

Childcare can no longer be a female issue: EU focuses on paternity leave with Spain in the forefront ^[1]

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EXCERPTS

We tend to think that in modern societies there is no room for the old gender roles that relegated women to family care, and the law should be the reflection of this evolution. However, it has been a long time since women have been incorporated into the labor market, and yet this has not led to a division of tasks between women and men regarding childcare. On the contrary, women have gained more responsibilities in the workplace without reducing the ones they had at home.

The figures speak for themselves, according to the Eurobarometer, only half of the parents in Spain have asked or plan to ask for paternity leave, which is already above the European average, situated at 41%. Another revealing fact is that only ten EU countries have a period of leave reserved for fathers, and even within these countries, this entitlement can often be transferred to mothers.

What is being done about it? There seems to be a slight awakening in the EU in general, and in Spain in particular, where the Government wants to equalize maternity leave to paternity leave in the next three years, and the Spanish the Supreme Court has established that the maternity benefit received during the leave is exempt of the Income Tax for Individuals.

Steps toward a shared childcare

The European context is very varied as there are no minimum standards for paternity leave at EU level, but the European Commission aims to modernize the existing legal framework and so is working on the proposal for a Directive on 'Work-Life Balance for Parents and Carers'. With this regulation, the EU intends to address women's underrepresentation in the labor market by encouraging a better sharing of caring responsibilities between both genders and pressing fathers to be more involved in childcare.

Meanwhile, in Spain, the Government of Pedro Sánchez and the left party Unidos Podemos have agreed to the progressive equalization of paternity leave to maternity leave in the framework of the General State Budget for next year. Currently, maternity leave in Spain lasts 16 weeks (the first six weeks are compulsory and the next ten are voluntary and transferable to the father), while the paternity leave lasts five weeks, which are voluntary and non-transferable to the mother. The objective of the proposal is to extend the paternity leave to eight weeks in 2019, to 12 in 2020, and to 16 in 2021.

If the budget is finally approved, the measure will place Spain at the front lines of the fight for gender equality in the childcare field. Spain would also overcome the EU proposed Directive, which aims to establish ten working days of paternity leave (the immediate period after the birth of a child) compensated at least at the level of sick pay, plus four months of parental leave (the period after the paternity leave) as an individual and non-transferable right.

These measures will be complemented with flexible working arrangements and parents will also have the right to request to take leave in part-time, full-time or in a piecemeal way. All in all, fathers asking for paternal leave should become the norm and stop being a strange phenomenon as soon as possible.

Spanish Justice on the side of parents

The other good news for parents, at least in Spain, is that from now on they will no longer have to pay taxes for the benefit they receive during the parental leave. That is what the Spanish Supreme Court ruled last October contradicting the criterion of the Spanish Tax Agency.

The Government accepted the legal defeat and so, on December 3rd, the Minister of Finance, María Jesús Montero, announced the opening of a special procedure by which families that had received the parental leave since 2014 (the last exercise not prescribed according to the retroactivity dictated by the Supreme Court) may request the refund of the fee: €1,600 (\$1,826) for mothers and €383 (\$437) for fathers on average according to Government estimates, a significant amount that they can now spend as they wish.

The legal dispute behind the conflict lies in a previous sentence of the Superior Court of Justice of Madrid that in 2017 ruled that the Spanish Tax Agency had to refund the Income Tax of the maternity leave benefit to a woman. The decision was appealed by the State

Attorney arguing that the maternity benefit has the function of replacing the normal remuneration that the taxpayer would obtain for the work activity, and therefore it should not be exempt.

However, the Supreme Court understood that the maternity benefit received during the leave cannot be equated to a salary as it is the subsidy that seeks to compensate the loss of income of the worker as a result of the rest permit: the work contract is suspended, and the work activity is interrupted, that is why the benefit is paid by the Social Security and not by the employer.

This interpretation marks a before and after for future parents. From now on, the parental leave in Spain will be included in the article 7 (letter h) of the Income Tax for Individuals regulation, which indicates that public family benefits such as birth, adoption, dependent children and orphanage are exempt.

It does not mean that other EU countries will adopt the same judgment as national regulations differ widely from one another, but it is a positive legal change since it can work as a new incentive for fathers to take the paternity leave. The transition towards gender-balanced childcare cannot be delayed anymore.

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