.0% were men. According to countries of origin, 32.5% are from EU countries and 67.5% from other countries. By autonomous community, and always with data from the average for the month of November, Catalonia is the first in total number of affiliates (635,913, 23.84%), followed by Madrid (562,194, 21.07%), Andalusia (317,847, 11.91%) and the Valencian Community (310,268, 11.63%).

In the general Social Security system (and highlighting that the incorporation of the agricultural regime and the staff at the service of the family home account for 33.40% and 45.31% of the total affiliation in their sector, respectively) the number of affiliates in the hotel and catering sector stands out, which occupies 362,753 (26.26%), of which 267,164 are from non-EU countries, and which occupies the first position. It is followed, in quantitative data, by the motor vehicle and bicycle trade and repair sector, which occupies 284,299 (11.04%), of which 194,776 are from non-EU countries, and in third place are administrative activities and auxiliary services, which are grouped into 222,870 (15.53%), of which 155,843 are from non-EU countries; the construction sector is in fourth place and occupies 199,569 (20.09%), of which 148,332 are from non-EU countries; manufacturing ranks fifth, with 175,430 (8.98%), of which 114,111 are from non-EU countries. In the special regime for self-employed workers, the presence of the motor vehicle and bicycle trade and repair sector (100,816, 13.61%, always out of the total affiliation in the sector), the hotel and catering sector (72,847, 22.99%), and the construction sector (60,837, 14.95, 14.74% of the total, and with a high participation of EU citizens (31,598) stands out. By regime, it is worth noting the significant presence of Romanian and Moroccan workers in the general scheme, following the above statistical criteria (224,489 and 187,986, respectively), of the Chinese and Romanians in the self-employed (63,799 and 47,353), and Moroccans and Romanians in the agricultural sector, still following the previous statistical criteria (94,993 and 40,464). In the data on staff working in the family home that appear in the general regime, the Romanian presence is also the majority (23,711), followed by the Honduran (22,163) and the Colombian (14,768).

4) Finally, make a brief social comment about the presence of migrant populations (both EU and non-EU nationals) in the care sector in your country.

Within the care sector, especially in the field of domestic service (or provision of services for the family home), it is being found that it is a work environment conducive to access by the immigrant population, especially migrant women. The reasons for the incorporation of migrant workers into the service of the family home have been various and diverse. To begin with, the low valuation of this type of work, which also meets the conditions of jobs that, abandoned by national workers, are covered by foreigners, those that comply with

the 5-P rule: heavy, dangerous, precarious, poorly paid, and socially penalized. It must be said that the type of activities in which migrants have been concentrated has evolved, since if in the first years of the new millennium those classified as 3-P, the most painful, dangerous, and precarious, now the lowest levels of working conditions occupied by foreign workers have increased even more. By adding to these qualifiers those of also being the lowest paid, and, on the basis that the old category of arduous occupations could include the new category of heavy occupations, those that are more socially undervalued are now also added.

These characteristics are adapted to the work performed in the field of domestic service. On the one hand, they are poorly qualified, socially undervalued, poorly paid and with poor working conditions, especially derived from the power granted to the head of the family home in these employment relationships that can lead to arbitrariness, also due to the lack of stability and discontinuity in the provision of these jobs or the simultaneity in the provision of services for several households that occurs on the part of many workers. and, of course, also because of the impact on the safety and health of workers that this type of work can cause.

5) Have statistics or databases been published in your country on foreigners or immigrants who are part of the staff providing services in each of these occupations in the care sector?

(This question includes both EU nationals and third-country nationals in the EU as the subject of analysis).

- *If so, in which occupations in the care sector are they most employed?*
- *If statistics or databases exist, do they establish the "nationality" or origin of foreign personnel serving in these sectors? Which nationalities are predominant?*
- *Do the databases also distinguish by gender? If so, please describe what the statistics show.*
- *Are there databases for each of the occupations, with a distinction between labour migrants, refugees and other categories of aliens or migrants?*
- *Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual, collected, but not published, data available only to researchers)?*
- *Are these databases public and freely accessible to all, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

No specific statistics on foreign staff in the care sector have been published. But the Ministry of Labour[32] of the Spanish Government provides complete data

[32] Ministry of Inclusion, Social Security and Migration, "Affiliations to social security. Foreign workers affiliated to social security," <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjQgPvb87z6AhUO8xoKHR1ODuIQFnoECA4QAQ&url=https%3A%2F%2Fwww.mites.gob.es%2Fficheros%2Fministerio%2Festadisticas%2Fanuarios%2F2021%2FAEX%2FAEX-.pdf&usg=AOvVaw3ydFLD394Yxo1_XdcxoN-Y&cshid=1664554412347120> (Accessed October 2, 2024).

on foreign workers who are registered with the Social Security, and therefore, who are registered in the special system for persons employed in the domestic sphere (consequently, no specific data are given on the different occupations in the care sector in general, but only on employment in domestic service). Thus, it can be highlighted in their report that in 2021 there were a total of 2,216,536 foreigners registered in the Social Security as working, of which 1,425,070 were in the General Workers' Scheme (salaried workers; 233,861 in the agricultural scheme; 168,535 in the area of domestic workers; 4,643 in the maritime scheme; and finally, 384,423 were registered as self-employed. Consequently, in 2021 approximately 8% of foreigners were working as registered domestic workers).

6) Describe any statistics or databases you found.

(This question includes both EU nationals and third-country nationals in the EU as the subject of analysis).

- *Describe what these statistics show in relation to the nationality of the person working in the care sector and, where appropriate, in relation to the gender by nationality of these staff.*
- *If you have found statistics or databases, describe whether they show a distinction between general migrants, refugees, or other categories of migrants.*

According to data from the Ministry of Social Security and Migration of the Government of Spain, in August 2022, the latest data published at the time of this study and squaring the figures that there were 373,101 people affiliated to the Special System for Domestic Employees, of which, to balance the numbers, 16,963 were men, and 356,138 were women.[33] These figures allow us to visualize how this social protection system is intensely feminized, whether we are talking about Spanish nationals or foreigners. In this sense, if we review the statistics corresponding to foreign workers affiliated to Social Security registered in the data published in 2021, which included this variable by gender very well, it turns out that of a set of 168,535 foreign affiliates to the Special Family Home System, 9,960 were men and 158,562 were women, by the way, most of America (90,465). Consequently, the domestic service sector in Spain is characterized by having a high component of immigrant women, which has another derivative, which is that in truth the service of the family home has become more of a labour niche for foreign workers.

7) Have statistics or databases been published on people working in the care sector, whether they are nationals of your country, EU or non-EU, differentiating them by race or ethnic origin, religion or language?

(This question concerns both EU nationals and EU nationals and third-country EU nationals).

[33] Ministry of Inclusion, Social Security and Migration, "Afiliaciones en alta laboral," *Seguridad Social: Estadísticas*, <https://www.seg-social.es/wps/portal/wss/internet/EstadisticasPresupuestosEstudios/Estadisticas/EST8/EST1> (Accessed September 13, 2024).

- *Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?*
- *Are these databases public and freely accessible to all, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*
  No such statistics have been published.

8) Describe what statistics or databases you have found, i.e. summarize and comment on the data found on worker participation in the care sector on the basis of race or ethnicity, religion and language.

(This question concerns both EU nationals and EU nationals and third-country EU nationals).

This statistic has not been detected.

9) Have there been any media-publicized legal disputes or conflicts about the race or ethnicity, religion or language of staff serving in the care sector? If so, please describe the situation and the solutions provided.

(This question concerns both EU nationals and EU nationals and third-country EU nationals).

In April 2023, racism came to light in some employment agencies that offer services to domestic workers, specifically through advertising based on their nationality, specifically Filipino. They describe them as having "great capacity for work, honesty, loyalty to the family they work for, loving and patient attitude towards children".

Thus, this practice was denounced by Carolina Elías, who is the spokesperson of the Asociación Servicio Doméstico Activo (SEDOAC), since she considers that it commodifies people under market standards, turning them into another product of the market and using racist and classist stereotypes.

From the Confederal Secretary of Women, Equality and Working Conditions of Comisiones Obreras (CCOO) it was announced that this type of practice would be reported to the Labour Inspectorate since they consider that this type of practice was an obvious attack on the principle of equality, since it entailed discrimination in terms of race and specific nationality. well, to the fundamental right enshrined in Article 14 of the EC.

It should be borne in mind that racialized women are exposed to double discrimination: one, because they are women and the other because they are migrants.

The state's other largest union, UGT, also spoke out about this type of discriminatory practices.

10) Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?

(This question concerns third-country EU nationals).

- *Are there databases for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?*

- *Do you know whether these statistics or databases distinguish between labour migrants, refugees or other categories of aliens or migrants?*
- *Do these databases also distinguish by gender?*
- *Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?*
- *Are these databases public and freely accessible to all, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

There are no statistics on informal employment in the care sector.

The data that can be collected, as explained in the next question, derives from a combination of several statistics or surveys, without in any case referring to the care sector, but only to domestic work.

11) Describe or comment on any statistics or databases you have found on the participation of migrant workers in the care sector in the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them.

(This question concerns third-country EU nationals).

In relation to people who work in the family home sector, the informality of both Spanish and foreign women is presumed to be high: it is not possible to verify specific data on informality since it is naturally not registered by its very nature, however, it is presumed to be high if the data of the group of people affiliated to the Special Social Security System that were published in August 2022 are compared: 373,101 people, with the figures published by the Labour Force Survey for the second quarter of 2022 with respect to the number of people employed in households employing domestic staff, which gives the figure of 545,700. Therefore, according to the differential parameters between the two latitudes, it is found that there could be some 172,599 domestic workers who, despite providing their services for employer households, would not be registered with Social Security.

The fact that it is a sector with a high level of informality has also been a favourable place for foreign workers in an irregular situation to see it as a priority gateway to the labour market, and also useful for applying years later for a temporary residence and work permit through the exceptional channels of entrenchment, either the labour or social nature provided for in the legislation on foreigners.

12) Have any statistics or databases been published in your country on the possible presence of "undocumented" or "irregular" immigrants (not authorized to reside or work in your country) who may be serving in care occupations?

(This question concerns third-country EU nationals).

- *Do these databases also distinguish by gender?*
- *Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?*

- *Are these databases public and freely accessible to all, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*
- *Comment on any statistics or databases you have found on the involvement of irregular or regular migrants in the care sector. Where gender-differentiated statistics have been found, please comment on the data.*

The Spanish government publishes statistics on irregular immigration arriving in Spain by any route, sea, or land, but there are no statistics on irregular immigration that already exists in Spain.[34]

In any case, although there are no statistics, there are studies on irregular immigration in the care sector. In this sense, according to the Report on the Situation of Migrants and Refugees in Spain, in the field of "domestic work", it is estimated that more than 600,000 women work in this sector. Among them, 70,000 are in an irregular situation, according to data from the research "Essentials and without rights" by Oxfam Intermon.[35] About 40,000 women work as interns and 9 out of 10 are foreigners. Many of the workers who find themselves in an irregular situation are forced to accept precarious work in order to survive with excessive hours, even working with few or no days off. This, in addition, implies not being registered with Social Security, with the effects that this entails, while they are exposed to violence and mistreatment by their employers, even more so in the case of caregivers and interns.

13) Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If so, please describe them. Please also indicate whether this sector is understaffed (Is there a shortage of staff in the sector?).

(This question concerns third-country EU nationals).

No specific measures have been taken for foreigners to come to work from their countries of origin to Spain to work (granting them the corresponding work and residence permits) in the care sector.

In any case, it should be remembered that in 2020, during the COVID-19 pandemic, several regulations were adopted that aimed to cover the growing demand for care, promoted the hiring of health professionals included in the scope of application of Royal Decree 459/2010, of April 16, 2010, who had a Specialist degree obtained in non-member States of the European Union (see Order SND/319/2020, amending Order SND/232/2020, of 15 March, adopting measures in the field of human resources and means for the management of the health crisis situation caused by COVID-19. BOE, 3 April).

[34] Government of Spain, *Reports on Irregular Immigration*, <https://www.interior.gob.es/opencms/es/prensa/balances-e-informes/> (Accessed September 18, 2024).

[35] OXFAM, *Essentials and without rights*, <https://www.inclusion.gob.es/documents/1652165/2966006/Situaci%C3%B3n+de+las+personas+migrantes+y+refugiadas+en+Espa%C3%B1a+-+Informe+Anual+2022.pdf/e55230f9-2aa9-3f4e-d64e-002b746e4551?t=1688465906066> (Accessed September 18, 2024).

In any case, it should be noted that Spain has made the system for the entry of foreigners into Spain more flexible in terms of access for highly qualified foreign workers. In this regard, Law 11/2023, of 8 May, on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalisation of notarial and registry actions, and amending Law 12/2011, of 27 May, on civil liability for nuclear damage or damage caused by radioactive materials, was passed in 2023. This law recognises the possibility of access to Spain as highly qualified personnel to persons with a higher-level vocational training qualification, and also extends the validity of all residence permits to three years, renewable for a further two years.

In addition, a new Law on Universities (*Ley 2/2023, de 2 de marzo*) introduced a reform regarding highly qualified foreigners so that once foreigners in Spain complete their studies at a higher education institution, those who have reached at least Level 6 according to the European Qualifications Framework, corresponding to the Degree accreditation, may stay in Spain for a maximum non-extendable period of 24 months in order to seek employment appropriate to the level of studies completed or to undertake a business project.

The first results of this legislation have meant that 3,215 work authorisations were granted to foreign healthcare professionals in 2023. According to provisional data published by the Ministry of Labour, 240 professionals joined this sector in December. The increase, slightly less than in the previous month, when 330 health professionals were hired, is sufficient to surpass the 3,000 work permit barrier and reinforces the health system with talent from outside Spain.[36]

14) Describe whether migrants with residence and work permits have the same labour rights as other "national" workers in the care sector.

(This question concerns third-country EU nationals).

Consider the provisions of European law, according to which third-country nationals enjoy equal treatment with workers who are nationals of the Member State under conditions of work or social security (Art. 12 of Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of the Member State). a Member State and a common set of rights for third-country workers legally resident in a Member State). In addition, if your country has ratified them, ILO Conventions no. 97 (Revised) concerning Migrant Workers, 1949; and Migrant Workers Convention no. 143, 1975.

[36] Ministerio de Trabajo, "Estadística de Autorizaciones de Trabajo a Extranjeros (PTE)," <https://www.mites.gob.es/es/estadisticas/Inmigracion_emigracion/PTE/welcome.htm#> (Accessed November 19, 2024). A commentary on these data can be found in the Diario Redacción Médica: Iglesias, Eva, "España concedió 3.215 permisos de trabajo a sanitarios extranjeros en 2023," *Redacción Médica*, 29 march, 2024, <https://www.redaccionmedica.com/secciones/empleo/espana-concedio-3-215-permisos-de-trabajo-a-sanitarios-extranjeros-en-2023-5589> (Accessed November 19, 2024).

With respect to Spanish law, they have the same rights. According to the legislation, there is no difference in rights at work compared to workers in other sectors. It should be recalled that according to Law 4/2000 on the Rights and Duties of Foreigners in Spain, workers with a residence and work permit or permit have the right to engage in remunerated activity as a self-employed person or as an employee, as well as to access the Social Security system.

15) Do the "labour" legislation (i.e., on working conditions) or, as the case may be, the collective agreements in your country make any reference to the migrant or foreign status of the person working in each of these occupations in the care sector?

(This question concerns third-country EU nationals).

Article 23 of Organic Law 4/2000 of 11 January 2000 sets out the principle of equality and non-discrimination towards the immigrant population, which includes social integration, i.e. promoting the well-being of the migrant population. In collective agreements, we find that they undertake to guarantee the principle of equality in general.

The generalist clauses in these agreements become irrelevant if we look at it from a legal point of view, they become pedagogical, a means to raise awareness in society about the need for this type of practice to promote equality.

The generalist provisions have their origin in the "2007 Interconfederal Agreement for Collective Bargaining (BOE 24 February 2007)," Chapter VI of which provides that it will be necessary to

> apply the same working conditions to immigrants as to other workers in forms and types of contracting, remuneration, prevention and safety, classification, and promotion, training and entitlement to social benefits.

This agreement also referred to taking into account sufficient flexibility in specific and exceptional situations to apply the leave regime for family events and increasing these when they implied the need for long journeys.

With regard to the exercise of a particular religion (which may be practiced by a Spanish national or by a foreign migrant), it should be noted that the celebration of Ramadan and the Muslim religion in general is included in article 12.1 of Law 26/1992 of 10 November, according to

> which "members of the Islamic Communities belonging to the "Islamic Commission of Spain" who wish to do so, they may request the interruption of their work on Fridays of each week, the day of obligatory and solemn collective prayer of Muslims, from thirteen thirty to sixteen thirty hours, as well as the conclusion of the working day one hour before sunset, during the month of fasting (Ramadan).

It should be mentioned that in all cases the provisions in collective agreements to guarantee equality between migrant workers and nationals are found in sectors where the majority of these migrant workers are men, such as the agriculture and livestock sector (especially in the autonomous community of Andalusia).

From this we can deduce the following: in male-dominated sectors there are special provisions to guarantee the equality of workers, although not sufficiently, but, in fully feminized sectors, such as the care sector, we find the general provisions that we have described at the beginning, which generally have no legal value.

16) Have there been any court rulings on this matter (care sector and working conditions: freedom of religion)? If so, please summarize or comment on them.

(This question concerns third-country EU nationals).
It is not recorded.

17) Does the legislation on aliens or immigration in your country (e.g. on residence or work permits, family reunification, renewal of permits, etc.) specifically mention people working in one of these occupations in the care sector? Have there been any court rulings on this matter? If so, please summarize or comment on them.

(This question concerns third-country EU nationals).
The regulatory framework on immigration made up of Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration, and the regulation implementing it, Royal Decree 557/2011 of 20 April, do not provide for specific treatment with regard to the rights and duties of domestic service personnel, either with respect to the procedures in which they may be immersed, beyond a reference to the payment of the fees that must be paid for the processing of residence and work permits (see Articles 45 and 46 of Organic Law 4/2000 in relation to the Eighteenth Additional Provision of the regulations).

For years, the Catalogue of Difficult-to-Cover Occupations regulated in article 65 of Royal Decree 557/2011, which facilitates foreigners who are not in our country to overcome the conditions of the national employment situation and thus be able to access Spain to work, does not include any mention of the need for domestic staff in the labour market. Thus, for example, in the "Resolution of October 13, 2020", of the State Public Employment Service, which publishes the "Catalogue of Occupations of Difficult Coverage for the fourth quarter of 2020", only those related to the Merchant Marine sector are included, as well as those related to coaches and professional athletes.

The first conclusion, therefore, is that Spanish legislation is closed to the reception of foreign personnel to work in domestic service or care in general.

In addition to the above, it is also necessary to bring up certain initiatives for the reform of immigration legislation involving foreign domestic workers. These initiatives have been launched by the Ombudsman in his annual reports, the last of which, prior to the COVID-19 pandemic, included a report on *The contribution of immigration to the Spanish economy*, which includes several reform proposals.

Of particular interest are several of the recommendations that affect the temporary residence and work permit. Although these are proposals whose adoption would affect all workers who intend to obtain such leave, the Ombudsman develops them after the treatment he makes in his study of the problems of the care sector and domestic service. In other words, these are recommendations for reg-

ulatory reform that have as a frame of reference the activities of the family home service, and, therefore, their acceptance would have a strong impact on this regime.

To begin with, the need to modulate the economic amounts that are set in articles 66.2a) of Royal Decree 557/2011 and that any employer must prove to justify that they have sufficient economic means for the purposes of formalizing the employment contract thanks to which the authorization is obtained. Apart from the request for this modulation of the economic percentages established in that provision, the Ombudsman does not add anything, although I consider that rather than modulation, what should be done is to expressly establish a specific regulation on these amounts, in order to reduce their amount as much as possible when the employer is a family home service holder, especially in the case of units of two or more people. In this sector of activity, care companies are also provided services, although I believe that the greatest modulating flexibility should be focused when the person who hires is the head of the family home, arbitrating the necessary measures for their beneficiaries of the necessary measures so that they respect the regulations on foreigners and of a labour nature.

Also, in general with regard to the procedure for applying for initial authorisation and residence and work as an employee, although without losing sight of the importance that this may have for foreign domestic workers, the Ombudsman requests an extension of the period established in article 67.8 of Royal Decree 55/2011, in the event of the death of the employer, so that the worker can be registered by another employer, which is now limited to three months from the foreigner's entry into Spain.

In any case, where the Ombudsman does make a specific mention of the special regime for domestic workers is when recommending a specific issue on residence permits for family reunification. In this sense, it advocates amending Article 54 of Royal Decree 557/2011, reducing the economic requirements set in accordance with the IPREM in the cases of foreign sponsors who are registered in the special regime for domestic employees, with minor children in their care in the country of origin.

18) Do migrants with the corresponding residence permit and authorization to work in the care sector (in each of these occupations) have access to the same rights as other workers in other productive sectors?

(This question concerns third-country EU nationals).

As stated above, they have the same rights. According to the legislation, there is no difference in rights at work compared to workers in other sectors. It should be recalled that according to Law 4/2000 on the Rights and Duties of Foreigners in Spain, workers with a residence and work permit or permit have the right to engage in remunerated activity as a self-employed person or as an employee, as well as to access the Social Security system.

However, in terms of wages, both domestic workers and foreign workers who provide services in the family home have a different "minimum wage" regime than other workers in other sectors (see the answer to question number 10, par. 3. of this report).

19) Have there been any court rulings on this matter (residence permit and authorization to work in the care sector)? If so, please summarize or comment on them.

(This question concerns third-country EU nationals).
No sentence is detected.

20) Have there been any collective bargaining provisions that favour the integration of migrant workers into the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnicity, etc.?

(This question concerns third-country EU nationals).

Within the framework of Catalonia, legal initiatives have been adopted that aim to encourage companies to adopt diversity plans that favour the integration of migrant workers into the labour market in general.

It is worth mentioning the Catalan Law 10/2010, of 7 May, on the reception of immigrants and returnees to Catalonia, which includes a precept that attributes to the Generalitat the promotion of the establishment of anti-discriminatory measures in relation to immigrants in companies, which in any case, according to article 16.2 of said law, They should be adopted with the participation of workers' representatives and should cover both access to the workplace and the establishment of working conditions, within the framework of the applicable labour legislation. Such measures include, in accordance with Article 16(3), the promotion of diversity management programmes, with the aim of adapting to the cultural and organisational changes that may be generated by the presence of immigrant workers, or the adoption of economic, commercial, labour, welfare or similar measures, aimed at promoting conditions of equality among all workers. regardless of their nationality, in the company's own or in their social environment, and it is also recalled that collective bargaining agreements and company agreements may contain clauses aimed at promoting the aforementioned measures.

Under this legislation and the Citizenship and Immigration Plan 2009-2012 of Catalonia, the Generalitat has published a "Guide of recommendations on diversity management in companies and other organizations".[37] The Guide, which has no binding legal value, makes a number of considerations of interest for the integration of foreign workers into the workplace: on the one hand, it is generally suggested that a vital part of diversity management is to include all staff in the planning and decision-making process; particularly in the area of collective bargaining. In this sense, it could be said that just as important as involving all staff, whatever their origin, in the planning of these company policies, is that the representative bodies also include workers who respond to the diversity of

[37] Department of Social Action and Citizenship. Secretary for Immigration. Generaliat de Catalunya, *Guide to recommendations on Diversity Management for companies and other organizations*, <http://www20.gencat.cat/docs/dasc/03Ambits%20tematics/05Immigracio/002Destacats_dreta/banners/banner_recomanacions_diversitat_empresa/recomanacions.pdf> (Accessed September 23, 2010).

profiles in the company, the latter issue in which the unions are also addressed in an important way.

Along with this, and in order to promote the operationalization of the principles of diversity of human resources, the Guide recommends that with the incorporation of people from different backgrounds, cultures, abilities, gender, age, etc., organizations must be able to manage the needs of flexibility linked to the conditions of reconciliation of personal and family life with work. which, according to the Generalitat's document, would imply obtaining improvements in relation to working hours, holidays, leaves and days of free disposal, leave of absence, etc. Precisely, in this area, and as an example of the cultural change that the diversity of the workforce entails for the company, the Guide recalls the negotiation processes on the festive calendar in the presence of workers of different religious confessions; in this sense, a general recommendation made by the Guide is that a good management of such diversity should take these people into account when specifying shifts or distributing vacation periods.

These tendencies to take into account in industrial relations the various factors of diversity of their workers (not only their nationality, origin or religion, for example, but also the age of the workers or, of course, gender issues), would seek due consideration by labour regulations, but above all by the practices in companies within the framework of their managerial power, but also, This, in my opinion, is fundamental, because of the collective agreements that can be reached between the workers' representatives and the employers.

On the other hand, in relation to the profession of a religion by workers and their adaptation to work, there are experiences in some collective agreements: some agreements in companies already go in this direction based on individual attention to the individual interests of workers, in some cases because of their migrant nature and the coverage of the needs that this entails. and in others for aspects derived strictly from their religion, but without attending to collective requests from the confessions to which they belong. This is the adoption by collective bargaining of a principle of personalised flexibility of working conditions, particularly working time, which grants the possibility of holding holidays of a traditional nature or linked to the worker's choices without this entailing any reduction in the working hours required of all workers,[38] in some cases leaving the final decision to the employer according to his organisational directive; Mention can also be made of the adoption of several company agreements that favour the reconciliation of working hours and working time with the personal and family commitments of workers, including the facilitation of emergency trips to the country of origin (illness of family members), or for specific celebrations, provided that in any case, this is "organisationally feasible".[39]

[38] Diversity in the Company Management Agreement. Abattoir of Girona.

[39] Acord de Gestió de la Diversitat de l'HotelMajestic SPA Barcelona; Acord de Gestió de la Diversitat de l'EmpresaMantylim, S.A.; Acord de Gestió de la DiversitatFerroberica, S.L.; Acord de Gestió de la Diversitat de l'Empresa ABD.

21) Do you know if there have been any media-publicised conflicts between migrant care workers and carers (in terms of non-discrimination on ethnic, religious or national grounds)? If so, please explain.

(This question concerns third-country EU nationals).

We can refer to the Spanish TV report of 30 March 2023: Female interns denounce their terrible working conditions: "I lost almost 25 kilos by eating leftovers".[40] The report talks about the case of an immigrant who migrated to Spain from South America, lives and works in the house of an elderly woman and her disabled daughter; for her it is a job opportunity (but without a work contract) that occupies all her time and space. She says that "I haven't slept at all tonight. The lady gets up at least four times a night to go to the toilet and we have to make sure she doesn't fall or bump herself, because she has bad feet", she exemplifies. Her working day is not limited to the night and, after a break of a couple of hours in the morning when she has taken time to look after us, she goes back to her work, from cleaning the house to looking after a dependent person. And so, six days a week for the minimum wage, 1,080 euros.

The report also points out that some 40,000 women work as live-in care workers in Spain with an average working week of 45 hours. It adds that according to studies that have been carried out, nine out of ten are foreigners and one in four cares for a dependent adult. These studies, which are made public in the report, denounce "endless working hours", extending over 61 hours for one in ten and over 71 hours for more than 7%. For many of these "essential workers" in our society, economic necessity, difficulties in obtaining a work contract without papers or the high cost of housing are intertwined to trap them in a particularly vulnerable situation.

On the other hand, in April 2023, racism came to light in some employment agencies that offer services to domestic workers, specifically through advertising based on their nationality, specifically Filipino. They describe them as having "great capacity for work, honesty, loyalty to the family they work for, loving and patient attitude towards children". Thus, this practice was denounced by Carolina Elías, who is the spokesperson of the Asociación Servicio Doméstico Activo (SEDOAC),[41] since she considers that it commodifies people under market standards, turning them into another product of the market and using racist and classist stereotypes.

From the Confederal Secretary of Women, Equality and Working Conditions of Comisiones Obreras (CCOO) it was announced that this type of practice would be reported to the Labour Inspectorate since they consider that this

[40] TVE, "Las trabajadoras internas denuncian sus pésimas condiciones laborales: 'Perdí casi 25 kilos por comer de las sobras'," *RTVE.es*, 30 march, 2023, <https://www.rtve.es/noticias/20230330/internas-hogar-cuidados-condiciones-laborales-migrantes/2433410.shtml> (Accessed November 19, 2024).

[41] Servicio Doméstico Activo (SEDOAC), "Home page," <https://sedoac.org/> (Accessed October 23, 2024).

type of practice was an obvious attack on the principle of equality, since it entailed discrimination in terms of race and specific nationality. well, to the fundamental right enshrined in Article 14 of the EC.

It should be borne in mind that racialized women are exposed to double discrimination: one, because they are women and the other because they are migrants.

The state's other largest union, UGT, also spoke out about this type of discriminatory practices.

In March of this same year 2023, Spanish radio and television reported on the appalling working conditions to which migrant domestic workers are subjected. This news showed that 9 out of 10 domestic workers are migrants and are in an irregular situation. In addition, most of the care work in Spain is endured thanks to the poor working conditions to which they are subjected (they receive the minimum wage or sometimes not at all) and the need they have for housing when they arrive in Spain. This news highlights a 2021 report by Oxfam Intermon, which highlights in its study that there are some 40,000 women working as interns in Spain, with an average working week of 45 hours per week that extends into more than 61 hours per week for one in ten and more than 71 hours per week for more than 7%.

22) Have statistics or databases been published in your country on the wages of migrant workers in the care sector?

(This question concerns third-country EU nationals).

- *Have statistics or databases been published in your country on the occupational classification of migrant workers in the care sector?*
- *Do these databases feature aggregated data, microdata, or both (aggregated data: data at the national or regional level; microdata: individual data, collected, but not published, only available to researchers)?*
- *Are these databases public and freely accessible to all, or only to researchers?*
- *If published databases exist, please provide links and/or how to apply for them.*

No data have been published on the wages of migrant workers in the care sector.

23) If you have found statistics or databases, describe what they show in relation to job classification and wages of migrant workers in the care sector.

(This question concerns third-country EU nationals).

Although there are no statistics, studies have been carried out indicating differences in working conditions between foreigners and Spaniards in the labour market in general, so there have been more foreign workers than Spaniards who had an indicator of working hours of more than 40 hours per week: while in that year 21.1% of Spaniards worked more than 40 hours, The percentage of foreigners rose to 25.4%, although this gap was progressively reduced until it approached both groups in 2009 (18.7% of Spaniards and 19% of foreigners), due to a sharp reduction in the rate of the immigrant population. In any case, the greatest gap in relation to the indicator of working days of more than 40 hours

was registered in the field of women, since while foreign women reached 14.8% in 2009, Spanish women remained at 11.6% in the same year,[42] in fact the sectors with a high concentration of immigrants, such as households that employ domestic staff, the indicator of working hours of more than 40 hours was much higher in foreign workers, although also in construction or hospitality, where the latter also suffered higher rates, the rates of high working hours tended to be high for all workers (see ARAGÓN

24) Are migrants in an undocumented situation (without authorization to reside or work) have the right to employment when working in the care sector in your country? Please provide your views on this issue.

(This question concerns third-country EU nationals).

Migrants in an irregular situation do not have the right to work recognized, and therefore cannot be employed in the labour market, nor therefore in the care sector.

In any case, they can obtain a residence and work permit through exceptional means, in particular the labour tie, the social or the professional roots. The common denominator of the first two is that to obtain the corresponding temporary residence permit (and therefore for the foreigner to become documented), he or she must have stayed in Spain for a minimum time and prove that he or she is working (see art. 124 of Regulation 557/2011). Thus, in the case of labour roots, foreigners who wish to regularize their situation must certify their continuous stay in Spain for a minimum period of two years and demonstrate the existence of employment relationships whose duration is not less than six months and that at the time of the application for entrenchment they are in an irregular situation. Article 124 of Regulation 557/2011 states that for the purposes of accrediting the employment relationship and its duration, the interested party must present any means of proof that proves the existence of a previous employment relationship carried out "in a legal situation of stay or residence", for these purposes the realization of the work will be accredited in the last 2 years. of a work activity involving, in the case of an employed activity, at least a working day of 30 hours per week in a period of 6 months or 15 hours per week in a period of 12 months, and in the case of self-employment, a continuous activity of at least six months. On the other hand, through the "social entrenchment" they will be able to obtain the residence permit if they can prove that they have been continuously staying in Spain for a minimum period of three years and have an employment contract signed by the worker and the employer that guarantees at least the minimum interprofessional wage or the established salary, as the case may be. in the applicable collective bargaining agreement, at the time of the application, and the sum of which must represent a weekly working day of no less than thirty hours in the overall calculation and guarantee at least the minimum interprofessional wage.

[42] J. Medina, A. Martínez Poza, J. Cruces Aguilera, and F. Rocha Sánchez, *The labour integration of immigrants in Spain. An approach to employment and working conditions. Reports from the 1º de Mayo Foundation. June 2010* (Madrid, 2010), 113.

25) Has there been a court ruling on this matter (undocumented worker working in the care sector) in your country? If so, please summarize or comment on them.

(This question concerns third-country EU nationals).

There is a sentence in the Court of Criminal no. 1 of Barakaldo, case number 244/2013, a judgment was issued on June 11, 2015. The court found that between 2010 and 2012, Gregoria employed several individuals from Nicaragua, Peru, Bolivia, and Honduras who were in Spain illegally. These individuals were hired to care for elderly and sick people in hospitals and private homes. They had no written employment contracts and no health coverage, working up to 12 hours a day without adequate rest. They were paid 5 euros per night hour and 4 euros per day hour, without differentiation between working days and holidays.

Gregoria was convicted of a crime against workers' rights. She was sentenced to 2 years and 6 months in prison, disqualified from the right to passive suffrage for the duration of her sentence, and fined 2,100 euros.

Gregoria appealed the judgment, requesting revocation and acquittal. She argued that there was an error in the evidence assessment and improper application of Article 312.2 of the Penal Code. She claimed she did not exploit the workers and that the lack of Social Security registration was due to the infeasibility of making the work profitable. She denied imposing harsh working conditions, arguing that the workers voluntarily accepted the terms.

The Court of Appeal reviewed the initial judgment and concluded that the evidence assessment was appropriate and logical. The court found that Gregoria employed individuals under conditions that restricted their labour rights. The appeal failed to undermine the evidential assessment, or the legal qualification made in the initial judgment.

As a result, the appeal was dismissed, and the initial judgment was fully upheld. The legal costs of both instances were declared ex officio. The judgment is final, and no ordinary appeal can be filed against it.

26) With the onset of the COVID-19 pandemic, did the State adopt measures to allow "undocumented" foreign personnel to obtain residence or work permits, both structural and extraordinary?

(This question concerns third-country EU nationals).

Mention should be made of Royal Decree-Law 13/2020, of April 7, 2020, adopting certain urgent measures in the field of agricultural employment, published in the Official State Gazette of today, Wednesday, April 8. Even if it is only focused on the agricultural field, they contain promotions of interest in terms of labour contracting in the agricultural sector for foreigners.

Secondly, the COVID-19 pandemic led to the adoption of other regulations:

1) The First Instruction on the Renewal of temporary residence and work permits of the Directorate-General for Migration, included in DGM Instructions 5/2020, which it published on 8 June 2020, should[43] be noted.

[43] See DGM instructions 5/2020 on the renewal of residence and/or work permits in the context of COVID-19. Ministry of Inclusion, Social Security and Migration, *Instrucción*

This is an instruction that, in terms of the renewal of temporary residence and work permits, is based on considering the application of the procedure provided for in article 71, with the effects of article 72 of Royal Decree 55//2011. In this sense, one of the cases that enables renewal consists of accrediting "the continuity in the employment relationship that gave rise to the granting of the authorization whose renewal is sought", the Instruction indicates that such continuity is maintained in cases in which the foreigner is registered in the Special System for Domestic Employees of the General Social Security Regime and there has been a reduction, total or partial, in your working hours.

On the other hand, another of the cases that also grounds the renewal of temporary residence and work permits is that, at the end of the period of the authorization to be renewed, the foreigner has been awarded a contributory unemployment benefit, or when he or she is the beneficiary of a public economic assistance benefit aimed at achieving his or her social or labour insertion (art. 7.1.2d) of the Royal Decree 557/2011 in relation to articles 38.6b) and c) of LO 4/2000). For the purposes of renewing the corresponding authorizations, the Instruction that is being commented on includes within these precepts,

> those other benefits that may be implemented, the minimum vital income, the exceptional unemployment subsidy for the end of a temporary contract and the extraordinary subsidy for lack of activity for people integrated in the Special System for Domestic Employees of the General Social Security Regime.

2) The fourth Instruction of DGM Instructions 5/2020 that are being referenced is intended to address the renewals of residence permits under family reunification. In fact, in art. 61 of Royal Decree 557/2011 establishes as requirements that the sponsor must meet if he or she is the holder of a valid residence permit, who has a job and/or sufficient economic resources to meet the needs of the family in an amount that represents 100% of the IPREM monthly, computing for these purposes the income from the social assistance system; as well as that they have adequate housing to meet their needs and those of their family, and that it must be their habitual residence.

In the aspect related to employment, the Fourth Instruction states that it will be understood to have been fulfilled in those cases in which the sponsor (or his or her spouse or partner in the cases of reunification established in article 61 of Royal Decree 557/2011), is registered in the Special System for Domestic Employees of the General Social Security Scheme and there has been a reduction. in whole or in part, during their working day.

sobre renovaciones de autorizaciones de residencia y/o trabajo en el contexto de la COVID-19 (Instrucciones DGM 5/2020), <http://extranjeros.inclusion.gob.es/ficheros/normativa/nacional/instrucciones_sgie/documentos/2020/INSTRUCCION_renovaciones.pdf> (Accessed October 23, 2024).

3) Finally, it is worth mentioning DGM Instructions 6/2020 on the procedures initiated relating to social roots in the context of COVID-19, published on 8 June 2020.[44] As far as our object of study is concerned, these instructions deal with applications for temporary residence permits for reasons of social roots, which are regulated in article 124.2 of Royal Decree 557/2011, in particular with respect to those applications in which a report is provided exempting the foreigner who intends to settle from having an employment contract. for which the accreditation that you have the economic means to reside temporarily in Spain must be assessed.

In this regard, the Instruction states in relation to the sufficiency of economic means, a non-assessed assessment of the circumstances in each case must be carried out, thus, the existence of an employment contract or the development of a self-employed activity and the stability of these as sources of resources could be assessed, among other elements, in terms determined in the instruction. In this sense, it would be confirmed that there is an employment contract (and, therefore, there is stability), in those in which the family member has suffered a reduction, total or partial, in the working day in relation to people integrated in the Special System for Domestic Employees of the General Social Security Regime.

The Instruction states that for the purposes of assessing the economic resources of the sponsor, the recognition and/or receipt of the minimum vital income will also be taken into consideration, as well as the extraordinary subsidy for lack of activity for people integrated in the Special System for Domestic Employees of the General Social Security Regime.

27) From the beginning of the COVID-19 pandemic to the present, have measures been taken by the State to allow "undocumented" foreign personnel providing services "in the care sector" to obtain residence or work permits?

(This question concerns third-country EU nationals).

It is worth mentioning the initiative developed by the Autonomous Community of Catalonia, which resulted in the approval of Decree-Law 25/2020, of June 16, 2020, on extraordinary measures in social, fiscal, and administrative matters. Article 1 creates a subsidy specifically aimed at the "creation of new jobs" in the field of care. In fact, the subsidy takes the form of an economic benefit aimed at employers or non-profit entities, with the aim of promoting employment in the field of care for the elderly or dependents. The determining factor of this new subsidy is that it will be granted to beneficiaries who offer an employment contract to carry out care work for the elderly or dependent for a minimum of 12 months, to people who have not been registered with Social Security in the last

[44] See the website of the Ministry of Inclusion, Security and Migration, *Instrucciones DGM 6/2020 sobre los procedimientos iniciados relativos a… 2020.*, <http://extranjeros.inclusion.gob.es/ficheros/normativa/nacional/instrucciones_sgie/documentos/2020/INSTRUCCION_iniciales.pdf> (Accessed October 23, 2024).

2 years from the date of signing the contract or to people who meet the requirements established to be able to obtain an authorisation in accordance with the provisions of Article 124.2 of Royal Decree 557/2011.

Consequently, an economic benefit is granted to employers so that they can either create informal work in the care sector or have at their service foreigners in an irregular situation who meet the requirements to put down roots socially and thus obtain a temporary residence and work permit as an employee. Among which will be precisely the accreditation of the employment relationship of at least one year.

I find this initiative very interesting, although, despite being a policy that would seek to mitigate to some extent the effects of the crisis resulting from the COVID-19 pandemic, the immense scope of this may have been an impediment to reducing the effects of that policy. The aid intended for the heads of the family household, not for regular migrant workers themselves, but with undeclared work, or subject to an irregular situation, may have had limited effects when, as we have seen above, the health and economic crisis has hit these women particularly hard about the reduction of working hours or the termination of their contracts. In other words, employers are subsidized when the data show that they have taken a significant number of decisions to terminate the employment relationships of the family home service with respect to informal or irregular workers, and those who have mainly suffered those decisions are left without social coverage.

28) If there are equality bodies or organizations fighting racial, ethnic or religious discrimination in your country, have they taken any action or produced any reports in relation to the rights of migrant workers in the care sector? If so, please describe this report.

(This question concerns third-country EU nationals).

According to a search conducted at the Council on Racial or Ethnic Discrimination, no reports have been found specifically referring to immigrants in the care sector.

29) If there are equality bodies or organisations fighting racial, ethnic or religious discrimination in your country, have they taken any action or produced any reports in relation to the rights of people, whatever their nationality, working in the care sector? If so, please describe this report.

(This question concerns both EU nationals and EU nationals and third-country EU nationals).

According to a search of the Council on Racial or Ethnic Discrimination, no reports specifically referring to the care sector have been found. In any case, in 2020 the report "Perception of discrimination based on racial or ethnic origin by potential victims in 2020" was published.

Of interest is what is said in this report with respect to the people surveyed to prepare the report. Among the sample made, the report assumes that women are concentrated in jobs in the cleaning sector and domestic workers (25%), salespeople or dependents (14%), and caregivers or nursing assistants/geriatrics (8%).

The report also points out that, in general, in the field of employment, the perception of discrimination is reduced, which is still very high among certain groups, especially (people of African descent, North Africans and Roma). However, this statement is qualified by noting that there seems to be an increase in the social valuation of the contribution to employment of these people who cover essential jobs (in agriculture, care, and hospitality, among other sectors), many of which are not covered by the rest of the population. However, the report ends by pointing out that in general terms, it is observed that the population under study feels a greater rejection in the workplace than in the neighbourhood or in the children's school. The aversion is greater when it comes to the Roma population than among other immigrant population groups.

The report also points out that people's sex explains some differences related to the role that men and women tend to develop in society: in this sense, the perception of discrimination is higher among women in the areas most related to the family and care environment (health and education), while in the case of men their perception of discrimination increases with respect to them in public and social spaces. in police treatment.

30) Please comment on whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Indicate whether the worker's employer (including migrant workers) can be held liable for such situations.

(This question concerns both EU nationals and EU nationals and third-country EU nationals).

The issue of harassment is regulated by Spanish law: firstly, the Workers' Statute Law recognises the right of every worker to respect for his or her privacy and to due consideration for his or her dignity.

Within this right to dignity, the Workers' Statute Act expressly includes the right to protection against harassment based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, and against sexual harassment and harassment based on sex.

On the other hand, and deepening the previous right, Law 15/2022, of July 12, 2022, comprehensive for equal treatment and non-discrimination, regulates discriminatory harassment. According to this law, any conduct carried out on any of the grounds of discrimination provided for in the law, with the objective or consequence of violating the dignity of a person or group of which he or she belongs and of creating an intimidating, hostile, degrading, humiliating, or offensive environment constitutes discriminatory harassment.

The person responsible for these situations can be the employer or any other type of worker in the company.

31) Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with respect to undocumented or irregular migrant workers (without residence permits). Comment on whether, in these cases, migrants in an irregular situation can file a complaint or have access to the courts in cases of

exploitation and labour exploitation. In addition, there are cases in the legislation in which they can obtain a residence permit.

(This question concerns third-country EU nationals).

To answer this issue, please take into account the Directive 2009/52/ of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

The regulations on foreigners, in particular Royal Decree 557/2011 of 20 April 2011, which approves the Regulations of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009, include a chapter on the granting of temporary residence and work permits in exceptional circumstances of foreigners who are victims of trafficking in human beings (which includes the exploitation of foreign workers in Spain).

In this regard, one of the main issues to be taken into account is that the police authorities, as soon as they have reasonable indications of the existence of a potential victim of trafficking in foreign human beings in an irregular situation, shall inform him or her reliably and in writing, in a language that is understandable to him, of the provisions provided for in both said Royal Decree 557/2011 and Organic Law 4/2000, of the Rights and Duties of Foreigners in Spain, which are mainly the following: the granting of a period of recovery and reflection so that the victim can decide whether he or she wishes to cooperate with the authorities in the investigation of the crime of trafficking in human beings. Also, once the victim is declared exempt from liability, he/she may be provided, at his/her option, with an assisted return to his/her country of origin or a residence and work permit for exceptional circumstances when he/she deems it necessary because of his/her cooperation for the purposes of investigation or criminal proceedings. or in view of their personal situation, and facilities for their social integration.

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CHAPTER 7

Swedish Care Workers' Discrimination Map Report[1]

Jenny Julén Votinius

1. Gender

1) Provide a brief overview of your national legislation on gender discrimination in employment.

The Instrument of Government (1974:152) imposes a constitutional obligation for public entities to counteract all discrimination on the ground of sex/gender, and prohibits negative differential treatment on the grounds of gender in laws or other regulations with an exception for positive action. These provisions do not give individual rights and cannot be a ground for individual complaints or claims for damages.

In working life, a statutory ban on sex discrimination has been in place since 1979 with the Act (1979:1118) on Equal Treatment Between Men and Women in Working Life. The current Discrimination Act (2008:567) came into force in 2009 and bans discrimination on the grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, and age. "Sex" is defined as "that someone is a woman or a man". In addition, "a person who intends to change or has changed the sex they belong to is also covered by sex as a ground of discrimination". Pregnancy and maternity discrimination is not specifically addressed in the law, but is covered by the ban on direct sex discrimination in line with the CJEU case law.

[1] The contents of this report were finalized on June 28, 2024.

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The Discrimination Act (2008:567) applies in a wide range of sectors in society. In working life, the prohibition to discriminate applies to employers in relation to employees, jobseekers, persons who are enquiring about work, or applying for or carrying out a traineeship, and temporary agency workers. Persons authorized to decide in place of the employer, as well as persons in managerial positions, are equated with the employer, and the employer is responsible if the discriminatory act is carried out by a recruitment company. A contract has no legal effect to the extent that it restricts a person's rights or obligations under the Act; the prohibition against discrimination applies even if the parties have agreed otherwise. The prohibition covers direct discrimination, indirect discrimination, harassment, sexual harassment, and instructions to discriminate. The prohibition, which gives rise to claimable rights, applies only in cases concerning individual persons; there is no prohibition against general discrimination. Under the act, the employer is also required to actively promote gender equality, to facilitate the combination of working life and family life, and to conduct pay surveys. The provisions on these active measures do not give rise to claimable rights for individuals. Instead, failure to comply may in the end lead to a sanction charge. The compliance with the law is monitored by the national equality body, the Equality Ombudsman.

2) Make a brief social commentary on the presence of women workers in the care sector.

From the 1970s, the female participation in employment has increased significantly from an already high level, and since the mid-1980s the difference in employment rates between men and women has been very small, with a 77% for women and 80.5% for men in 2023. This development corresponded to the gradual introduction of reforms to increase women's participation in the labour market, including gender neutral parental leave and comprehensive public childcare. The welfare state is oriented towards the individual: every adult person should be able to support themselves and live independently according to their own choices taking into account the services, benefits and, if needed, additional support provided by the public system.

A large part of the public care and health care sector (where the provider can be regions, municipalities, or private companies) is carried out in the form of domestic care work. Swedish elder care policy is based on the principle of ageing in place, encouraging elderly to remain in their homes for as long as possible with various forms of support. The great majority of elderly persons live in their homes with or without care services. In 2020, only 4% of the age group 6 –79 and 11% of persons above 80 lived in residence homes for elderly. Likewise, in disability policy, the promotion of individual support and solutions for individual independence is a cornerstone in all parts of life including housing. Around 14,000 persons with a disability are entitled to personal assistance. There are around 100,000 personal assistants, 22% of whom are a relative to the assistance user: in the majority of cases these relatives are parents caring for a child with a disability. Many personal assistants work by the hour and part-time, with one in five working less than four hours a week. Personal assistants normally work

in the home of the care-taker. In health care, Sweden is the country in the EU which, together with the Netherlands, has the highest proportion of home care beds (and the lowest number of hospital beds). In addition, patients can receive highly specialized medical healthcare at home.

While Sweden is often referred to as a model for gender equality, the labour market is one of the most gender segregated across Europe, although slowly becoming less so. The pronounced gender segregation has been attributed to the rapid increase in women's labour force participation between the 1970s and 1990s, when a large proportion of Swedish women entered the labour market in already female-dominated occupations, including care workers' occupations. Today, the most common occupation in Sweden is "assistant nurse in home care, home health care and residence homes for the elderly". Women make up 89% of the employees in this occupation. Similarly, except for emergency medical services (*ambulanssjukvårdare*), other occupations in the care sector are heavily female-dominated.

3) Have statistics or databases been published in your country on the care sector or on each of the occupations that are part of this sector, differentiating by gender?

- *In the case of databases, do these present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If databases exist, please provide links and/or how to request them.*

All public statistics on the individual level must be broken down by gender unless there are specific reasons against. Statistics on care sector occupations are published regularly. For over a hundred years, occupational data on individuals have been collected in Sweden. Since 2001, the Swedish Occupational Register provides information on the distribution of the working population in different occupational groups and has highlighted the development of occupations in various industries and sectors of the labour market.

The Swedish Occupational Register is an individual register covering all persons over the age of 16 registered in Sweden, and it is updated every two years. It contains gender-disaggregated information on the occupation, place of work, income, and education of the working population. Approximately 20 different administrative sources contribute occupational data to the register.

The register is organized according to the Standard Swedish Occupational Classification 2012 (SSYK2012), based on the International Standard Classification of Occupation 2008 (ISCO-08). Occupational data is classified at four-digit level, corresponding to 429 classes, made up of individual data. The publicly available data at the web page of Sweden Statistics is presented at a macro level by occupation, sector, region, sex, and place of birth based on geographical regions. Micro data is available upon request and at a charge to authorised clients: Swedish universities and other entities for the purpose of a specific research project, as well as authorities and public organisations for the purpose of limited

statistical analysis. Micro data is pseudonymised; identities of individuals are replaced by a serial number.

The statistics can be accessed at: <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/labour-market/employment-and-working-hours/the-swedish-occupational-register-with-statistics/>.

In addition, for occupations in the care sector that requires a license (for this study: nurse and assistant nurse) statistics is available free of charge at the web site of the National Board of Health and Welfare.

The statistics can be accessed at: <https://www.socialstyrelsen.se/statistik-och-data/statistik/alla-statistikamnen/halso-och-sjukvardspersonal/>.

4) Describe or comment on what the statistics or databases you have found show in relation to the participation of male and female workers in the care sector workforce, either taking this sector as a whole, or in relation to each of the occupations that make up this sector.

The largest occupational group in the care sector and, also, the most common occupation in Sweden is "assistant nurse in home care, home health care and residence homes for the elderly" (*undersköterskor inom hemtjänst, hemsjukvård och äldreboende*). This group is made up of 89% women and 11% men, similar to what applies for the largest group of licensed health care professionals, nurses (*sjuksköterskor*), where women accounted for 88%, as well as for assistant nurses generally (*undersköterska*), and home care assistants for elderly (*hemtjänstpersonal, vårdbiträde*). Women also account for around 70% of care assistants (*vårdbiträde*) and personal assistants (*personlig assistent*) for persons with a disability. This is in contrast to the entire workforce, where the shares of men and women are virtually equal with women making up over 48%.

In Sweden, most employees have a permanent and full-time employment. Here, the health care and care sectors deviate; the share of both fixed term and part time employments are above average. This applies particularly to the occupational groups in this study, all of whom are clearly female dominated.

Fixed term contracts are more common in elder care and personal assistants for persons with a disability than in other parts of the care sector. In elder care, most notably, 60% of the care assistants has a fixed-term contract, while the corresponding figure for assistant nurses is 16%. Fixed term contracts are even more common for personal assistants for persons with a disability, here eight out of ten personal are employed for a fixed term. Hourly employments are common for care assistants and assistant nurses particularly in elder care. In 2021, more than half of all hourly paid employees in municipalities worked in elder care and the care of persons with a disability, with care assistants accounting for around one quarter (around 27,000 employees). In total, 42% of the care assistants employed in municipalities were paid by the hour. In the regions, assistant nurses account for almost 40% of the hourly paid employees. In total, 18% of the assistant nurses, and 9% of the nurses in regions were paid by the hour.

While the prevalence of fixed-term employment varies considerably across occupational groups and areas of care, part-time work is common across the en-

tire sector. More than half of care workers work part-time, making them one of the groups in the labour market with the highest proportion of part-time workers. In health care, part-time employments accounts for just over 30% in municipalities and regions and just under 40% in the private sector. For assistant nurses and care assistants in elderly care, and personal assistants for persons with a disability, the share of part-time employment is higher, around 50% in private companies and slightly lower in municipalities and regions. There are significant differences in terms of working hours among part-time workers. Among nurses, it is unusual to work less than 70%, and a large proportion of part-time nurses work more than 81% of a full-time job. Quite differently, among personal assistants for persons with a disability, 20% work less than four hours a week and many combine work with studies or other work. In the female dominated care sector there are long standing debates and current debates on involuntary part-time, health and safety and shortages of staff, as well as on the low level of wages. In 2024, these debates amounted to a long and comprehensive industrial conflict where the nurse's trade union took collective action, including strike. The conflict revolved not primarily around the yearly wage increase but about health and safety, stress, and workload, and included demands from the trade union on substantial reductions of working hours. At the drafting of this report, the industrial conflict is still ongoing.

In 2022, the average retirement age for the entire Swedish labour market was 64.8 years (64.8 for women and 64.9 for men). The care and health care sector shows a very similar picture, with an average retirement age of 65 for nurses (sjuksköterskor), 64.4 years for assistant nurses (*undersköterskor*), 64.2 years for care assistants (vårdbiträden), 64.5 years for home carers (*annan hemtjänstpersonal*), and 64.7 years for personal assistants for persons with a disability (*personliga assistenter*).

5) If legislation exists on the care sector in general, or on the occupations that make up the care sector, please describe whether it is gender-neutral in terms of the workers, or whether it makes any reference to the presence of women in this sector or these occupations (e.g. acknowledging the majority presence of women in the sector, or granting them any special attention in terms of rights, etc.). If special reference is made to women, please specify.

Swedish law is gender neutral with very few exceptions, mainly regarding pregnancy. The Work Environment Authority issues binding occupational health and safety provisions, some of which on pregnant and breastfeeding workers. In line with the uniform character of Swedish labour law, these provisions apply in the entire labour market, although some are particularly relevant for the care sector, see Section 15.

6) Does the legislation or, if applicable, collective agreements provide for occupational classification system in care sector? If so, do you consider any gender bias in this occupational classification (if so, please explain).

Public statistics on employment applies Swedish Standard Classification of Occupations (SSYK 2012), based on the international classification (ISCO-08), covering 429 occupational codes. It has been noted that this system means a less nuanced breakdown in relation to many female-dominated occupations, than what applies in relation to male-dominated occupations.[2]

In the joint wage statistics of the social partners, each employers' organization applies their own classification system.[3] Municipalities and regions use the Labour Identification System (*Arbetsidentifikation*, AID) with about 225 occupational codes for different areas of work. Companies in the private sector use various systems, most frequently the Business Sector Occupational Classification (*Näringslivets yrkesklassifikation*, NYK14), with around 1,000 occupational codes. It is based on Statistics Sweden's SSYK codes, with some additions determined by the Confederation of Swedish Enterprise together with the employers' organizations.[4] Other private employers use for instance IPE (Internal Position Evaluation) and BAS (Befattnings- och arbetsvärderingssystem / Position and work evaluation system). There are also many other systems in place, which have been developed by the social parties together or by one of them, or by external consultants.[5] In the state sector, which is not particularly relevant for care workers, the social partners have jointly developed a job classification system called BESTA, as a tool in the wage formation process on sectoral and local level, and the foundation for the jointly collected wage statistics.[6]

Some occupations in the care sector are clearly distinguished from others in that they require a license from the National Board of Health and Welfare, which also functions to classify these occupations. This applies to nurses and assistant nurses, who must produce a university diploma from a nurse program or, for assistant nurses, an upper secondary school diploma from a health and care program. The license requirement for assistant nurses entered into force 1 July 2023, and anyone who had a permanent position as an assistant nurse when the requirement entered into force may continue to use the title until 30 June 2033 without a license. Care assistants and personal assistants for persons with a disability are not covered by a license requirement.

[2] Government Inquiry Report SOU 2022:4, *Minska gapet. Åtgärder för jämställda livsinkomster*, 250.

[3] Government Inquiry Report SOU 2022:4, *Minska gapet. Åtgärder för jämställda livsinkomster*, 241.

[4] Confederation of Swedish Enterprise, *Näringslivets Yrkesklassifikation 2021 – NYK. Beskrivning av klassifikationen – Systematisk beskrivning* (2021).

[5] Johanna Kumlin, *Sakligt motiverad eller koppling till kön? En analys av arbetsgivares arbete med att motverka osakliga löneskillnader mellan kvinnor och män. Report 2016:1*, Equality Ombudsman, (Stockholm, 2016), 52.

[6] BESTA is available (in Swedish only) at: <https://bestawebben.arbetsgivarverket.se/?acceptCookies=true> (Accessed June 1, 2024).

7) Have there been any legal disputes or conflicts publicised by the media in your country over "job classification" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

No such conflicts have been detected.

8) Does legislation or, where applicable, collective agreements provide for specific provisions on employment contracts in the care sector, which are different from employment contracts in other productive sectors? If so, do you consider that there is any gender bias in relation to employment contracts? (If so, please explain).

The definition and meaning of an employment contract are the same in the care sector as in other sectors. There are no specific provisions on employment contracts with regard to gender.

9) Have there been any legal disputes or conflicts publicised by the media in your country over "employment contracts" in the care sector and gender discrimination? If so, please summarise or comment on the case(s).

No such conflicts have been detected.

10) Do the legislation or, if applicable, collective bargaining agreements make any provision for wages in each of the care sector occupations, differentiating them in terms of their structure or amount from workers in the general or other production sectors?

There is no statutory regulation of wages and no statutory minimum wage. Wages are set within the framework of sectoral collective bargaining with extensive elements of local wage agreements and individual wage setting. Wages may not be determined on the basis of gender, and collective agreements must be in accordance with the requirements in the Discrimination Act (2008:567).

To safeguard the principle of equal pay for women and men, the employer must carry out yearly pay audits in collaboration with trade union representatives, under the provisions in the Discrimination Act (2008:567).[7] Pay audits were first introduced in 1994 and were last revised in 2017.[8] The pay audit includes a survey and an analysis of wages and wage differences, referring in particular to the comparison between women and men performing work that is to be regarded as equal; groups of employees performing work considered to be dominated by women and groups not dominated by women performing work of equal value; and employees performing work considered to be dominated by women and a group of employees performing work not considered to be female-dominated but better paid despite the work requirements being deemed to be lower.[9] Employers with 10 or more employees must document the work

[7] Chapter 3, Sections 8 and 11 of the of the Discrimination Act (2008:567).

[8] Government Bill Prop. 1993/94:147 *Jämställdhetspolitiken: Delad makt, delat ansvar*; Government Bill Prop. 2015/16:135 *Ett övergripande ramverk för aktiva åtgärder i syfte att främja lika rättigheter och möjligheter.*

[9] Chapter 3, Section 9 of the of the Discrimination Act (2008:567).

undertaken in relation to pay audits. Upon request, this information must be sent to the Equality Ombudsman.[10] The Discrimination Act do not refer to a particular classification system for the comparison of wages. Instead, it provides a general guidance: the comparison should be based on the *requirements* of the work—including knowledge and skills, responsibility, and effort—and on the *nature* of the work—particularly in terms of working conditions.[11]

Although there is no statutory requirement for the employer to apply a systematic or factor-based job evaluation system when deciding which work that is to be regarded as of equal value to other work, such systems are frequently applied. Wage setting in accordance with professional skills as well as responsibility is ensured by each employers' organisation applying its own classification system within the framework of the social partners' joint wage statistics.[12] In municipalities and regions, the Labour Identification System (*Arbetsidentifikation*, AID) is used, which contains about 225 occupational codes for different areas of work. In the private sector, the largest share of employees is covered by the Business Sector Occupational Classification (*Näringslivets yrkesklassifikation*, NYK14). The NYK is based on Statistics Sweden's SSYK codes, with some additions determined by the Confederation of Swedish Enterprise together with the employers' organisations and contains around 1,000 occupational codes.[13]

As a result of the different conditions for wage formation in different parts of the labour market, wage levels differ between the private and public sectors, and also between different occupational groups. In the public sector, and in care work, both which are female dominated, the pay levels are typically lower than in the private sector and in occupations where most employees are men.[14] In addition, normally, female-dominated occupations display a narrow wage range, thus limiting the possibility of wage progression for those who stay in the profession for many years.[15] The table below shows the average full time monthly pay for the care sector occupations in 2022. In all these occupations,

[10] Chapter 4, Section 3 of the Discrimination Act (2008:567).

[11] Chapter 3, Section 10 of the Discrimination Act (2008:567). Until 2015, the Equality Ombudsman provided tools for evaluation schemes and pay systems. These were later transferred to non-profit organizations, which provide the tools to employers free of cost, cf. Government Inquiry Report SOU 2022:4, *Minska gapet. Åtgärder för jämställda livsinkomster*, 228.

[12] Government Inquiry Report SOU 2022:4, *Minska gapet. Åtgärder för jämställda livsinkomster*, 241.

[13] Confederation of Swedish Enterprise, *Näringslivets Yrkesklassifikation 2021 – NYK. Beskrivning av klassifikationen – Systematisk beskrivning* (2021).

[14] National Mediation Office, *Löneskillnaden mellan kvinnor och män 2022 Vad säger den officiella lönestatistiken?* (2023); Government Inquiry Report SOU 2015:86, *Mål och myndighet. En effektiv styrning av jämställdhetspolitiken*; Government Inquiry Report SOU 2020:46, *En gemensam angelägenhet.*

[15] Government Inquiry Report SOU 2015:86, *Mål och myndighet. En effektiv styrning av jämställdhetspolitiken.*

the average wages are lower than in occupations of equal value which are not female dominated.[16]

Table 1 – Average monthly wage, by gender and occupation 2022.

	Men	Women	Total
Nurse (SSYK 2221)	3,773 euros / 42,200 SEK	3,656 euros / 40,900 SEK	3,674 euros / 41,100 SEK
Assistant nurse; home care, home health care and residence homes for the elderly (SSYK 5321)	2,682 euros / 30,000 SEK	2,753 euros / 30,800 SEK	2,745 euros / 30,700 SEK
Assistant nurses; medical and specialised ward (SSYK 5323)	2,759 euros / 30,900 SEK	2,804 euros / 31,400 SEK	2,795 euros / 31,300 SEK
Care assistants (SSYK 5330)	2,384 euros / 26,700 SEK	2,384 euros / 26,700 SEK	2,384 euros / 26,700 SEK
Personal assistant for persons with a disability (SSYK 5343)	2,598 euros / 29,100 SEK	2,589 euros / 29,000 SEK	2,598 euros / 29,100 SEK

See: Statistics Sweden, Average salary and salary dispersion by sector, occupation (SSYK 2012) and sex 2022.

11) Have there been any legal disputes or conflicts publicised by the media in your country over "wages" in the care sector and gender discrimination?

There are three cornerstone cases as regards the comparison of work claimed to be of equal value, the so-called midwife cases, brought by the Sex Equality Ombudsman 1996 and 2001.[17] These cases were transferred from the midwives' trade union to be used as pilot cases, contesting collectively bargained pay differences between the female dominated category of mid-wives and various male-dominated categories of workers. The issue at stake in the first case was whether the wage of a midwife was discriminatory as compared to that of a hospital technician. The Labour Court did not exclude the possibility that the work of a midwife and a hospital technician could be compared, but in the case at stake it did not find the method used by the Sex Equality Ombudsman (JämO) (the predecessor of the Equality Ombudsman) to be sufficient to prove that the two works were of equal value. The second case, too, concerned the alleged pay discrimination of a midwife as compared to a hospital technician. In this case, following an assessment in terms of knowledge and skills, responsibility, effort and working conditions, the midwife and the technician were indeed found to perform work of equal value. A prima facie case of pay discrimination was thus

[16] Swedish Gender Equality Agency, *Analys av den könssegregerade arbetsmarknaden. Förutsättningar för en bredare rekryteringsbas till välfärden. Underlagsrapport 2023:8*, 24 (2018).

[17] Swedish Labour Court cases AD 1996 no. 41; AD 2001 no. 13 (C-236/98) and AD 2001 no. 76.

found. However, the Labour Court accepted the employer's objection that the higher wages of the technician were due to market arguments—the fact that there was an alternative labour market for technicians with significantly higher wages—was an acceptable motive to adjust the wages of technicians to a somewhat higher level. There was thus no discrimination. This may be compared with the third case, in which a nurse and a hospital technician were compared, and their work was found to be of equal value, but the wage difference could be explained by market reasons. Thus, in this case the wage discrimination claim was also dismissed. Although wage discrimination was not established in any of the rulings, the cases had other implications. The then head of the Swedish Association of Health Professionals noted that the publicity surrounding the complaints increased the public awareness of pay discrimination and influenced peoples' attitudes.[18] And, as noted by the former Sex Equality Ombudsman, during the time the cases were pending in the Labor Court, the midwives received the highest pay increases they had ever received before.[19]

As highlighted by scholars and some stakeholders over the years, the acceptance of the market argument has hampered the effect of the legal obligation for employers to carry out pay surveys to identify and eliminate pay differences between women and men performing work to be regarded as equal or of equal value.[20] In recent years, the market argument has gained increased attention in the discussion on the political level. A 2022 governmental inquiry tasked inter alia with reviewing the provisions on pay audits stressed that some jobs are structurally undervalued in the labour market and that this is reflected in the general wage levels—the market salary. The inquiry report concludes that there is reason to consider the need to clarify the conditions under which the market salary situation constitutes an acceptable explanation for wage differences, but it has not yet resulted in a legislative proposal.[21]

12) Do the legislation or, if applicable, collective agreements for the care sector or for each care sector job make specific provision for reconciling work and family life?

- *Do the legislation or, if applicable, collective agreements make any reference to reconciling work and family life " for women workers" in the care sector in general or in each care sector job? If so, please summarise or comment.*

[18] Eva Fernvall, "DN debatt: Vårdfacket tar avstånd från JämO: "Jämställdhetslagen och Jämställdhetsombudsmannen är hinder i kampen mot lönediskriminering," *Dagens Nyheter*, 29 october, 1997.

[19] Ann Norrby, "Det behövs en särskild DO för arbetslivet," *Lag & Avtal* 4 (2017).

[20] See, for instance Lena Svenaeus, *Konsten att upprätthålla löneskillnader mellan kvinnor och män: en rättssociologisk studie av regler i lag och avtal om lika lön* (Lund: Lunds universitet, 2018); Union for Professionals, Akademikerförbundet SSR, *Lönekartläggning: försummad lagstiftning i kommuner och landsting* (2013).

[21] Government Inquiry Report SOU 2022:4 *Minska gapet. Åtgärder för jämställda livsinkomster.*

In line with the uniform character of Swedish labour law, the statutory right to leave related to the birth of a child or parenthood, in the Parental Leave Act (1995:584), applies equally in all sectors of working life. Benefits are paid out under the parental benefits scheme of the Social Security Code (2010:110). The right to *maternity leave* amounts to seven weeks prior to the estimated delivery date and seven weeks after the delivery (of which two weeks are compulsory).[22] Benefits are paid out at sick pay level under the parental benefits scheme of the Social Security Code (2010:110) where the days on maternity leave are included in the total amount of days with parental leave benefit.[23] In addition, maternity leave is provided for breastfeeding for as long as needed, which means that the employee must be allowed to interrupt work to breastfeed the child. In connection with the birth of a child there is a right to 10 days off for the other parent of the child (the father or, in same-sex relationships, the other mother). If the parent giving birth is a single parent, the leave can be taken up by another close relative. No special conditions are attached. Benefits are paid at sick pay level under the parental benefits scheme.[24] Each parent is entitled to take full-time *parental leave* from work until their child is 18 months old, with or without paid benefits.[25] For adoptive parents, the 18 months are calculated from the time when the employee receives the child into their care. In addition, all employees have the right to parental leave when taking up parental leave benefit, which amounts to 240 days for each parent (195 days at sick pay level and 45 days at a low fixed level). Of these days, 90 days are reserved for each parent, the rest of the days may be transferred between the parents at choice. Parental benefit days can be taken as whole, three quarters, half, one quarter or one eighth of a day. As regards part-time leave (but not full-time), the employer may in certain cases distribute the leave in a way that deviates from the wishes of the employee.[26] Parents must take most of the paid parental leave before the child reaches the age of four years (for adoptive parents, four years from the day when the child came into their care). However, 96 days may be saved until the child turns 12 years or has finished fifth grade (for both biological and adoptive parents). There is also a right to unpaid part-time leave for parents with children below 8 years.[27] In addition to the regular parental leave, there is a right to temporary

[22] Section 4 of the Parental Leave Act (1995:584).

[23] Income-related pregnancy and maternity benefits correspond to sick leave benefits according to Chapter 12 Sections 18 and 19 of the Social Security Code (SSC) (2010:110). For mothers who are not employed / have no income there is instead a benefit at the lower (guarantee) level. Sickness benefits amount to 77.6% of the income up to approximately 49,000 euros per annum (Chapter 28, Section 7.1 compared to Chapter 12, Sections 22 and 26 of the SSC).

[24] Chapter 13, Sections 10 and 14 and 33 of the Social Security Code (2010:110).

[25] Section 5 of the Parental Leave Act (1995:584).

[26] Section 14 of the Parental Leave Act (1995:584).

[27] Section 7 of the of the Parental Leave Act (1995:584).

parental benefit when *caring for a sick child* under the age of 12, with 60 benefit days per child, per year paid at sick pay level under the parental benefits scheme.[28]

In addition to the statutory regulation, virtually all collective agreements top up the parental leave benefit. As is normally the case with collective agreements on occupational welfare, these are concluded on the intersectional level. In the regional and municipal sectors, to which a majority of the care workers belong, the collective agreement provides a supplement for 180 non-consecutive days per parent when receiving statutory parental leave benefit.[29] Incomes above the ceiling are supplemented for another 90 days per child at a level corresponding to the statutory benefit during parental leave. The parental leave benefit supplement must be taken while the child is still under two years of age. The collective agreement in the municipal sector lays down qualification periods of between nine months and one year. In the private sector, an insurance scheme for a parental leave benefit supplement jointly run by social partners pays a top-up for one consecutive period during which the employee is in receipt of statutory parental leave benefit on sick pay level.[30] The consecutive period may be arranged so that the employee works some days in the week and is on leave the other days. The insurance is payable from 30 up to 180 days depending on the duration of the employment.[31] As regards the right to parental leave, both collective agreements extends the notice period in the Parental Leave Act (1995:548) whereby employee shall give notice to their employer no later than two months prior to the start of the leave, if this is practicable.[32] The collective agreements extend this period to three months.[33] The collective agreement on parental benefit in the private sector provides similar rights.

There is also a right to leave / reduced hours when caring for severely sick relatives.[34] This right to leave is related to special care benefits at sick pay level in Chapter 47 of the Social Security Code. The right to leave covers a maximum

[28] Chapter 13, Sections 2 and 33 of the Social Security Code (2010:110).

[29] Chapter 6, Section 29 of the Central Collective Agreement for the Municipal Sector 01 Oct. 2023 (AB 17). The agreement provides for "parental leave benefit supplement" at 10% of the actual wage and is payable for 180 nonconsecutive days per child, and "parental wage" which is applicable to incomes above the ceiling in the statutory scheme and amounts to almost 80% of the income above the ceiling for 270 days per child. The qualification period is one year or nine months, respectively.

[30] AFA Insurance, Work-related Insurance, <https://www.afaforsakring.se/globalassets/sprak/f6285_forsak ringar-i-arbetslivet-engelska.pdf> (Accessed June 1, 2024); Finfa, *Statutory and Collective Insurance Schemes for the Swedish Labour Market 2020* (2020).

[31] Collective Agreement between Municipal Workers Union Kommunal and Employers in the Care Sector Almega Vårdföretagarna, 1 June 2023–31 May 2025. Collective Agreement, Personal Assistants, between Fremia Municipal Workers Union Kommunal 1 October 2023–31 October 2025.

[32] Section 13 of the Parental Leave Act (1995:584).

[33] Chapter 6, Section 29, Central Collective Agreement for the Municipal Sector 01 Oct. 2023 (Allmänna bestämmelser, AB 17).

[34] Act on Leave for the Care of Relatives (1988:1465).

of 100 full benefit days per caretaker (note that the days are linked to the recipient of the care, not to the carer). The days can be taken as full days or as 25, 50 or 75% of a day. Anyone who is prepared to take time off work to care for an ill person is considered to have a sufficiently close relationship to be entitled to the right to paid leave, thus not only family members. This is different from what applies for the Act on the Right to Leave for Urgent Family Reasons (1998:209), which provides a right to time off due to urgent family reasons relating to severe illness or injury of a close family member that require the presence of the employee. There are no explicit time limits to this right, but its nature indicates that it is not for a long time. The right to leave due to urgent family reasons applies to all employees, without any qualification period. There is no statutory right to be paid during the leave. In the regional and municipal sector, the collective agreement grants one paid day off to in connection with severe illness of a close family member.[35]

The Parental Leave Act (1995:584) prohibits unfavorable treatment related to parental leave.[36] For carers' leave and leave for urgent family reasons, there is a prohibition against unfavorable treatment on the sole ground that the employee has exercised their right to leave.[37] With respect to these prohibitions, the Equality Ombudsman may represent an employee who so wishes and who is not represented by a trade union.[38]

There are no provisions referring to reconciling work and family life "for women workers", neither in general, nor in the care sector. The only provisions particularly addressing female employees are those concerning maternity leave and breastfeeding, described above in this Section, and those concerning pregnancy, described below in Section 15. Provisions on parental leave are gender neutral.

- *Have there been any court rulings on this matter? If so, please summarise or comment.*

There are no cases on gender specific rights for women, but a number of cases have dealt with discrimination and disfavourable treatment, most predominantly in relation to pregnancy and parental leave. Three cases can be mentioned, as they concerned employees in the care sector:

In the first case, a nurse had requested four weeks' leave to take care of a 16-year-old niece who required constant supervision due to serious mental and social problems.[39] When her application was rejected, the nurse neverthe-

[35] Chapter 6, Section 32, Central Collective Agreement for the Municipal Sector 01 Oct. 2023 (Allmänna bestämmelser, AB 17).

[36] Section 16 of the Parental Leave Act (1995:584).

[37] Section of 10 the Act on Leave for the Care of Relatives (1988:1465) and Section 4 of the Act on the Right to Leave for Urgent Family Reasons (1998:209).

[38] Section 25 of the Parental Leave Act (1995:584), Section of 16 the Act on Leave for the Care of Relatives (1988:1465) and Section 8 of the Act on the Right to Leave for Urgent Family Reasons (1998:209).

[39] Swedish Labour Court judgement AD 2003 no. 70.

less stayed home to take care of her niece, and she was therefore dismissed. The Swedish Labour Court found that the Act on the right to leave for urgent family reasons (1998:209) was not applicable. As the need for supervision had been long known to the nurse, the situation did not constitute a case of force majeure (however, the dismissal was found contrary to the Employment Protection Act).

The second case concerned physiotherapist who had been denied participation in occupational training because it was to take place just one week before her due date and the beginning of her parental leave.[40] Referring to the explicit prohibition in the Parental Leave Act (1995:548) against disadvantages resulting from parental leave, the Swedish Labour Court explained that parental leave is particularly worthy of protection, in comparison to other types of leave. There is a limited scope for allowing disadvantages, but the conditions for applying the exception were not considered to be met and the employer was found liable for damages.

The third case concerned the right to wage development during parental leave. The claimant was a nurse represented by the Equality Ombudsman.[41] After her parental leave, she had received a significantly lower wage increase than the year before. According to the preparatory works of the Parental Leave Act (1995:584) the wage development must be kept uninterrupted during periods of parental leave.[42] While referring to the preparatory works, the Labour Court also noted that the employer had demonstrated with conviction that the nurse had wrongly received a too high wage increase the previous year. Thus, her limited wage development for the year at hand was therefore found to be unrelated to the fact that she had been on parental leave.

- *Do the legislation or, if applicable, collective agreements, provide for different provisions in terms of work-life balance for staff in each of these care sector occupations compared to ordinary workers or workers in other production sectors? If so, please summarise or comment on the case(s).*

The statutory legislation applies to all employees irrespective of sector, and no such differences have been detected in the collective agreements.

- *Have there been any court rulings on differences in conciliation between the care sector and other sectors? If so, please summarise or comment on the case(s).*

No such conflicts have been detected.

13) Have statistics or databases been published in your country on occupational accidents or illnesses arising from the work of personnel in the care sector as a whole or in each of the care sector jobs according to the workers' gender?

[40] Swedish Labour Court judgement AD 2009 no. 45.

[41] Swedish Labour Court judgement AD 2022 no. 53.

[42] Government Bill Prop. 2005/06:185 *Förstärkning och förenkling - ändringar i anställningsskyddslagen och föräldraledighetslagen*, 88.

- *If so, do the databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

For occupational injuries and diseases, the Swedish Work Environment Authority is responsible for collecting and compiling statistics. The statistics, which is based on reports of occupational injuries made by individuals to the Social Insurance Agency and broken down by gender, sector, and occupational risk, is published (in Swedish) at the webpage of Sweden Statistics: <https://www.statistikdatabasen.scb.se/pxweb/sv/ssd/>.

Every year, the Swedish Work Environment produces three comprehensive reports where the statistic material is analysed. These are published at the web page of the authority: <https://www.av.se/arbetsmiljoarbete-och-inspektioner/arbetsmiljostatistik-officiell-arbetsskadestatstik/>.

14) Describe or comment on any statistics or databases you have found regarding the participation of male and female workers in the care sector workforce, either in general, or in relation to each of the various occupations that make up the care sector.

For 2022, men were more often affected by occupational accidents with a fatal outcome than women and reported more occupational accidents leading to sick leave. Women reported more occupational diseases and occupational accidents without sick leave than men.[43]

For the health and care sector, COVID-19 has had significant impact on the statistics in this area. In 2020, the number of reported occupational *diseases* increased sharply for both women and men, but significantly more for women. This can be entirely explained by large number of reports caused by infections linked to COVID-19. In 2021, then, the number of reports of occupational *accidents* increased significantly, especially among women. The reason was that side effects of the COVID-19 vaccine were reported as occupational accidents. Historically, men have reported more cases of occupational accidents, but in 2021 women reached a record high, with almost the same number as men. Many of these cases come from the health and care sector.

In 2022, the number of occupational accidents were back at about the same level as in 2019, the year before COVID-19. In total for all sectors men reported about 7.7 occupational accidents with sick leave per 1,000 employed men, and for women the corresponding number was 6.1. In a sectoral comparison, women reported the most accidents per 1,000 employees in "Transport and storage" (16.7 accidents), followed by "Mining and quarrying" (10.0 accidents), and then

[43] Facts collected from Swedish Work Environment Authority, *Arbetsmiljöstatistik Rapport 2023:01. Arbetsskador 2022, Occupational accidents and work-related diseases* (2023).

"Water supply; sewerage, waste management, etc." (9.6 accidents). For the sector "Health and care: social services", the corresponding figure was 7.8 accidents.[44]

Occupational diseases have also decreased but are still at a higher level than before COVID-19; in total for all industries, about 4.9 cases per 1,000 employed women and about 1.7 cases per 1,000 employed men. The sector with the most reported occupational diseases per 1,000 employed women in 2022 was "Health and care: social services" (9.6 reports). The most prominent exposure factor for occupational diseases was "Chemical and biological factors", which in 2022 alone accounted for almost three-fifths of all notifications in the sector. Before COVID-19, this exposure factor accounted for a small share of notified occupational diseases but has grown significantly in 2020 and 2021.[45] The second most common cause of occupational diseases in the sector "Health and care: social services" was "Organisational and social factors", which, in terms of the number of reported cases, has remained relatively constant in recent years. Reported occupational diseases attributed to "Organisational and social causes" are often related to excessive workloads or work pace (stress) and problems in workplace relations.

15) Do the legislation or, if applicable, collective agreements, for each of these occupations in the care sector, make specific provision for women in terms of occupational safety and health? If so, please provide details.

Occupational safety and health regulation is gender neutral, and there is no particular legislation regarding women in their capacity as women. However, for women who are pregnant, breastfeeding or have recently given birth, protective safety and health measures are realized through a combination of the Work Environment Act (1977:1160), the Parental Leave Act (1995:584) and the scheme on pregnancy benefits in Chapter 10 of the Social Security Code (2010:110).

The Work Environment Act (1977:1160) is gender neutral and requires the employer to provide a good working environment adapted to the individual employee and his or her individual needs.[46] Provisions issued by the Work Environment Authority provide detailed rules for work tasks and groups of workers, one of them being pregnant and breastfeeding workers.[47] The provision AFS 2007:5 Pregnant and Breastfeeding Workers requires employers to conduct a risk assessment of the work tasks and, if required, take preventive measures for an employee

[44] Among men too, "Transport and storage" reported the highest number of occupational accidents with sick leave per 1,000 employees (16.7 accidents), followed by "Water supply; sewerage, waste management and remediation activities" (14.2 accidents), and "Renting, real estate, travel and other support service activities" (13.9 accidents).

[45] The same pattern applies to men, "Health and care: social services" is by far the sector where most occupational diseases are reported (6.4 notifications), and "Chemical and biological factors" are the dominant explanation.

[46] Chapter 2, Section 1 and Chapter 3 Section 3 of the Working Environment Act (1977:1160).

[47] AFS 2007:5 Pregnant and Breastfeeding Workers¸ with later amendments. The mandate to issue the regulations, Swedish Work Environment Authority Provisions AFS, is given in Chapter 4 Section 6 of the Working Environment Act (1977:1160).

who is pregnant, gave birth in the last 14 weeks, or who is breastfeeding. If the risk cannot be eliminated by protective measures, the employee must be temporary relocated to other work tasks. If the risks prevail, the employer may not allow the employee to work. A general prohibition applies for work that includes contact with lead and work where the employee risk being exposed to rubella or toxoplasmosis unless she is immune against these agents. An employee who cannot be relocated must be granted leave of absence with statutory pregnancy benefit.[48] Detailed rules on pregnant and breastfeeding employees can also be found in other Work Environment Authority Provisions that concerns specific types of work. In the health care sector, such provisions concern, for instance: work posture and workload ergonomics; other physical factors; psychosocial factors; radiation; forceful shocks and vibrations; noise; nightwork; infectious agents including a prohibition against any risk of exposure to rubella or toxoplasma; chemical substances including a prohibition work involving lead.[49] These provisions must be considered by the employer when carrying out the risk assessment in relation to pregnant and breastfeeding employees.

For a pregnant or breastfeeding woman who has been prohibited from continuing her regular work under the work environment regulation or otherwise cannot carry out physically demanding work duties and who cannot be relocated, the Parental Leave Act (1995:584) provides a right to leave of absence.[50] In terms of economic compensation, the Social Security Code (2010:110) includes a special benefit scheme on pregnancy benefits for pregnant workers during the leave. The scheme applies from day 60 of the pregnancy until 10 days before the expected delivery date. After that date, the ordinary parental leave scheme applies.

Another area that merits mention in the context of health and safety in the workplace is protection against harassment. Harassment based on sex and sexual harassment are considered psychological occupational safety and health risks and categorized as forms of victimization. Employers are required to take actions to counteract work environment risks of victimization and are obliged to establish procedures for cases where victimization occurs, and make the procedures known to all employees.[51] In parallel with the occupational health and

[48] Section 18 and 20 of the Parental Leave Act (1995:584), Chapter 10 Sections 2, 3, 3a of the Social Security Code (2010:110).

[49] AFS 2012:2 Load ergonomics; AFS 1981:14 Protection against damage from falls; AFS 1993:2 Violence and threats in working life; AFS 2015:4 Organisational and social work environment; AFS 2016:3 Electromagnetic fields; AFS 2020 Workplace design; AFS 2005:15 Vibrations; AFS 2005:16 Noise; AFS 1982:17 Records of on-call time, overtime and additional time; AFS 2019:3 Medical checks in the workplace; AFS 2018:4 Risk of infection; AFS 2011:19 Chemical work environment risks; 2005:5 Cytostatic and other drugs with lasting toxic effects; AFS 2001:7 Anaesthetic gases; and AFS 2018:1 Sanitary thresholds.

[50] Sections 18 and 19 of the Parental Leave Act (1995:584).

[51] AFS 1993:17 Victimization at work, repealed through AFS 2015:4 Organizational and social working environment. Victimization is defined as "recurrent reprehensible or distinctly negative actions, which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community".

safety legislation, there is also a protection in the Discrimination Act (2008:567). When conducted by the employer, harassment and sexual harassment constitutes discrimination, for which the employer can be held liable.[52] When conducted by an employee against another employee, it gives rise to an obligation for the employer to investigate the allegations and, where appropriate, take measures to prevent future harassments. An employer who fails to meet these requirements can be held liable.[53] The Discrimination Act (2008:567) also requires employers to take active preventive measures to prevent harassment or to sexual harassment.[54] This obligation does not correspond to any particular rights for individual employees, but is a matter for supervision of the Equality Ombudsman.

16) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

One important case from the care sector concerned the right to pregnancy allowance when working tasks differ over the week.[55] The claimant was a nurse working full-time: 75% of her working hours in a residential care home and 25% in home healthcare. Due to pregnancy, she could no longer cope with the strenuous work in home health care. As her employer could not relocate her, she applied for a one-quarter pregnancy allowance corresponding to the days when she would have worked in home health care. She was granted one quarter of the pregnancy allowance but only during the days when she was absent from work; she would thus only be compensated for a quarter of her daily salary on the days she would have worked in home care, even though she had to give up that work completely. The Supreme Administrative Court found that although the right to compensation should be calculated as a quarter per calendar day, the calculation should include all days in a given period regardless of how the work tasks were distributed over the days of the week.

In relation to harassment, one case from the Swedish Labour Court is particularly relevant for the area of this study.[56] It concerned a personal assistant employed by a private company who claimed to have been subjected to sexual harassment and harassment based on ethnicity by the cohabiting partner of the assistance recipient. The question was whether the employer had a duty to investigate and take measures under the Discrimination Act, which, in practice, would mean that the cohabitant of the assistance recipient would have been equated with an employee at the employer. The Labour Court concluded that there was no such duty, but at the same time the Court stressed that the employer is responsible for the health and safety at the workplace under the Work Environment Act (1977:1160) which was not invoked in the case.

[52] Chapter 1, Section 4, pp. 4–5 of the Discrimination Act (2008:567).
[53] Chapter 2, Section 3 of the Discrimination Act (2008:567).
[54] Chapter 3, Section 6 of the Discrimination Act (2008:567).
[55] Swedish Supreme Administrative Court judgement 2018:58.
[56] Swedish Labour Court judgement AD 2017 no. 61.

17) Is there any specific provision for termination of contract that differentiates between men and women in each of these occupations? If so, please provide details.

Statutory legislation employment on protection is uniform for virtually the entire labour market and the same provisions apply in the public and the private sector. The exception the small group of personal assistants for persons with a disability, who are employed directly by the care-taker. In this group, 27% of the employees are a relative of the care recipient, of whom 61% live in the same household all or part of the time.[57] For this group, a specific act on employment protection (and working time) applies, which do not require just cause for dismissal and where the notice period many times is shorter than the normal.[58]

Collective agreements on working conditions and employment protection are concluded on sectoral level.

There are no sex-specific provisions on employment protection, and thus no explicit prohibition against dismissal particularly protecting pregnant women. However, any dismissal under Swedish law requires just cause according to Section 7 of the Employment Protection Act (1982:80). For dismissals based on reasons related to the employee themselves (personal grounds), there are strict requirements. Pregnancy or maternity, or related shorter or longer absence from work, are never considered just cause for dismissal. A dismissal on the ground of pregnancy or maternity, or related shorter or longer absence from work, would thus be in contravention with the general provisions on employment protection. It would also amount to direct discrimination and constitute unfavorable treatment in connection with parental leave.[59] A notice of termination of contract or a summary dismissal solely based on reasons related to parental leave may also be declared invalid if the employee so requests.[60] Should dismissal be based on grounds that are permissible, such as redundancy, the notice period will not start until the employee has returned from full-time maternity or parental leave. The employment cannot thus cease during maternity leave or parental leave.[61] For personal assistants of a disabled person, who are employed directly by the carer (often these employees are relatives of the carer); these employees are covered by a specific law on employment protection and working time Act (1970:943) on working time etc. in domestic work, the employment protection is less comprehensive. In contrast to what applies under the uniform employment protection legislation, under this specific law, the employer may terminate the employment without a cause. The notice period is at least one month and increases with the number of years in employment. This corresponds to the uniform legislation, but

[57] Government Inquiry Report SOU 2020:1 *Översyn av yrket personlig assistent. Ett viktigt yrke som förtjänar bra villkor.*

[58] Act on Working Time etc. in Domestic Work (1970:943).

[59] Chapter 2, Section 1 of the Discrimination Act (2008:567) and Section 16 of the Parental Leave Act (1995:584).

[60] Section 17 of the Parental Leave Act (1995:584).

[61] Section 11 of the Employment Protection Act (1982:80).

the maximum notice period is only three months (if the employment has lasted for ten years) in comparison to the maximum of six months provided for other employees. In addition, and opposite to what applies under the uniform legislation, an employment may cease also during maternity leave or parental leave.

18) Have there been any court rulings on this matter? If there have been court rulings, please summarise or comment on them.

There have been rulings confirming the right to employment protection in connection with pregnancy and parental leave. However, these rulings refer to the matter in general and do not highlight questions of particular importance for the care sector.

19) Is there any specific provision for social protection that differentiates between men and women in each of these occupations? (The term social protection refers to benefits provided by the State such as unemployment benefits, social security, or social assistance, etc.).

No. Swedish social security law is gender neutral.

20) Have there been any legal disputes in your country concerning the granting of social benefits to staff working in the care sector that have led to direct or indirect discrimination on grounds of sector? If so, please summarise or comment on the case(s).

No such conflicts have been detected.

21) If there are Equality Bodies in your country, do you know if they have undertaken any action, report, monitoring, or judicial activity in relation to the rights of women workers in care occupations? If so, please summarise or comment.

The equality body in Sweden, the Equality Ombudsman, has not published any reports or conducted general monitoring in relation to the rights of women workers in care occupations.

Quite recently, the Equality Ombudsman has litigated before the Swedish Labour Court in the case mentioned above in Section 12 on wage development during parental leave.[62]

22) Comment whether the care sector in your country complies with international and EU obligations regarding non-discrimination on the grounds of sex in the field of employment and social protection. Describe the main regulations in this field and refer to whether equal working conditions (e.g., pay) are expressly provided for specifically in the care sector.

For an overview of the legislation on non-discrimination on the grounds of sex and equality between men and women, see above in Section 1. The legislation is universal for the whole labour market, and does not refer specifically to the care sector.

[62] Swedish Labour Court judgement AD 2022 no. 53.

In terms of the implementation of EU law on non-discrimination on the ground of sex, the 2014 Recommendation on Pay Transparency has been implemented in relation to the Swedish industrial relations system, stressing the autonomy of the social partners.[63] This means that there is no individual right to information on wages, but that right instead belongs to the trade union. In addition, although the social partners have chosen to include the matter of equal pay in collective bargaining, there is no legal requirement for them to do so. This is because the principle of the autonomy of the social partners prevents the state from interfering in the collective bargaining process. A governmental inquiry to prepare a legislative proposal for the implementation of the 2023 Directive on pay transparency will deliver its report in late spring 2024.[64] In the area of work life balance, national law in some respects exceeds the requirements of EU law; not least the long duration of the periods of leave and the generous economic compensation should be mentioned. In comparison to other EU countries, penalties are generally relatively low in all areas of law including the in area of pregnancy and maternity rights and family-related leave.

As regards international conventions it can be noted that Sweden has ratified the Domestic Workers Convention no. 189, after adopting necessary legislative changes in the Act on Working Time etc. in Domestic Work (1970:943).[65]

2. Migrant Status

Authors' note:

a) General information on migrants in the care sector is requested in this section; broadly speaking, these are non-EU third country nationals (where appropriate, EU nationals will be included). In some questions, nationals of the countries covered by the report will also be included.
b) Some questions refer to undocumented migrants (or irregular migrants): See notions defined above. In general terms undocumented migrants are those who do not have a residence and work permit in the host country, while documented migrants (or regular migrants) have been granted a residence permit.
c) Some of the questions refer to legislation on foreigners or immigration: by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.

[63] 2014/124/EU: Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

[64] Government Inquiry Remit Dir. 2023:68 *Genomförande av EU-direktivet om stärkt tillämpning av principen om lika lön för kvinnor och män för lika eller likvärdigt arbete genom insyn i lönesättningen och efterlevnadsmekanismer.*

[65] Government Bill Prop. 2017/18:272 *ILO:s konvention om anständiga arbetsvillkor för hushållsarbetare.*

d) Some questions may be answered not only by referring to the specific legislation on aliens, but also to other legislation, such as, for example, the legislation established by each country in the field of human rights or labour rights.

1) Provide a brief overview of your national legislation on anti-discrimination on the grounds of race or ethnic origin, religion, or belief, in the field of employment or occupation.

The Instrument of Government imposes a constitutional obligation for public entities to counteract all discrimination on the ground of skin colour, national or ethnic origin, language or religious affiliation. It also prohibits negative differential treatment on the grounds of ethnic origin, skin colour or other similar characteristic in laws or other regulations.[66] These provisions does not give rise to individual rights and cannot be a ground for individual complaints or claims for damages.

As regards working life, the first statutory legislation prohibiting discrimination the grounds of ethnicity was introduced in 1994. In 1999, it was replaced with an amended act which also included discrimination on the grounds of religion or other belief.[67] Today, the protection is provided in the Discrimination Act (2008:567), which came into force in 2009 and bans discrimination on the grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, and age.[68] For the scope of application in working life, and for the various forms of discrimination, see above, Part I, Gender, Section 1.

2) Also provide a brief overview of the legislation concerning the rights and duties of "foreigners": EU third country nationals (by this we mean the legislation that establishes the framework of rights and duties of foreigners in the country; requirements for gaining entry to and working in the country; requirements for bringing family members into the country, etc.) In terms of national legislation on foreigners or migrants, please make a brief overview of whether it contains any sections on non-discrimination, as well as the rights of foreigners in employment.

In this report, the following concepts will be used:

- Alien (*utlänning*) = non-Swedish national in general.[69]
- Immigrant (*invandrare*) = foreign-born person residing in Sweden.

[66] Chapter 1, Section 2(5) and Chapter 2, Section 12 of the Instrument of Government (1974:152).

[67] Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (1999:130) replacing the Ethnic Discrimination Act (1994:134); Government Bill Prop 1997/98:177, *Ny lag om åtgärder mot etnisk diskriminering i arbetslivet*.

[68] Discrimination Act (2008:567); Government Inquiry Report SOU 2006:22, *En sammanhållen diskrimineringslagstiftning*; Government Inquiry Report SOU 2002:43 *Ett utvidgat skydd mot diskriminering*.

[69] Aliens Act (2005:716).

- Labour immigrant (*arbetskraftsinvandrare*) = third country national, right to reside based on working permit.[70]

Initially, it should be noted that Swedish migration policy is currently undergoing comprehensive changes, which are supported by a broad political majority, and where the restructuring of labour immigration is an important element.[71] The legal framework and policy can be expected to change in various ways in the near future, in line with the Government's aims to reduce low-skilled labour migration while increasing high-skilled labour migration, curb misuse, and reduce turnaround time for applications. The following Section provides a brief overview of the current legislation under the Aliens Act (2005:716) and the Aliens Ordinance (2006:97).

In most cases, a residence permit is temporary, with the possibility of extension. After a certain number of years of residence (normally three years) the applicant may apply for a permanent residence permit, subject to requirements regarding livelihood and an orderly life. Such a permit does not need to be extended but can be revoked if conditions for the permit are no longer met, if the applicant no longer live in Sweden, or if the applicant provided incorrect information in their original application.[72] There are four main routes to applying for a residence permit in Sweden: as an asylum seeker or refugee, as a family member, as a student, and as a labour immigrant. While labour immigrants reside in Sweden for the explicit reason of working, many of those who have arrived in the country due to other reasons are also included in the work force.

An asylum seeker will be assessed a—refugee if the person has well-founded reasons to fear persecution due to race, nationality, religious or political beliefs, gender, sexual orientation, or affiliation to a particular social group—or a person in need of subsidiary protection because a risk of being sentenced to death, a risk of being subjected to corporal punishment, torture or other inhumane or degrading treatment or punishment, or as a civilian, a serious risk of injury due to armed conflict, all in line with the Geneva Convention and the EU Asylum Qualifications Directive 2011/95/EU.[73] Persons granted refugee status or subsidiary protection status declaration will be granted temporary residence per-

[70] Government Bill Prop. 2021/22:284, *Ett höjt försörjningskrav för arbetskraftsinvandrare*.

[71] Government Declarations on Taking Office 2022; Government Inquiry Report SOU 2024:12 *Mål och mening med integration*; Government Bill Prop. 2023/24:1 Budgetproposition, Utgiftsområde 8, Migration, 19.

[72] Chapter 7 of the Aliens Act (2005:716).

[73] Chapter 4, Sections 1 and 2 of the Aliens Act (2005:716); Convention relating to the Status of Refugees (189 U.N.T.S. 150, entered into force April 22, 1954). United Nations. 1951; Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

mit, for three years or 13 months respectively, with a possibility for extension.[74] In addition, each year, a number of quota refugees within the framework of the resettlement programme of the UNHCR are granted a permanent residence permit.[75] Persons covered by the EU Directive on the status of long-term resident third-country national are granted a permanent residence permit.[76] Persons fleeing the war in Ukraine are granted a temporary residence permit under specific rules implementing the Temporary Protection Directive for displaced persons from Ukraine.[77] As a rule, persons coming to Sweden to seek shelter may take up a work. Both a permanent residence permit and a temporary residence permit for persons with refugee or subsidiary protection status, or for those who have fled Ukraine, allows for work in Sweden during the period of the permit without a separate work permit. Asylum seekers may apply for an exemption from the requirement of a work permit while waiting for the assessment.[78]

A family member of someone living in Sweden can apply for a residence permit. Family members are spouse, registered partner, or cohabitant, all of whom, as well as the person living in Sweden, must have reached the age of 21 (unless they jointly have children under the age of 18), along with children under 18 or, for labour immigrants, unmarried children under 21. Siblings or parents of adult persons normally does not count as family members. The person living in Sweden must fulfil a maintenance requirement of an income that covers their own cost of housing and living as well as for family members. The assessment is based on standard cost for housing depending on the family size and the location in Sweden, along with a standard cost of living for each adult and child in the household.[79] The person living in Sweden must either be a Swedish citizen, have a permanent residence permit, or a temporary residence permit with refugee or subsidiary protection status. For persons with a residence permit to study or work, family members can be granted residence permit for the same period as the student or labour immigrant, and they can apply for a work permit.

A third country national completing university studies for more than three months require a residence permit, granted before entering Sweden. The dura-

[74] Chapter 4, Sections 3 and 3a, Chapter 5, Sections 1 and 1a of the Aliens Act (2005:716).

[75] Chapter 5, Section 2 of the Aliens Act (2005:716).

[76] Chapter 5, Section 2b of the Aliens Act (2005:716), Directive 2011/51/EU amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

[77] Chapter 21, Sections 2, 3, 4, 6 and 7 of the Aliens Act (2005:716); Council Directive 2001/55/EC on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof; Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

[78] Chapter 5, Section 4 of the Aliens Ordinance (2006:97).

[79] Chapter 5, Sections 3 and 3b of the Aliens Act (2005:716). Swedish Migration Authority Provisions MIGRFS 2022:8 on the Maintenance Requirement for Family Member Immigration.

tion of the permit is linked to the study period and can be extended. Doctoral students may apply for permanent residence permit after four years of residence. Anyone holding a residence permit for studies may take up work while studying, without a work permit. After the studies, residence permit may be granted to search for work or explore possibilities to start a business.[80]

Normally, an application for residence permit to work in Sweden must be granted before entering the country, but there are certain exceptions.[81] For asylum seekers who has been denied asylum, currently, there is a possibility to apply for work permit without leaving Sweden; this is called a "track change" with reference to the change from the asylum track to the labour migration track. This possibility will likely be abolished from 1 June 2025.[82] Other groups of third country national covered by special provisions on residence and work permits are employees within the framework of an intra-corporate transfer (ITC) and highly skilled employees eligible for EU Blue Card. As regards the latter group, the current national provisions implement the 2009 Blue Card Directive, while the process of implementing the 2021 Blue Card Directive into Swedish law is underway.[83] There is also a possibility to apply for work permit from within Sweden for occupations for which there is a shortage of manpower, according to a list issued and updated by the Swedish Migration Agency in collaboration with the Swedish Public Employment Agency.[84] For labour immigrants not covered by any of these special rules, before entering into Sweden, the applicant must demonstrate an employment contract, signed by both parties, where the terms of employment, wage and insurances including pensions are in line with the collective agreement or practices in the relevant profession or industry. The wage level must also be above a wage floor. To counteract exploitation and abuse, strengthen the position of labour immigrants, prevent the salaries of labour immigrants from being undercut, and discourage competition with low salaries, the wage floor has recently been increased, following a proposal put forward by the previous Government and adopted with a significant majority in the Parliament.[85] Since November 2023, for the granting of a work permit, the wage

[80] Chapter 5, Section 5, and Chapter 5b, Sections 5 and 8 of the Aliens Act (2005:716). Both during the studies and for the period after, the person must have sufficient means of subsistence as well as means for their return travel, see Chapter 5b, Section 9.

[81] Chapter 4, Section 2 of the Aliens Act (2005:716).

[82] Government Inquiry Report SOU 2024:15 *Nya regler för arbetskraftsinvandring.*

[83] Directive EU/2021/1883 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC; Government Inquiry Report Ds 2023:6, *Genomförande av det nya blåkortsdirektivet*. Currently, the lowest monthly salary for granting the EU Blue Card is 5,090 euros, Swedish Migration Agency Provisions MIGRFS 2023:8; Chapter 5a, Section 5 of the Aliens Ordinance (2006:97).

[84] Chapter 5, Section 18 of the Aliens Act (2005:716); Chapter 5, Section 12 of the Aliens Ordinance (2006:97); Swedish Migration Agency Provisions MIGRFS 2023:7.

[85] Chapter 6, Section 2 of the Aliens Act (2006:716). Government Bill Prop. 2021/22:284, *Ett höjt försörjningskrav för arbetskraftsinvandrare*.

must be at least at least 80% of the median salary published by Statistics Sweden, which means a lowest monthly salary of around 2,700 euros. This is irrespective of whether the employment is full-time or part-time.[86] A work permit is linked to a specific employer and relates to a specific type of work. It is granted for the duration of the employment but for a maximum of two years. Thereafter, it can be renewed and is then linked to a specific type of work only, and not to a specific employer.[87] For work as a personal assistant for a person with a disability, additional requirements apply to prove that the employment is legit.

Once again, there is reason to emphasise that major changes to the Swedish migration policy currently are being prepared and implemented. Following reports of extensive abuse of residence permits for studies where students use their residence permits primarily to work, the Migration Agency and the Swedish Association of Higher Education Institutions (SUHF) has been tasked to take action to stop the fraud, and a government inquiry has been set up to propose legislative changes to limit the possibilities to work during studies.[88] In the area of labour immigration, in February 2024, a government inquiry presented a proposal recommending an additional increase of the recently raised wage floor. The proposal is that that the minimum wage level should correspond to the median salary or to around 3,400 euros / month.[89] For occupational groups where there is a labour shortage, the proposal is that the Government could instead stipulate that the wage must correspond to the lowest wage set out in a collective agreement or established practice in the profession or industry. This exception could be of relevance for the care sector, where the matter of labour shortage is high on the agenda. Sweden's municipalities and regions estimate that by 2031, due to retirements within the sector and due to a general increased need of staff, they will need to recruit more than 30,000 new nurses, 93,000 assistant nurses and 20,000 new care assistants.[90] Following a number of different reports on abuses of the labour immigration system specifically identifying fraudulent use of work permits for personal assistants for persons with a disability, the government inquiry report has also proposed that from June 2025 it shall no longer be possible to obtain a work permit to work as a personal assistant.[91]

[86] Chapter 5, Section 8a of the Aliens Ordinance (2006:97). The previous floor was 1,300 euros. Government promemoria of 4 May 2023 on changes of the Aliens Ordinance (2006:97) *Ett höjt försörjningskrav för arbetskraftsinvandrare*.

[87] Chapter 6, Section 2 and 4a of the Aliens Act (2006:716).

[88] Government Promemoria of 8 April 2024 *Improved conditions for foreign doctoral students and researchers to work in Sweden and more accurate decisions on residence permits for studies*, HR2024/00827. The due date for the inquiry report is in late 2024.

[89] Proposed to enter into force in January 2025. Government Inquiry Report SOU 2024:15 *Nya regler för arbetskraftsinvandring.*

[90] Swedish Association of Local Authorities and Regions *Välfärdens kompetensförsörjning. Personalprognos 2021–2031 och hur välfärden kan möta kompetensutmaningen* (2022), 38.

[91] Government Inquiry Report SOU 2024:15, *Nya regler för arbetskraftsinvandring.* National Intelligence Center, *OLLE – Strategisk rapport om hur personlig assistans och arbetstillstånd*

3) Make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in employment in your country.

Throughout the 2000s, the number of foreign-born people in Sweden has increased from 1 million persons in 2000 to nearly 2.2 million in 2023, corresponding to 20% of the population.[92] Of these persons, the majority are born outside the EU. Third-country immigrants make up around 15% of the total population, making Sweden the EU countries with the third largest proportion of non-European residents, after Luxembourg and Malta.[93] Overall, the largest countries of immigration to Sweden are Syria and Iraq, but there is also a significant amount of people born in Iran, Somalia, and Afghanistan. In the last few years, there have been an increasing number of legislative and policy changes aimed at reducing immigration and change its composition. In 2023, the total number of immigrants was close to 100,000.

The age structure of the immigrant group differs from the population born in Sweden. A large proportion of the foreign-born in Sweden are aged between 25 and 34 years, which means that this group has a higher proportion of working age, and comparatively fewer young children and older people.[94] Unemployment is significantly higher for those born abroad, and particularly for those born outside Europe. In 2022, the unemployment rate for persons born in Sweden was 4.6%, while it was 16.0% for foreign-born. For those born outside Europe, the unemployment rate was 21.9%, and in February 2024, this group made up 40% of all persons registered as unemployed.[95]

At the same time, the foreign-born makes up an important part of the workforce: around 20% of the population in employment, and this share is expected to increase over the coming years.[96] In 2022, more than 70% of those born in Sweden were employed, with slightly below 72% for men and slightly below 69% for women. For foreign-born people, the corresponding figures were just over 67%, with just over 72% of the men and just below 62%.[97] However, within the category foreign-born there are great varieties with respect to region of origin. Unemployment and long-term unemployment are significantly more common among those born outside Europe, particularly in Africa or Asia.[98] In addition,

otillbörligt och systematiskt utnyttjas av organiserad brottslighet, Stockholm, Swedish Police.

92 Statistics Sweden, Swedish and foreign-born population by region, age and sex 2000–2023.

93 Eurostat, Population on 1 January 2024 by age group, sex and country of birth.

94 Statistics Sweden, Swedish and foreign-born population by region, age and sex 2000–2023.

95 Government Bill Prop. 2023/24:1 *Budgetproposition, Utgiftsområde 14 Arbetsmarknad och arbetsliv*, 12. Swedish Public Employment Service, unemployment statistics February 2024.

96 Statistics Sweden, *Sveriges framtida befolkning 2023–2070*, Demografiska rapporter 2023:2.

97 Statistics Sweden, *Arbetsmarknadssituationen för befolkningen 15–74 år AKU 2023*, 17.

98 Both among unemployed and long term unemployed, there is a significant over-representation of persons born in Somalia, Ethiopia, Eritrea, Iraq, Iran and Syria, Swedish Public Employment Agency, *Ett decennium med etableringsuppdraget*. Arbetsförmedlingen analys 2021:24.

of the persons in this group who are employed, a large share has a fixed-term employment contract and thus a weak position in the labour market.[99] The sectors with the highest proportion of foreign-born employees are restaurants and catering, healthcare and care, cleaning, as well as storage and terminals, and these are also the sectors with the highest proportion of people born outside Europe.[100]

In 2022, the Swedish Migration Agency granted 37,103 working permits for third country labour immigrants, of which two thirds regarded new applications and one third were prolongations of existing permits. The most common occupations were berry picking and planting, followed by IT development, and occupations within engineering. Only a very low number of working permits regarded occupations in the care sector: in total 60 permits were granted for assistant nurses and 160 permits for the broader category of cleaning and home service staff, for which the proportion of people actually working in the care sector is unclear.[101]

4) Finally, make a brief social commentary on the presence of migrant populations (both EU and non-EU nationals), in the care sector in your country.

Persons born abroad make up a larger share of the employees in the health and social care sector than in other sectors, and this applies particularly for persons born outside Europe. In the total population, persons born outside Europe represent 15 percent, in entire labour market they represent 9 percent, of the employees in public care 12.5 percent and in private care they represent just over 20 percent.[102] One explanation mentioned for the high representation among those employed in private care is that many private healthcare companies are run by people born in non-European countries; around 12 percent of operational managers in the private health and care sectors are born outside Europe. In health care and care companies, some of which have a specific language or cultural profile, managers with a foreign background are much more likely to employ persons with a foreign background.[103] Among personal assistants for persons with a disability, one in four were born outside Europe.[104] A large proportion of these, 36 percent, work directly for the caretaker. This figure contrasts sharply to what applies for total number of personal assistants, where

[99] Swedish Public Employment Services, *Arbetsmarknadsutsikterna hösten 2023 Utvecklingen på arbetsmarknaden 2023–2025*, 43; Government Inquiry Report SOU 2023:24 *Etablering för fler – jämställda möjligheter till integration*, 130.

[100] Swedish Occupational Register.

[101] Government Inquiry Report SOU 2024:15 *Nya regler för arbetskraftsinvandring*, 100 ff.

[102] Swedish Occupational Register; The Association of Private Care Providers, *Privat vårdfakta 2022. Fakta och statistik om den privatdrivna vård- och omsorgsbranschen* (2022), 31.

[103] Persons with a foreign background make up 37 percent of the employees in companies where the managers have a non-European background, and 27 percent of the staff where the managers have a Swedish background. The Association of Private Care Providers *Privat vård och omsorg. En integrationsmotor i vår tid* (2018).

[104] Swedish Occupational Register 2022, se details below in Section 6.

only 4 percent work directly for caretaker. This has been explained by the fact that people with disabilities born abroad are more likely to have personal assistants who are also their relatives.[105]

Among those born abroad who work in the health and care sectors, only very few are labour immigrants, i.e. people who's right to reside in Sweden is based on a work permit. Between 2019 and 2023, the yearly average of work permits issued by Swedish Migration Agency was 29 permits for nurses, 63 permits for assistant nurses, 43 permits for care assistants and 103 permits for carers including personal assistants for persons with a disability.[106] As mentioned in Section 2 above, there is much to indicate that work permits to work as a personal assistants for persons with disabilities will cease to be granted from June 2025.[107]

5) Have statistics or databases been published in your country on foreigners or immigrants who are part of the personnel providing services in each of these care sector occupations?

The Occupational Register provide gender specific data on occupation, sector, level and orientation of education, age, region of residence, region of work. The register distinguishes between place of birth based on geographical regions, but it does not provide information on nationality. Generally, the data presented in the following is extracted from the Occupational Register.

In addition, the Labour Force Surveys (LFS) should be mentioned. Although it is not relevant to this specific question, it has informed other parts of this study. This data base provides gender specific data on labour market status, hours worked, absence from work, wages, sick pay, unemployment, level and field of education, civil status, and children, separate only between foreign-born and those born in Sweden. It does not provide data on nationality. Nor does it provide sector specific data.

The only group that can be distinguished by their nationality in openly available public statistics is labour immigrants applying for their first permit or for a prolongation, as the Swedish Migration Agency register the granted work permits with reference to nationality. However, this information is published separately from the information on occupational group. It is thus not possible to draw any conclusion about nationalities of the (very few) persons who have been granted a work permit for employment specifically in the care sector.

- *If yes, which care sector occupations are they most employed in?*

The occupations which have the largest share of employees are born outside Sweden is, first, care assistant where 53.3% of the employees are born outside Sweden, second, assistant nurse in home care, home health care, elder care, where

[105] Government Inquiry Report SOU 2020:1, *Översyn av yrket personlig assistent. Ett viktigt yrke som förtjänar bra villkor*, 96.

[106] Swedish Migration Agency, statistics on work permits.

[107] Government Inquiry Report SOU 2024:15, *Nya regler för arbetskraftsinvandring.*

the number is 36.8% and, third, personal assistant for persons with a disability where 34.8 percent are born outside Sweden.

- *If there are statistics or databases, do these establish the "nationality" or origin of foreign personnel providing services in these sectors? What nationalities are predominant?*

The Occupational Register provide data on place of birth based on geographical regions, but not information on nationality. For each occupation, the dominant geographical regions of birth outside Sweden are as follows:

nurse: Asia (5.5%) Europe excl. Nordic countries (5.39%)

assistant nurse in hospital ward: Asia (11.2%) Europe excl. Nordic countries (7.65%)

assistant nurse in home care, home health care, elder care: Asia (14.7%) Africa (10.04%)

care assistant: (25.9%) Africa (17.34%)

personal assistant, persons w. disability: Asia (14.8%) Europe excl. Nordic countries (8.51%)

- *Do databases also distinguish by gender? If yes, please describe what the statistics show.*

There is a statutory requirement that all public statistics on the individual level should be broken down by gender unless there are specific reasons against this.[108] Statistics are published regularly in the Swedish Occupational Register on occupations in the care sector, differentiated by, among others, place of birth based on geographical regions, and gender. For information on the databases, see above Part I Gender, Section 3.

In all care occupations, women are in the majority of the employees irrespective of region of origin. For detailed information, see Figure 2 below in Section 6.

- *Do databases exist for each of the occupations, with a distinction between labour migrants, refugees, and other categories of foreigners or migrants?*

No.

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*

The Swedish Occupational Register is an individual register covering all persons over the age of 16 registered in Sweden, and it is updated every two years. It contains gender-disaggregated information on the occupation, place of work, income, and education of the working population, along with information place of birth based on geographical regions. Approximately 20 different administrative sources contribute occupational data to the register.

[108] Section 14 of the Ordinance (2001:100) on official statistics.

The register is organized according to the Standard Swedish Occupational Classification 2012 (SSYK2012), which is based on the International Standard Classification of Occupation 2008 (ISCO-08). The occupational data is classified at four-digit level, which corresponds to 429 classes. The database is made up of individual data.

- *these databases public and freely accessible to everyone, or only to researchers?*

The publicly available data accessible at the web page of Sweden Statistics is presented at a macro level by occupation, sector, region, sex, along with information place of birth based on geographical regions, see link below. Micro data is available upon request and at a charge to authorised clients, i.e. Swedish universities and other entities for the purpose of a specific research project, as well as statistical authorities and public organisations for the purpose of limited statistical analysis. The individual data will be provided in pseudonymised form, whereby the identities of individuals are replaced by a serial number.

- *If published databases exist, please provide links and/or how to request them.*

The statistics can be accessed at: <https://www.statistikdatabasen.scb.se/pxweb/en/ssd/START__AM__AM0208__AM0208E/YREG53BAS/>.

6) Describe any statistics or databases you have encountered:

- *Describe what these statistics show in relation to the nationality of the person working in the care sector and, if applicable, in relation to the gender by nationality of these staff.*

The Occupational Register provide data on place of birth based on geographical regions, but it does not provide information on nationality. Of the occupations in the care sector, the proportion of foreign-born employees is lowest among nurses at 16.7% born outside Sweden and just 8% born outside Europe, followed by assistant nurses working on hospital wards at 28% foreign-born with 19% born outside Europe. In both these occupations, Asia is the most common region of birth outside Sweden, with Europe excluding the Nordic countries being the next most common. Also, there is a small share of assistant nurses working on hospital wards who were born in Africa. Other geographical regions are not represented to a substantial extent in these occupations. In the other end of the scale, the occupations which have the largest share of employees born outside Sweden is, first, care assistant at 53.3% foreign-born with 45% born outside Europe, second, assistant nurse in home care, home health care, elder care at 36.8% foreign-born with 27% born outside Europe, and third, personal assistant for persons with a disability at 34.8% born outside Sweden with around 25% outside Europe.

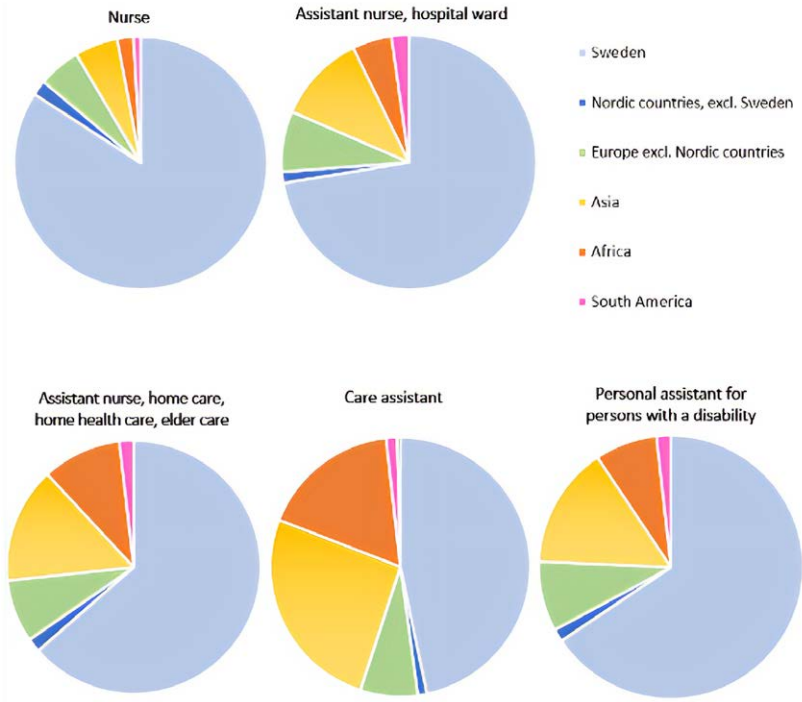

Figure 1 – Employees by region of birth, percent per occupation (most frequent regions). See: Swedish Occupational Register. Employees 16–64 years by occupation (4-digit SSYK 2012), region of birth and sex. BAS. Year 2022.

Table 2 – Employees by region of birth, percent per occupation (including all regions).

	Sweden	Nordic excl. Sweden	Europe excl. Nordic	Africa	Asia	South America	North & Central America	Other
Nurse	83,88	1,93	5,39	2,05	5,50	0,91	0,30	0,05
Assistant nurse, hospital ward	72,02	1,43	7,65	4,98	11,20	2,19	0,46	0,04
Assistant nurse, home care, home health care, elder care	63,23	1,75	7,95	10,04	14,70	1,81	0,48	0,04
Care assistant	46,70	1,11	7,14	17,34	25,90	1,37	0,39	0,07
Personal assistant, persons with a disability	65,20	1,55	8,51	7,58	14,80	1,75	0,50	0,07

See: Swedish Occupational Register. Employees 16–64 years by occupation (4-digit SSYK 2012), region of birth and sex. BAS. Year 2022.

For those born in Sweden, women are in the majority of the employees in all care occupations with 89% among nurses, 91% for assistant nurses in hospital wards, 93% for assistant nurses in home care, home health care and elder care, 81% for care assistants, and 72% among personal assistants for persons with a disability. The same pattern applies to employees born abroad: regardless of region of birth, women are in the majority in all care occupations. However, while there is a general dominance of female employees, in some occupations, the ratio of men to women is different for workers born in certain regions. Among employees born in Asia and Africa working either as care assistants or as assistant nurses in home care, home health care and elder care, and for employees born in Asia working as personal assistants for persons with a disability, the share of men is significantly higher than in all other groups.

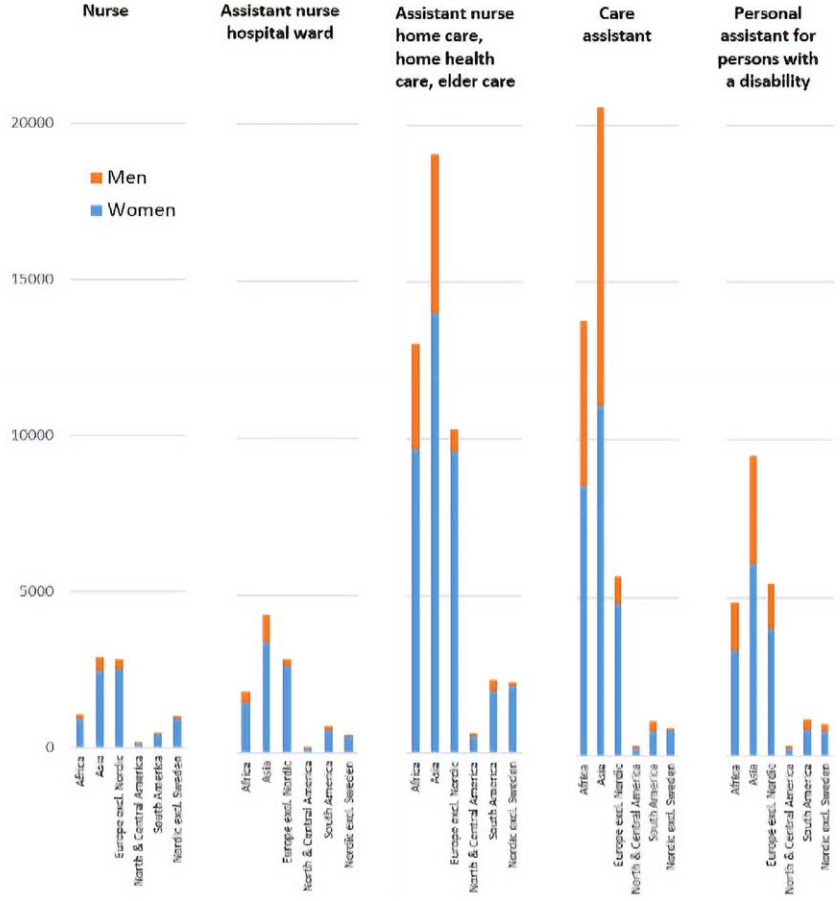

Figure 2 – Employees by region of birth and sex, number per occupation (most frequent regions). See: Swedish Occupational Register. Employees 16–64 years by occupation (4-digit SSYK 2012), region of birth and sex. BAS. Year 2022.

- *If you have found statistics or databases, please describe whether these show a distinction between general migrants, refugees, or other categories of migrants?*

Generally, labour market statistics does not make any distinction between groups of immigrants with respect to the ground for residence permit. It is therefore not possible to know how many of the foreign-born employees in the care sector have immigrated as refugees or are staying in Sweden to study, for example.

The only category of immigrants that can be distinguished is labour immigrants applying for their first work permit or for a prolongation. The Swedish Migration Agency register decisions for these work permits with reference to occupational group. As described above, Section 4, among those born abroad who work in the health and care sectors, only very few are labour immigrants, i.e. people who's right to reside in Sweden is based on a work permit. Between 2019 and 2023, the yearly average of work permits issued by Swedish Migration Agency was 29 permits for nurses, 63 permits for assistant nurses, 43 permits for care assistants and 103 permits for carers including personal assistants for persons with a disability.[109]

7) Have statistics or databases been published on people working in the care sector, whether nationals of your country, EU, or non-EU nationals, differentiating them by race or ethnic origin, religion, or language?

- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

Public labour market statistics only distinguish between foreign-born and those born in Sweden. It does not provide information on nationality, ethnic origin, religion, or language.

8) Describe what statistics or databases you have found, i.e., summarise and comment on the data found on participation in the care sector by workers on the basis of race or ethnicity, religion, and language.

Not applicable.

9) Have there been any legal disputes or conflicts publicised by the media about the race or ethnicity, religion or language of staff providing services in the care sector? If so, please describe the situation and the solutions provided.

In recent years, increasing attention has been paid to quality deficiencies in the care sector, particularly in elderly care, due to insufficient knowledge of the Swedish language among employees. The matter has for instance been addressed

[109] Swedish Migration Agency, statistics on work permits.

in several Government Inquiry Reports, it has been the subject of a comprehensive report from the Municipal Workers Union Kommunal, and in their yearly reports, the Health and Social Care Inspectorate (IVO) has repeatedly highlighted serious negative effects of language shortcomings.[110] In summing up the results of the inspections in the 2023, the Health and Social Care Inspectorate (IVO), reported that in 97% of the municipalities, there are health and care workers in residential elderly care who lack enough knowledge of the Swedish language to understand what the patient expresses and to be able to convey this information correctly. Nearly one in five patients interviewed stated that they had experienced situations where they neither understood nor were understood by the health and care workers.[111] These various reports have been covered by the media and sparked debate. Some municipalities have introduced language tests in recruitment to certain parts of the care sector, including elder care and personal assistance for persons with a disability. This development has been received positively by the Municipal Workers Union Kommunal, although at the same time the trade union cautions against the risk of ethnic discrimination in connection with the tests.[112] Statutory language tests that are required for certain professions are described below in Section 13.

Another topic that has long been the subject of political and media debate is the use of religious symbols in public service, including in the health sector. One such issue has been the requirement for dentists to work with bare forearms for hygiene reasons.[113] The Swedish Labor Court has found that such a requirement is permissible and does not violate the prohibition of discrimination on grounds of religion.[114] As regards the wearing of a Muslim headscarf, which has been the subject of a number of judgments from the Court of Justice of the European Union, the Swedish Labour Court has tried one case, outside the care sector, and the judgement was in favor to the employee.[115] The Hand-

[110] Government Inquiry Report (SOU 2019:20) *Stärkt kompetens i vård och omsorg*, 118; Government Inquiry Report SOU 2020:80 *Äldreomsorgen under pandemin- Delbetänkande av Coronakommissionen*, 107; Government Inquiry Report SOU 2021:52 *Vilja välja vård och omsorg – En hållbar kompetensförsörjning inom vård och omsorg om äldre*, 145; Municipal Workers Union Kommunal (2019) *Svenska språket – A och O inom äldreomsorgen*.

[111] Health and Social Care Inspectorate, *Vad har IVO sett 2022?* (IVO, 2023); Health and Social Care Inspectorate, *Tillsyn av medicinsk vård och behandling vid särskilda boenden för äldre* (IVO, 2022).

[112] Erlandsson, Johan, "Så många kommuner har språktest i äldreomsorgen", *Kommunalarbetaren*, 14 december, 2022.

[113] The National Board on Health and Welfare Provisions SOSFS 2015:10 *Socialstyrelsens föreskrifter om basal hygien i vård och omsorg.*

[114] Swedish Labour Court judgement AD 2017 no. 65; Jenny Julén Votinius, "Headscarves, Handshakes, and Plastic Underarm Covers. Recent developments on religion in working life in Sweden," *Hungarian Labour Law e-Journal* 1 (2019): 88–99.

[115] Cases C-157/15 Samira Achbita and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding v. G4 S Secure Solutions NV, EU:C:2017:203, C-188/15 Asma Bougnaoui, Association de Défense des Droits de l'Homme (ADDH) v. Micropole Univers

book for Healthcare for caregivers and healthcare personnel on regulations an provisions in health care states that if a head scarf is used, it should be secured so that it remains in place, hanging parts should be tucked into the neckline and it should be visibly clean.[116] Some Regions provide headscarves as part of the work clothes. In other Regions, employees are allowed to bring their own scarves, but they must be washed every day. In some regions and municipalities, political proposals have put forward to prohibit religious and political symbols from being worn by employees in the public care sector, but these proposals have not been acted upon.[117]

10) Have statistics or databases been published in your country on the percentages of formal or informal employment that may affect the care sector?

- *Do databases exist for each of the occupations, distinguishing between formal and informal employment and/or between foreigner and immigrant?*
- *Do you know whether these statistics or databases distinguish between work migrants, refugees, or other categories of foreigners or migrants?*
- *Do these databases also distinguish by gender?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

There are no databases providing this information.

11) Describe or comment on any statistics or databases you have found regarding the participation of migrant workers in the care sector in either the formal or informal economy. Where statistics show data by gender and by category of migrants within the formal and informal economy, please comment on them or include a description of them.

There are no statistics on the informal economy.

The statistics relating to occupational sectors, including the care sector, do not distinguish between categories of immigrants (i.e. by ground for residence permit).

SA, EU:C:2017:204; Joined Cases C-804/18 and C-341/19, IX v. WABE eV and MH Müller Handels GmbH v. MJ, Judgment of the Court (Grand Chamber) of 15 July 2021, EU:C:2021:594; C-344/20 LF v. SCRL, EU:C:2022:774; Case C-148/22 OP v. Commune d'Ans, EU:C:2023:924. Swedish Labour Court judgments AD 2023 no. 71.

[116] The Handbook for Healthcare is based on the Swedish Health and Medical Service Act (2017:30) and Social Services Act (2001:453), coordinated by the Swedish Association of Local Authorities and Regions, and dates back to the early 1990ies. It can be accessed online at <https://www.vardhandboken.se/vardhygien-infektioner-och-smittspridning/vardhygien/basala-hygienrutiner-och-kladregler/kladregler/> (Accessed March 8, 2024).

[117] Such proposals have been put forward in recent years for instance in the Regions of Stockholm, Uppsala, Skåne and Västmanland, and in the Municipalities of Trelleborg and Varberg.

12) Have any statistics or databases been published in your country on the possible presence of "undocumented" or "irregular" immigrants (without authorisation to reside or work in your country) who may be providing services in care occupations?

- *Do these databases also distinguish by gender?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*
- *Comment on any statistics or databases you have found regarding the participation of irregular or regular migrants in the care sector. Where statistics have been found which differentiate by gender, please comment on the data.*

Generally, Sweden is estimated to be one of the countries in the EU with the lowest share of undeclared work.[118] Note that the estimates regard undeclared work in general and does not distinguish between employees who have the right to work in the country and those who have not. There is very limited knowledge of the number of immigrants residing in Sweden without a residence permit.[119]

The sectors most likely to report competition from undeclared work are construction, restaurants, and transportation.[120] There are no estimates on the incidence of undeclared work in the care sector.

It should be noted, though, that the topic of undeclared work is high on the political agenda, where it constitutes an important element of the wider range of abusive practices in working life that are referred to as working life crime.[121] See below, Section 31.

13) Have measures been taken in your country to facilitate access to work specifically in the care sector for migrants? If yes, please describe them. Also indicate if this sector is understaffed (Are there staff shortages in the sector?).

In the entire care sector, the demand for labour is high and growing, and measures have been taken to facilitate access to work for labour immigrants in

[118] European Labour Authority, *Extent of undeclared work in the European Union* (February 2023). See also European Labour Authority, *Tackling undeclared work in the personal and household services sector* (September 2021).

[119] Government Inquiry Report SOU 2022:36, *Arbetslivskriminalitet, en definition. En inledande bedömning av omfattningen. Lärdomar från Norge.*, 183. Swedish National Audit Office, *Statens insatser mot exploatering av arbetskraft. Regelverk, kontroller samt information och stöd till de drabbade*, RIR 2020:27.

[120] Confederation of Swedish Enterprise (2021) *Konkurrensen med den svarta sektorn – ett stort problem för företagen och samhällsekonomin*.

[121] Government Inquiry Report SOU 2023:8 *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland*; Carin Håkansta et al., "Power resources and the battle against precarious employment: Trade union activities within a tripartite initiative tackling undeclared work in Sweden," *Economic and Industrial Democracy* (2022): 1–28.

various care occupations. The current labour shortage of assistant nurses, care assistants, and personal assistants for persons with a disability is expected to become more severe and to increase to by 50 percent until 2040. Similarly, there is and will continue to be a shortage of nurses and of specialist nurses regardless of their area of specialisation.[122]

Every year, the National Board of Health and Welfare is required to assess the current and anticipated supply and demand for licensed health care professionals. The results are presented in a report called the National Planning Support. For 2023, the National Board of Health and Welfare reports that more than one third of the Regions have developed international recruitment programmes targeting EU/EEA countries or Switzerland, and that one fifth of the Regions are actively pursuing programmes targeting countries outside the EU/EEA and Switzerland, although this is reportedly subject to greater administrative difficulties. While these programmes have a good track record, the main challenge identified in the report (in addition to the challenge of bureaucratic constraints) regards the time required to develop sufficient language skills. Several regions are investing in language training and support for everyday use of the language. One region, Skåne, reports that it has set up an international office to support individuals to obtain a professional licence from National Board of Health and Welfare (see below) and in their search for work, and that 94 percent of the persons that they have supported have subsequently been employed in the services of the region.[123]

The title of nurse is a protected professional title that requires a licence from the National Board of Health and Welfare. Since 1 July 2023, the same applies to the title of assistant nurse.[124] Those who were permanently employed as assistant nurses when the requirement entered into force will be able to continue to use the title until 30 June 2033 without a licence.[125] For persons who have received their education outside the EU/EEA, there are two ways to acquire a licence as a nurse; either by completing a supplementary university programme of 1–3 years, or by a process which includes validation of the foreign qualifications validated, a theoretical and a practical test, regulatory training, and clinical work under supervision corresponding to three consecutive months of full-time work within the same organisation. For assistant nurses who have received their education outside the EU/EEA a license can be obtained through a validation of the foreign qualifications along with a period of clinical work under supervision, normally equivalent to six consecutive months of full-time employment in the same organisation. In addition, in both cases, there is also a statutory requirement of

[122] Statistics Sweden, *Trender och Prognoser 2023 Befolkning Utbildning Arbetsmarknad Med sikte på år 2040* (2023), 47, 101.

[123] National Board of Health and Welfare, *Bedömning av tillgång och efterfrågan på legitimerad personal i hälso- och sjukvård samt tandvård. Nationella planeringsstödet 2023* (2023).

[124] Chapter 4, Section 4 and 5 a of the Patient Safety Act (2010:659).

[125] Government Bill Prop. 2020/21:175, *Stärkt kompetens i vård och omsorg.*

proficiency in the Swedish language, or alternatively in Danish or Norweigan.[126] At present, there are no language requirements for care assistants and personal assistants for persons with a disability, although some changes can be expected shortly with regard to the elder care sector. A Government inquiry concerning the introduction of requirements for and measures to ensure proficiency in Swedish for employees in elder care is currently being conducted, with the due date of 1 September 2024.[127] This legislative development has been prompted by a number of monitoring reports highlighting important quality deficiencies in elder care resulting from insufficient language skills of employees in the care sector.[128] In 2021, the Government made a comprehensive targeted effort to improve the working language skills of employees in elderly care, including as care assistants and assistant nurses who lack sufficient knowledge of the Swedish language for their occupation. The initiative has continued over 2022 and 2023.[129] Language training, as well as supplementary vocational training, is provided through the public education system and in initiatives run by the social partners.

14) Describe whether migrants with residence and work authorisation have the same labour rights as other "national" workers in the care sector. Take into account the provisions of European law, according to which third-country national workers enjoy equal treatment with workers who are nationals of the Member State in working conditions or Social Security (art. 12 of Directive 2011/98/EU, of 13 December 2011, on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State). Also, if your country has ratified them, ILO Conventions no. 97 (Revised) on migrant workers, 1949; and Convention no. 143 on migrant workers, 197.

Immigrants with a residence and work permit have the same labour rights as other employees. This applies on the entire labour market.

Sweden has ratified ILO Convention no. 143 on migrant workers, but not Convention no. 97 (Revised) on migrant workers.

15) Do the "labour" legislation (i.e., on working conditions) or, if applicable, collective agreements in your country, make any reference to the migrant or foreigner status of the person working in each of these care sector occupations?

No, in labour legislation or collective agreements on working conditions applicable to the care sector, there are no references to the status of workers as immigrants.

[126] Chapter 6 of the Patient Safety Ordinance (2010:1369).

[127] Government Inquiry Remit Dir. 2023:44 *Språkkrav för personal i äldreomsorgen*.

[128] Government Inquiry Report SOU 2019:20 *Stärkt kompetens i vård och omsorg*, 118; Government Inquiry Report SOU 2020:80 *Nationell samordnare för kompetensförsörjning inom vård och omsorg om äldre*.

[129] Government Bill Prop. 2020/21:1 *Budgetpropositionen för 2021. Utgiftsområde 16 Utbildning och universitetsforskning*, 126.

16) Have there been any court rulings on this matter? If so, please summarise or comment on them.

There have been no court rulings on this matter.

17) Does the legislation on foreigners or immigration in your country (e.g., on residence or work permits, family reunification, permit renewal, etc.) specifically mention people working in one of these care sector occupations? Have there been any court rulings on this matter? If so, please summarise or comment on them.

Normally, a labour immigrant must apply for work permit before entering into Sweden. There are certain exceptions from this requirement, one being when the application regards an occupation for which there is a shortage of manpower, according to a list issued and updated by the Swedish Migration Agency in collaboration with the Swedish Public Employment Agency.[130] The list includes a number of occupations in the care sector, among which those of relevance for this study are Specialist nurses, Nurses and Assistant nurses.

Other than this, the regulatory framework on aliens or immigrants does not specifically mention people working in care sector occupations. However, as described above in Section 2, the recent government inquiry proposing changes to the provisions on labour immigration specifically points out groups of care workers in two regards. The first mentioning is in relation to the increased wage floor for granting of a working permit and the proposal that occupations for which there is a high labour shortage could be exempted from the stricter wage requirement. In addition to the list of occupations issued by the Swedish Migration Agency, the inquiry report specifically mentions medical doctors and nurses with a foreign exam who are employed in lower-paid occupations while waiting for a license from the Swedish National Board for Health and Welfare. The second concerns the proposal that certain professions should not be eligible for a work permit at all, where the inquiry report specifically points out work as personal assistants for persons with a disability.[131]

18) Do migrants with the corresponding residency permit and authorisation to work in the care sector (in each of these occupations) have access to the same rights as other workers in other production sectors?

Yes.

19) Have there been any court rulings on this matter? If so, please summarise or comment on them.

There have been no court rulings on this matter.

[130] Chapter 5, Section 18 of the Aliens Act (2005:716); Chapter 5, Section 12 of the Aliens Ordinance (2006:97); Swedish Migration Agency Provisions MIGRFS 2023:7.

[131] Government Bill Prop. 2021/22:284, *Ett höjt försörjningskrav för arbetskraftsinvandrare*. The list of excluded occupational groups and the list of occupational groups with lower salary requirements are to be determined each year by the government.

20) Have there been any collective bargaining provisions to favour the integration of migrant workers in the care sector on the basis of their language, religion, particular difficulties in visiting their families in their countries of origin, ethnic origin, etc.?

The Swedish industrial relations tradition includes an involvement of the social partners in meeting labour market challenges and a readiness for collectively bargained solutions, sometimes in a tripartite form backed up with State subsidies. An important example of this is the so-called Introduction Agreements (*yrkesintroduktionsavtal*); collective bargained employment contracts on employment and education. These agreements emerged in 2010 in the industrial sector and originally for young workers, and then expanded to other sectors, before they were transformed into the current tripartite scheme which is partly financed by the state.[132] Since 2016, the scheme was expanded to also cover long-term unemployed and newly arrived immigrants.[133] Provided that there is a sectoral collective agreement on introduction employments in place, an economic incentive is payable for a maximum of 12 months, in the form of a wage subsidy and as a monthly economic supervisory support.[134] An example of an introduction agreement in the care sector is BAL20 which is applicable for care work in the municipal sector, such as home care services. This agreement covers includes unemployed or newly arrived immigrants with a need to combine employment with extensive induction and training measures to find work within their profession. In the introductory employment the employee works during 75 percent of the time and receive training and introductory measures during the remaining time. The wage is 75 percent of the minimum wage under the collective agreement in the sector, the employment must follow an introduction plan, and the employee must have a supervisor.[135] Normally, the supervisor must be trained as a supervisor at a so called Health and Care College, which an educational institution within the national educational system that has acquired a validation from the bipartite organisation Health and Care College.[136]

[132] In 2011, the Government invited the social partners to tripartite consultations on youth unemployment, and specifically on Introduction Agreements, Government Inquiry Report Ds 2013:20 *Vissa lagförslag med anledning av trepartssamtalen*.

[133] Ordinance (2016:366) amending ordinance on support for Introduction Agreements (2013:1157).

[134] Ordinance on support for Introduction Agreements (2013:1157). In July 2013, the support scheme was authorized by the European Commission under EU state aid rules, decision C (2013) 4053 final.

[135] BAL20 Collective Agreement on Introduction Employment between Swedish Municipalities and Regions together with Sobona, and Swedish Municipal Workers' Union, Public Employees' Negotiation Council (OFR) for general municipal activities, and AkademikerAlliansen from 1st December 2020, updated 31 April 2023.

[136] Since 2008, the social partners in the care sector have collaborated in the organisation Health and Care College to secure future workforce supply and promote collaboration. On application, educational programmes within the national educational system can be validated by the organisation.

As part of the Health and Care College, a language ambassador function has also been developed, along with training for these persons. Language ambassadors are employees in the care sector tasked with supporting colleagues in terms of language development. They work closely with their manager and have the task of developing language skills throughout the workplace and to improve communication.

Although not of immediate relevance for the care sector, it should also be mentioned that, already in 2017, the social partners in the private sector agreed to collaborate for the introduction of a new form of employment mainly designed for newly arrived immigrants, called establishment employments (*etableringsjobb*). The initiative was based on the premise that a large part of the wage costs was to be borne by the State. The Government and the social partners signed a declaration of intent whereby the Government agreed to support this joint initiative, and after the European Commission's approval of the scheme in 2022 and the following adoption of national legislation, the first sectoral collective agreements were negotiated in 2023.[137] There is no collective agreement on establishment employments for the care sector.

21) Do you know if there have been any conflicts publicised by media between migrant workers of the care sector and the people they care for in terms of non-discrimination on the basis of ethnicity, religion, or nationality? If so, please explain.

First, there is reason to once again mention the Swedish Labour Court case described above, in Part I Gender Section 16, where a personal assistant employed by a private company claimed to have been subjected to sexual harassment and harassment based on ethnicity by the cohabiting partner of the assistance recipient, and where the Labour Court found that the employer could not be held liable under the Discrimination Act (2008:567) although stressing that the employer is responsible for the health and safety at the workplace under the Work Environment Act (1977:1160) which was not invoked in the case.[138]

The second case that should be mentioned here is not s case of actual discrimination of an individual, but a series of cases staged by journalists. In 2017, a Swedish Radio broadcasted a story where a journalist had contacted seven municipalities in Norrland, claiming to represent an elderly parent who requested homecare services but was unwilling to be cared for by non-Swedish carers.[139] All but one municipality replied that the request could probably be met. The story was widely reported and sparked public debate. The Equality Ombudsman initiated supervisory inspections of the seven municipalities. The purpose of the

[137] Declaration of Intent of 5 March 2018 between the Government, the Swedish Trade Union Confederation (LO), Unionen and the Confederation of Swedish Enterprise; Decision of the European Commission 16 May 2022, SA.100209 (2022/N); Ordinance (2022:807) on Public Compensation for Work in Establishment Employment.

[138] Swedish Labour Court judgement AD 2017 no. 61.

[139] *Radio Sweden*, "Local authorities offer clients right to refuse "foreign" care staff," 30 May 2017, <https://sverigesradio.se/artikel/6707244> (Accessed June 1, 2024).

inspections was not to establish whether any employee had been discriminated against in an individual case—indeed, there had been no allegation of this—but to carry out a general audit of the compliance with the statutory requirements relating to the promotion of equal treatment. As part of the monitoring process, the municipalities were asked to give their comments on the media reports. The Equality Ombudsman stated that if there had been a possibility to opt out of certain care workers based on ethnic background, this would constitute ethnic discrimination. In the end, the Equality Ombudsman did not find grounds for criticism in any of the seven supervisory decisions, as the municipalities were found to work actively with promotion and prevention in the areas of recruitment and working conditions.[140] A similar story came in 2021: two reporters at a national newspaper called 120 public and private primary care centers and dental clinics across the country to request an appointment with an ethnically Swedish medical doctor or dentist.[141] In 50 of the cases, they received an affirmative answer. As a response to the reports, the Equality Ombudsman initiated a meeting with representatives from the Regions to clarify the legal requirements under the Discrimination Act (2008:567) and the responsibility of the Regions in their capacity as employers.[142]

22) Have any statistics or databases been published in your country on migrant workers' salaries in the care sector?

- *Have any statistics or databases been published in your country on the occupational classification of migrant workers in the care sector?*
- *Do these databases present aggregated data, micro-data, or both (aggregated data: data at national or regional level; micro-data: individual data, collected but not published, only available to researchers)?*
- *Are these databases public and freely accessible to everyone, or only to researchers?*
- *If published databases exist, please provide links and/or how to request them.*

The public statistics on wages in each occupation does not distinguish between persons born in Sweden and persons born abroad.

Upon request, researchers may obtain some relevant information for the years 1968–2018. The data is provided in a sample-based longitudinal individual database for research, LINDA. The database provides information on income development for various groups over a long period of time, but it is not

[140] Supervisory decisions of the Equality ombudsman: GRA 2017/101; GRA 2017/102; GRA 2017/103; GRA 2017/104; GRA 2017/105; GRA 2017/106; and GRA 2017/107.

[141] Adrian Sadikovic and Christy Chamy, "Patienter tillåts välja läkare med enbart svenskt ursprung – över hela landet," *Dagens Nyheter,* 26 July, 2021 (Uppdaterad 30 July, 2021).

[142] Equality Ombudsman, "Tema för dialogmöte: Hanteringen av önskemål om etnisk tillhörighet i vården," <https://www.do.se/om-do/pressrum/aktuellt/2021/2021-09-17-tema-for-dialogmote-hanteringen-av-onskemal-om-etnisk-tillhorighet-i-varden> (Accessed March 3, 2024).

being updated as the collection of data for this database has been considered to lack legal support.

The Occupational Register provide data for each occupation on the employees based on, inter alia, place of birth based on geographical regions. It does not provide information on nationality. See above Section 5–6.

23) If you have found statistics or databases, please describe what they show in relation to the job classification and wages of migrant workers in the care sector.

Not applicable.

24) Are migrants in an undocumented situation (without authorisation to reside or work) entitled to employment rights when working in the care sector in your country? Please outline your views on this issue.

As a rule, labour law applies to all employees. The status as an employee is determined according to established principles of labour law, and it follows already from case law dating back to the late 1970'ies that the status as an employee is not dependent on whether the person has the authorisation to reside in Sweden or has a work permit.[143] An employee without a residence or working permit is entitled to wages in accordance with collective agreements or customs and is obliged to pay income tax on those wages, and the employer must apply statutory rules on working hours, annual leave, as well as on health and safety.[144] In contrast, the employee has no actual employment protection. This is because the employment is illegal; the employer cannot be required to commit a criminal offense.[145]

A fundamental rule in Swedish labour law is that when a collective agreement is in force at a workplace, the employer is always obliged to apply that agreement to all employees, including those who are not members of the trade union. This obligation arises from the collective agreement and, normally, it can only be invoked by the trade union—the employer's counterpart in he the collective agreement—and never by the non-unionized worker him- or herself. However, for employees without a residence or working permit, the situation is different. Under the Act (2013: 644) on the right to pay and other compensation for work performed by an alien not entitled to stay in Sweden, adopted as part of the national implementation of Directive 2009/52/EC on sanctions and measures against employers of illegally staying third-country nationals, an employee in this situation may invoke the collective agreement in a wage claim

[143] Swedish Labour Court judgements AD 1979 no. 90 and AD 1991 no. 49, see below Section 25. Selberg, Niklas, "The Laws of Illegal Work and Dilemmas in Interest Representation on Segmented Labour Markets: A Propos Irregular Migrants in Sweden," *Comparative Labor Law & Policy Journal* 35 (2014):247.

[144] Government Bill Prop. 2012/13:125 *Genomförande av direktivet om sanktioner mot arbetsgivare*, 24, 80 f.

[145] Swedish Labour Court judgements AD 1979 no. 90 and AD 2012 no. 34, see below Section 25.

even if he or she is not a member of the trade union. Moreover, in a wage dispute, unless proven otherwise, the employee is presumed to have performed three months of full-time work.[146]

Although the employee may invoke these rights provided by labour law, in practice, these rights may be difficult to realise, at least as long as the employee is still hiding from the authorities. To reside and to work in Sweden without having adequate permits constitutes criminal offences. This means that, apart from most likely having to leave the country, the employee also risks penalties or even, in some specific cases regarding illegal residence, imprisonment.[147] See further below, Section 31.

25) Have there been any court rulings on this matter? If so, please summarise or comment on them.

There have been a few relevant court rulings on this matter, none of which particularly concerns the care sector. The first case is from the late 1970'ies. It raised the question of whether an employer could terminate an employment contract notwithstanding the rules on notice in the Employment Protection Act, on the grounds that the employee had been denied a continued residence and work permit. The Swedish Labour Court stated that a person who is employed without having work permit is nevertheless to be considered an employee which means that labour law is applicable. However, in the case in question, the Employment Protection Act had to be set aside as the employer would have been committing a crime had the employment lasted as long as the notice period required.[148]

That the lack of a work permit is irrelevant for the status as employee was confirmed in the second case, more than ten years later. Based on an overall assessment, including the fact that the workers in question had received wages and had been required to follow the directives of the management, the Labour Court concluded that they were to be regarded as employees.[149]

In a third case, the Labor Court ruled that, in terms of wage claims, an employee who lacks a work permit is never considered to be at the employer's disposal during time when the employee is not working. Since the employer is not legally permitted to let the employee work for the company, the employee can-

[146] Section 5 of the Act (2013: 644) on the right to pay and other compensation for work performed by an alien not entitled to stay in Sweden. Government Bill Prop. 2012/13:125 *Genomförande av direktivet om sanktioner mot arbetsgivare*, 81.

[147] Chapter 20 Section 1-3 of the Aliens Act (2005:716). Niklas Selberg, "Om kriminaliseringen av papperslösas arbete och argumenten för att avskaffa den," in *Arbetskraft från hela världen*, eds. Calleman, Catharina and Petra Herzfeld Olsson (Stockholm: Delmi, 2015), 9; Andreas Inghammar, "The Employment Contract Revisited. Undocumented Migrant Workers and the Intersection between International Standards, Immigration Policy and Employment Law," *European Journal of Migration and Law* 12 (2010):193214.

[148] Swedish Labour Court judgment AD 1979 no. 90.

[149] Swedish Labour Court judgment AD 1991 no. 49.

not, in the same way as other workers, be entitled to pay for time in which the he or she only has been available for work without actually working.[150]

26) With the onset of the COVID-19 pandemic, measures were adopted by the State to allow "undocumented" foreign personnel to obtain residence or work permit, both structural and extraordinary?

No.

27) From the onset of the COVID-19 pandemic to the present day, have measures been taken by the State to allow "undocumented" foreign personnel providing services "in the care sector" to obtain residence or work permits?

No.

28) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of migrant workers in the care sector? If yes, please describe this report.

The equality body in Sweden, the Equality Ombudsman, has not published any reports or conducted general monitoring in relation to the rights of immigrant workers in the care sector.

29) If there are Equality Bodies or Organisations fighting racial, ethnic, or religious discrimination in your country, have they undertaken any action or produced any report in relation to the rights of people, whatever their nationality, working in the care sector? If yes, please describe this report.

The equality body in Sweden, the Equality Ombudsman, has not published any reports in relation to the rights of immigrant workers in the care sector.

There has been one monitoring activity in the care sector, relating to the ground of ethnicity. This activity, which concerned seven municipalities in Norrland has been described above in Section 21. In addition, as described in the same Section, following the media report that patients could opt out from non-Swedish medical doctors or dentists, the Equality Ombudsman has initiated a meeting with representatives from the Regions to clarify the legal requirements under the Discrimination Act (2008:567) and the responsibility of the Regions in their capacity as employers.

30) Comment whether your State has adequate legislation on harassment (including gender-based harassment and sexual harassment) of women workers in the domestic sector, especially if they are migrant workers. Comment whether the worker's employer (including migrant workers) can be held responsible for such situations.

To answer this issue, please consider the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support, and protection of vic-

[150] Swedish Labour Court judgment AD 2012 no. 34.

tims of crime, and replacing Council Framework Decision 2001/220/JHA; or Convention (Council of Europe) on preventing and combating violence against women and domestic violence, adopted on 7 April 2011 (Istanbul Convention).

See above, Part I Gender, Sections 15 and 16.

31) Comment on whether there are mechanisms in the legislation against cases of exploitation in the workplace with regard to undocumented or irregular migrant workers (without residence authorisation). Comment on whether in these cases migrants in an irregular situation can denounce or have access to the courts in cases of exploitation and labour exploitation. Also, whether there are cases in the legislation in which they can obtain a residence authorisation. To answer this issue, please take into account the Directive 2009/52/ of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Following a deregulation of the labour immigration provisions in 2008, the matter of work force exploitation, including the situation for employees who lack a residence or work permit, became topical in the political debate.[151] Over the years, the matter has gained growing attention. The sectors most likely to report competition from undeclared work are construction, restaurants, and transportation.[152] There are no estimates on the incidence of undeclared work in the care sector.

In the latest years, the matter has been increasingly high on the political agenda and a large number of preventive and responsive measures have been taken in the larger field of exploiting and fraudulent activities labelled Work-related Crime.[153] The measures include inter alia increased emphasis on and funding of cooperation government agency cooperation, the establishment of two regional centres to combat work-related crime, the establishment of a large number of governmental inquiries on related matters, and the adoption of the first national strategy to combat work-related crime.[154] There has been important engage-

[151] Before 2008, work permits required a labour market test on the need for foreign manpower. Following the deregulation, several scandals appeared between 2009 and 2014, relating to employment of Thai wild-berry-pickers. In a joint effort between the Swedish Migration Agency, trade unions and some companies in the food retail industry, important improvements were achieved including collectively bargained wages for many of the berry-pickers, Petra Herzfeld Olsson, "Towards Protection of Vulnerable Labour Migrants in Sweden: The Case of the Thai Berry Pickers," in *Towards a Decent Labour Market for Low-Waged Migrant Workers*, edited by Conny Rijken, and Tesseltje de Lange (Amsterdam: Amsterdam University Press, 2018), 149–68.

[152] Confederation of Swedish Enterprise, *Konkurrensen med den svarta sektorn – ett stort problem för företagen och samhällsekonomin* (2021).

[153] Government Inquiry Report SOU 2022:36, *Arbetslivskriminalitet, en definition. En inledande bedömning av omfattningen. Lärdomar från Norge*, 80 ff.

[154] Government Inquiry Report SOU 2024:14 *Arbetslivskriminalitet: Myndighetssamverkan. En gemensam tipsfunktion. Lärdomar från Belgien och gränsöverskridande arbete*; Government Inquiry Report SOU 2024:15 *Nya regler för arbetskraftsinvandring*; Government Inquiry Report SOU 2023:8 *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland; Government Inquiry Report* SOU 2022:36 *Arbetslivskriminalitet, en definition. En inledande bedömning av omfattningen. Lärdomar från*

ment from the side of the social partners in some of the affected industries, and also from other actors.[155] Legislative changes have been adopted and yet other legislative changes are currently underway, following the recently delivered and ongoing governmental inquiries.[156] It must be emphasised that there is very limited knowledge of the number of immigrants residing in Sweden illegally.[157] Although this group has been addressed in the discussions and legislative activities on labour exploitation, the focus has not been on these workers, but instead but on workers who have residence permits in Sweden but are still vulnerable: asylum seekers, people with work permits, international students and people with residence permits with long-term resident status in another EU country.

Employing a person who lacks a working permit is a crime under the Aliens Act (2005:716), and the employer faces the risk of penalty or up to one year of imprisonment.[158] Irrespective of whether charges has been brought, the employer must also pay a special charge to the State, which is counted per case of illegal employment and increases if the employment has continued for a longer period than three months.[159]

In addition to criminal liability under the immigration legislation, an employer can in some cases also face criminal charges under the Criminal Code (1962:700) for the crime human exploitation for labour, introduced in 2018 to complement and strengthen the existing criminalisation of human trafficking for forced labour which had existed since 2004.[160] The penalty for human exploitation is imprisonment for a maximum of four years or, in for gross crime, imprisonment for a minimum of two and a maximum of ten years, which is also the penalty for human trafficking for forced labour. There are two forms of labour exploitation: forced labour, which also includes force by threats to report

Norge; Government Inquiry Report SOU 2021:88 *Ett förbättrat system mot arbetskraftsexploatering m.m. Slutbetänkande av Utredningen om arbetskraftsinvandring*; Government Inquiry Report Ds 2021:1 *Myndigheter i samverkan mot arbetslivskriminalitet*.

155 Government Inquiry Report SOU 2023:8 *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland,* particularly Chapter 2.

156 Government Inquiry Remit Dir. 2023:68 Tilläggsdirektiv till Delegationen mot arbetslivskriminalitet (A 2021:04).

157 Government Inquiry Report SOU 2022:36, *Arbetslivskriminalitet, en definition. En inledande bedömning av omfattningen. Lärdomar från Norge*, 183. Swedish National Audit Office, *Statens insatser mot exploatering av arbetskraft. Regelverk, kontroller samt information och stöd till de drabbade*, RIR 2020:27.

158 Chapter 20, Sections 3 and 5 of the Aliens Act (2005:716).

159 Chapter 20, Sections 12 of the Aliens Act (2005:716). The charge is half of the price base amount under the National Insurance Act (1962:381) or, for employments longer than three months, a full price base amount. For 2024, the price base amount is 5,000 euros. The charge must not be paid if the employer, before concluding the employment contact, has asked the employee for a copy of the residence permit, and informed the authorities.

160 Chapter 4, Sections 1 a and b of the Criminal Code (1962:700). Erik Sjödin, "Criminalisation as a response to low wages and labour market exploitation in Sweden", *European Labour Law Journal* 12, 4 (2021): 529–46.

a worker who lacks residence or work permit to an authority, and work under clearly unreasonable conditions, which refers to working conditions that are so bad that, on an objective overall assessment, they deviate in a striking and negative way from what is considered acceptable in the labour market.[161] It has proven difficult to hold an employer accountable for human exploitation, as the victim is usually required to cooperate in order for the prosecutor to be able to bring charges. The inquiry committee tasked to propose improvements to the system against labour exploitation has recommended the legislation be reviewed and new criminal classifications be introduced.[162] The inquiry committee is still working. In February 2024, its remit was amended, and a due date set to early 2025.[163]

As discussed above in Section 24, the right to wages for employees who lack a residence or work permit is laid down in a separate legislative act.[164] Whereas criminal cases are initiated and brought before court by the prosecutor, in a civil case on wage claims or other labour rights, questions regarding access to court arise. In individual labour disputes, Swedish employees normally are represented by their trade union. However, employees lacking permit to stay and to work in Sweden, are usually not members of a trade union, and not all trade unions allow them to become members.[165] In 2008, a number of trade unions formed an association to help and support workers without a residence or working permit in the Swedish labour market. Through this association, persons who are in Sweden without permission can obtain information about their rights in the labour market and receive advice on wages, working conditions and the work environment, and they can also get help to enforce their rights. The importance of this association was emphasised in the legislative process to implement Directive 2009/52/EC on sanctions and measures against employers of illegally staying third-country nationals.[166] Neverthe-

[161] This could for instance be a particularly low or no wage, unreasonably long working days, exposure to unacceptable safety risks at work, or that the employer deducts unreasonably high payments from the wage for travel, food or accommodation, Government Bill Prop. 2016/17:272 *Det straffrättsliga skyddet mot människohandel och människoexploatering*, 60.

[162] Government Inquiry Report SOU 2023:8 *Arbetslivskriminalitet: arbetet i Sverige, en bedömning av omfattningen, lärdomar från Danmark och Finland,* 294. Cf. Petra Herzfeld Olsson, "Konsten att inkludera arbetskraftsmigranter i den svenska arbetsrättsliga modellen," *Juridisk Tidskrift* 20, 3 (2019):638–70.

[163] Government Inquiry Remit Dir. 2023:68 *Tilläggsdirektiv till Delegationen mot arbetslivskriminalitet (A 2021:04)*.

[164] Section 5 of the Act (2013: 644) on the right to pay and other compensation for work performed by an alien not entitled to stay in Sweden.

[165] Anders Neergaard, "Fackföreningsrörelsen och arbetskraftsinvandring," in Calleman and Herzfeld Olsson, *Arbetskraft från hela världen*, 9.

[166] Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals; Government Bill Prop. 2012/13:125 *Genomförande av direktivet om sanktioner mot arbetsgivare*, 90. The association is called Fackligt Center För Papperslösa (FCFP),

less, in the ten years of its existence, the act on wage protection has in practice proved to provide very little, if any, protection. The lack of a well-functioning support and protection process and insufficient opportunities for compensation for victims of labour exploitation has been pointed out as a shortcoming and reason for further action.[167]

Under the Aliens Act (2005:716), in a criminal case, the prosecutor may apply to the Migration Agency for a temporary residence permit for an alien if this is necessary for the preliminary investigation or the main hearing, and if the alien has shown a clear intention to cooperate with the investigating authorities. Under this provision, a person who has been employed while illegally residing in Sweden may obtain a temporary residence permit, which includes right to work and right to medical care. The residence permit shall be issued for a maximum of six months and may be renewed the prosecutor.[168] After this, in cases where there is a pending civil action against the employer for unpaid wages, the employee may apply for further renewal of the residence permit.[169]

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[169] Chapter 5, Section 15 d of the Aliens Act (2005:716).

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STUDI SUL LAVORO DI CURA – STUDIES ON CARE WORK

TITOLI PUBBLICATI

1. Maria Luisa Vallauri, William Chiaromonte (edited by), *CARE4CARE - We Care for Those Who Care – Vol. I. Care Work and Working Conditions: National Legal Frameworks and Comparative Insights*, 2025
2. Maria Luisa Vallauri, William Chiaromonte (edited by), *CARE4CARE We Care for Those Who Care – Vol. II. Discriminations in the Care Sector: National Legal Frameworks and Comparative Insights*, 2025

The volume brings together the national reports and the comparative report prepared within the framework of the CARE4CARE project and maps patterns of discrimination affecting care workers in France, Germany, Italy, Poland, Spain and Sweden. The reports offer a critical reconstruction of the applicable anti-discrimination legal frameworks and provide an overview of available data on discriminatory practices against care workers, with particular attention to gender and migrant status as sensitive factors.

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