

## EQUALITY, NON-DISCRIMINATION AND WORK-LIFE BALANCE CONCLUSIONS

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### *Abstract*

The Comparative Labor Law Dossier (CLLD) in this issue 2/2016 of IUSLabor is dedicated to equality, non-discrimination and work-life balance. We have had the collaboration of internationally renowned academics and professionals from Belgium, France, Greece, Italy, Portugal, Spain, Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Mexico, Peru, Uruguay, Canada and the United States.

Without detriment to recommend our readers the reading of these articles, we have drawn the top 10 conclusions. Furthermore, we have elaborated a summary table with the most relevant issues regarding equality, non-discrimination and work-life balance in the different legal systems analyzed in this issue of IUSLabor.

*El Comparative Labor Law Dossier (CLLD) de este número 2/2016 de IUSLabor está dedicado a la igualdad, no discriminación y conciliación de la vida laboral, familiar y personal. Hemos obtenido la participación de académicos y profesionales de prestigio de Bélgica, España, Francia, Grecia, Italia, Portugal, Argentina, Brasil, Chile, Costa Rica, México, Perú, República Dominicana, Uruguay, Canadá y Estados Unidos.*

*Sin perjuicio de recomendar a nuestros lectores la lectura del capítulo correspondiente a cada uno de los países citados, en las páginas que se suceden hemos incluido las 10 conclusiones principales que hemos alcanzado. Asimismo, hemos elaborado un cuadro-resumen con aquellas cuestiones más relevantes en materia de igualdad, no discriminación y conciliación de la vida laboral, familiar y personal en los distintos ordenamientos jurídicos analizados en este número de IUSLabor.*

*Título: Igualdad, no discriminación y conciliación de la vida laboral, familiar y personal.  
Conclusiones*

Keywords: equality, non-discrimination, work-life balance, leave of absence, maternity leave, paternity leave, right to accommodation.

*Palabras clave: igualdad, no discriminación, conciliación de la vida laboral, familiar y personal, permisos, permiso maternidad, permiso paternidad, derecho a adaptar la distribución del tiempo de trabajo.*

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### *Summary*

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## 1. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 2/2016 of IUSLabor is dedicated to equality, non-discrimination and work-life balance and it includes articles, elaborated by internationally renowned academics and professionals, regarding this important matter.

In the current context where, unfortunately, inequality and discrimination towards women in the workplace persists, we considered it necessary to analyze, from a **comparative perspective**, how the promotion of equal opportunities between men and women and fight against discrimination in the workplace is developed, both at EU and international level. In this dossier we analyzed the most relevant 10 issues in the legal systems of **Belgium, France, Greece, Italy, Portugal, Spain, Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Mexico, Peru, Uruguay, Canada and the United States**.

The international advisors of the law review have responded to the following questions:

1. Is sex a cause of discrimination in your legal system? What other circumstances are discriminatory? Does the prohibition of discrimination also include indirect discrimination?
2. What is the legal consequence of discrimination on grounds of sex or other circumstances? Specifically, what is the legal consequence of an unfair dismissal of a pregnant worker or a worker exercising work-life balance rights?
3. Are there examples of wage discrimination, access to employment and/or promotion development between men and women? What treatment do these cases receive by the legislation and case law? What measures does the legislation regulate to promote equal treatment between men and women in the workplace?
4. What rights of work-life balance are recognized in your labor regulation? Specifically, does the labor regulation recognize workers the right to adapt their working time (distribution and/or reduction of working hours)? What capacity does the employer have to oppose or limit the exercise of these rights?
5. Are part-time contracts used as an instrument to achieve work-life balance? If so, is the legal regime of part-time work adequate for this purpose?
6. Can the employer alter working hours of workers exercising work-life balance rights through overtime and/or irregular distribution of working time?
7. Do workers have permits or the right to suspend the employment contract (leave of absence) due to family and personal circumstances? If so, are they paid leave of absences? Do workers maintain the right to return to their previous job post? What the employer is recognized ability to limit the exercise of these rights? What capacity does the employer have to oppose or limit the exercise of these rights?

8. Is there maternity leave? If so, what is its duration? Who hold the right to maternity leave? Are workers entitled to compensation or Social Security benefits during this time?
9. Is there paternity leave? If so, what is its duration? Who can exercise this maternity leave? Are workers entitled to compensation or Social Security benefits during this time?
10. What is the role of collective bargaining in promoting equality between men and women in the workplace and work-life balance? Does collective bargaining often improve the legal regulation in this matter? Or does it limit the exercise of work-life balance rights?

Following, and in the same order of the above questions, are the **10 most important conclusions** regarding equality, non-discrimination and work-life balance, drawn from the articles written by our international consultants.

**1. In all the legal systems analyzed sex is a cause of prohibited discrimination.** This conclusion is not surprising when we consider that the prohibition of discrimination on grounds of sex is found in **numerous international treaties**, most notably the Universal Declaration of Human Rights (article 2), the Charter of Fundamental Rights of the European Union (article 21) or ILO Convention No. 111 on discrimination (employment and occupation).

However, **in all countries analyzed inequality and discrimination against women in the labor market persist.** The activity rate among women is consistently lower than that of men, from 36% in **Mexico**, 37.8% in **Peru** and 46% in **Greece** to 76% in **Canada**. The unemployment rate is higher, although there are some exceptions such as **Belgium** or **Canada**. The part-time contract is still strongly feminized in almost all the countries analyzed, highlighting the cases of **Belgium** where 41.4% or **France** where 30% – increasing up to 47% for women with three children– of women have a part-time contract, compared to 13.1% in **Greece**. There is also a greater presence of women in atypical forms of work or informal work, highlighting the case of **Greece**, where 14.7% of women working in family businesses without pay, or the case of **Peru** where female underemployment reaches 58.2% compared to 37% of men and there is a significant difference in the rate of unpaid activities (36.27% - 15.45%). The wage gap between men and women is estimated above 16% in the European Union, although it can reach 27.8% in **Portugal** when calculated on an annual basis; among non-EU countries, the wage gap is also stubbornly present, reaching 27.1% in **Brazil**, 33% in **Canada** and 68% in **Uruguay**. Finally, the presence of women in leadership positions is still insignificant, from 4% in **Greece** and 4.2% in the **United States**. Although far from parity, it is possible

to highlight the cases of **Spain** with 17.3% and for **Canada** with 32% of women in management positions.

The **prohibition of discrimination** in all legal systems analyzed also includes other causes, such as **race, birth, opinion, age, sexual orientation, national origin, disability, language, union affiliation, economic status**, etc.; extending, in some countries, to physical appearance, health status, genetic characteristics, etc.

Furthermore, in the **vast majority of European and North American countries** analyzed **the prohibition of discrimination also includes indirect discrimination**, understood as the apparently neutral provision or practice that generates an adverse effect to a group protected by the prohibition of discrimination. The generalization of the ban on indirect discrimination in EU countries is not surprising, given article 2 of Directive 76/207/EEC<sup>1</sup> and the consolidated doctrine of the Court of Justice of the European Union<sup>2</sup> –although **Greek case law** seems to deviate from this position. However, it is interesting to note that also among some **Latin American countries** analyzed –**Costa Rica, Chile, Peru** and the **Dominican Republic**– there is a prohibition against indirect discrimination. However, in most cases it is a mandate arising from the interpretation of the imperative prohibition of discrimination.

**2. The legal consequences of discrimination based on sex are also consistent across most legal systems analyzed: nullity.** This is, legal dispositions, collective agreement provisions, contracts or discriminatory business practices on the grounds on sex are considered null and void, resulting in the replacement to the situation prior to discrimination. The exceptions are **Peru** –which leads to an injunction to cease the discriminatory conduct and the imposition of sanctions– and **Canada** and the **United States** –where the consequences are determined judicially.

In any case, in **all legal systems analyzed the dismissal of a pregnant worker or workers exercising rights of conciliation is deemed a discriminatory dismissal**, although its consequences vary between countries. Among **member states of the European Union**, the discriminatory dismissal generally results in the reinstatement of the worker, payment of unpaid wages and/or compensation for moral damages, in addition to economic sanctions. Among **Latin American countries**, the result is homogeneous and consists in the obligation to reinstate the workers in the position occupied before the termination. Regarding this matter, it is interesting to highlight the

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<sup>1</sup> Council 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.

<sup>2</sup> See, among others, decision of the Court of Justice of the European Union of February 28, 2013.

**Mexican regulation**, which exempts the employer from the obligation to reinstate the employee when there are reasons of incompatibility or in the cases of domestic workers, temporary workers or employment relationships based on trust. Finally, the discriminatory dismissal in **Canada** leads to the reinstatement of the worker or compensation for damages, while in the **United States** results in compensation for damages and punitive damages.

**3. In most European countries** analyzed there are **case law examples of discrimination between men and women in terms of pay, access to employment and/or career advancement**, with the sole exception of **Greece**, which, despite having a specific prohibition in this matter, has little jurisprudence. For example, **Belgian case law** has qualified as discriminatory any wage differences not based on objective grounds, such as the duration and professional experience criteria; similarly, **Spanish case law** has also introduced the need for objective criteria in wage determination and professional promotion in order to avoid discrimination between men and women.

Without prejudice of the greater or lesser existence of case law in this matter, **all European countries analyzed have introduced legal measures to prevent discrimination and promote equality between men and women in the labor market. The most widespread measure is clearly the introduction of quotas** in management positions and/or boards of directors in public and/or private companies. In addition, **Belgium** has limited the professional activities (mainly related with shows) in which sex can be a condition of hiring and has introduced the obligation to elaborate a social balance in terms of gender and a report on the structure wage in companies with more than 50 workers. In **France**, companies are required to prepare an annual report on the comparative situation between men and women in the company, which must be extended to workers' representatives, the labor inspection and any employee who requests it. **Italy** has adopted a reform to avoid the discriminatory practice known as "*dimissioni in bianco*", according to which women signed an undated resignation letter at the beginning of the employment relationship, which was used by the employer in case of pregnancy. In **Portugal**, the collective agreement clauses considered discriminatory become generally applicable to all workers; it has introduced a preference for hiring women in underrepresented sectors; and in 2015 developed two online tools to analyze the wage gap between men and women in the companies.

In **Latin American countries** there are also several examples of discrimination between men and women in the labor market, especially related with the wage gap and employability inequalities in countries like **Brazil, Chile, Peru** and **Uruguay** and the failure to comply with legal provisions promoting gender equality in the labor market in **Chile**. Despite the low rate of litigation in the region, it is important to mention the impact

produced by the case law in Argentina, which has led to the adoption of relevant laws in the matter. With regard to legal measures, there is a significant trend towards the implementation of affirmative action in order to guarantee the entry and permanence of women in certain representative public agencies or organizations –measures mentioned in all the countries analyzed except **Brazil** and **Chile**– and the introduction of specific prohibitions of discriminations in hiring and wage between men and women. To a lesser extent, **Argentina** stands out for the creation of a government agency specifically dedicated to the deliberation and implementation of projects dedicated to promoting equity in the workplace.

In **Canada** and the **United States**, despite a general prohibition of discrimination, the case law related with wage discrimination, access to employment and career development is limited. Furthermore, in the **United States** existing wage differences between men and women are not considered discriminatory when they are justified on market factors. As for legal measures, whereas in the **United States** there is no obligation to adopt affirmative actions, in **Canada** there is a business requirement to conduct studies of the employment and wage situation of men and women in the company.

**4. There is a significant disparity between EU and non-EU regulations on the rights of reconciling work and family life.** Among analyzed member states of the **European Union**, although with significant differences, there is an evident **tendency to recognize measures to work-life balance**.

Overall, breastfeeding is protected by recognizing workers the right to 1-2 hours of paid absence for breastfeeding of children up to 9 months in **Belgium** and **Spain** or 2.5 years in **Italy**. Also, most legal systems recognize workers the right to reduce working hours up to 50% of working time to care for children (up to an age limit ranging between 8 and 16 years) or dependent family members. Notwithstanding the above, there are important differences in legal regime of such rights. While in **Belgium** this right to reduce working hours is limited to a maximum of 48 months (or 24 in cases of dependents family members) and two years in **France** (with the possibility to extend up to five years in case of multiple births), there is no limit in **Italy** and **Spain**, beyond the limitation of 6 or 12 years of the child, respectively. Additionally, in many legal systems, specific conciliation rights are recognized in cases of diseases of children, as in the cases of **Spain** and **Portugal**. Additionally, in **Spain** and **Portugal** workers are entitled to –in addition to reduction on working time– adapt the distribution of their working hours, introducing flexible worktime arrangements; even in **Portugal** there is a right of telework in cases of children under 3 years and provided the activity is compatible with that form of work. The exception to the above is **Greece**, which only recognizes the right to one hour of

reduced working hours for workers with a child with a disability, however only in companies with more than 50 employees.

In spite of the relative homogeneity between EU countries on measures to reconcile work and family life, there is a **significant divergence as to the extent of such rights and the employer's capacity to oppose or not their exercise**. While in **Greece** every right to work-life balance requires collective bargaining agreement, the right to reduce working hours in **Spain** is an individual right of workers and cannot find opposition from the employer –although the right to adapt the distribution of working time requires agreement. **Italy** and **Portugal** recognize the employer's right to oppose based on business reasons. **France** also allows the employer to oppose the exercise of the right to reduce working hours, except when workers' exercise this right as a leave of absence. **Belgium** establishes a dual system with regard to the size of the company: while workers have an individual right to reduce working hours in companies with more than 10 workers –although with the employer's right to postpone its exercise–, in companies with less workers the exercise of this right requires agreement with the employer. In any case, **none of the European countries analyzed regulates an individual right for workers to – without reducing working hours– modify the distribution of working time**.

Among the **non-EU countries** analyzed, the rights of work-life balance are most developed in **Chile** and **Uruguay**. In addition to having a period of absence for breastfeeding newborns –right recognized in all analyzed Latin American countries–, in the **Chile** workers have the right to change their functions, while in **Uruguay** workers have the right to modify their working time in order to work-life balance, establishing in both countries limitations on the employer's right to oppose these rights. In other **Latin American countries** analyzed, work-life balance rights require agreement with the employer. Similarly, in **Canada** and the **United States** the rights of work-life balance are practically nonexistent, existing in **Canada** the right to adapt the distribution of working hours when work duties interfere with family responsibilities and there is no alternative, except when the exercise of this right imposes excessive damage to the company.

**5. The part-time contract, although highly and generally feminized, is not unanimously considered an effective measure to work-life balance**, exist in many countries a high percentage of involuntary part-time work because of the impossibility to find a full-time employment. Furthermore, in some legal systems analyzed, such as **Belgium** or **Spain**, the part-time contract has a high flexibility in managing working time that impedes this purpose.

There are countries, however, where the regulation of part-time contract is adequate to achieve the objective of reconciling work, family and personal life, essentially due to the

**recognition of a right of conversion.** In this respect, in **Greece, Italy and Portugal** there is a right to convert to a part-time contract on the ground of care of minors children, disabled and/or dependent family members. In addition, the **Greek regulation**, which conditions this entitlement to a minimum seniority of 1 year, grants workers the right to return to full-time work. The **French regulation**, although without recognizing a right of conversion, limits the employer's right to oppose a worker's application to conversion to part-time to the absence of a vacancy or organizational reasons; also, workers employed part-time may object to changes in working time for family reasons. Among some **Latin American countries** analyzed, the absence of work-life balance rights leads to the use of the part-time contract as an informal mechanism, which allows workers to meet their family responsibilities.

**6. Despite recognizing work-life balance rights, the analyzed legal systems do not contain any different regulation on overtime and/or working time distribution to workers exercising these rights.** The **Spanish regulation** is a remarkable example, as it may undermine the effectiveness of work-life balance rights through the irregular distribution of working time, unilaterally imposed by employers. The only exception is the **Portuguese law**, where flexible working arrangements cannot be introduced without consent with respect to workers with children under 3 years old; furthermore, pregnant workers can refuse night work, overtime and flexible working arrangements. In a similar sense, the **French regulation** recognizes workers the right to oppose performing night work, Sunday work and changes of working time due to incompatibility with family responsibilities. However, the high unemployment rate may reduce the effectiveness of this entitlement.

**7. Most of the legal systems analyzed, recognize permits and the right to suspend the employment contract with the purpose of attending family responsibilities.**

Although there are differences in the legal regimes, most of the analyzed **European countries** recognize the right to suspend the employment contract in order to take care of underage children, those affected by disabilities, and/or dependent family members. This leave of absence is short-term in **Portugal** (30 days per year) and long-term in **Belgium, Italy and Spain** (maximum 2-3 years). These leave of absences are usually not remunerated and entail job reservation, and in **France** they also leads to the average increase in salary that other workers have benefited. Non-remunerated exceptions are found in **Belgium**, where workers are recognized Social Security benefits, and **Italy** in relation to suspensions for attending dependent family members. Moreover, in the majority of countries analyzed, permits are recognized due to illness or medical assistance of relatives: maximum 12 months in **Belgium** and entitlement to Social Security benefits; 6 non paid days per year in **Greece** or 20 paid days in case of cancer treatment or

hospitalization of underage children; with no limit for children under 3 years and maximum 5 days per year for children up to 8 years in **Italy**; or maximum 30 non paid days in **Portugal**. Finally, in **Greece** additional permits are recognized: 6 paid days per year for widowers or single parents for taking care of their children or 4 days for school meetings until 16 years age. **Portugal** recognizes a 30 days permit to grandparents to attend their daughter's childbirth.

Also amongst **European countries**, **there are relevant differences concerning employer faculties to oppose or restrict these rights**. While in **Spain** and **France** employers cannot oppose the exercise by workers of these leave of absences, in **Italy** this entrepreneurial faculty certainly exists, and in **Belgium** employers have the right to postpone its exercise. Although in **Portugal** firms are not allowed to oppose the exercise of these rights, it is possible to require workers prove its necessity and the absence of an alternative.

The majority of **non-European countries** also recognize permits or leaves of absence in case of childcare, children or family illness or family emergencies. Moreover, there is usually the right to job reservation. However, those permits are often short-term in most of the **Latin-American** countries analyzed, where is worth to highlight **Argentina** and **Uruguay** where permits can be at best until 6 months. The regulation of the **United States** is an exception as it only recognizes permits for family health care to workers under the "Family Medical Leave Act". In **Mexican law**, leaves of absence are possible only under agreement with the employer.

**8. All of the analyzed countries recognize a maternity leave.** The only exception is again the **United States** where this right is only granted to workers protected by the "Family Medical Leave Act", which is estimated to cover only 20% of new mothers. Despite the recognition of a maternity leave in **Canada**, a minimum work qualification is required.

Amongst analyzed **European and non-European countries**, **the duration of the maternity leaves ranges from 12 to 18 weeks. In addition, in most cases it is required to take between 1 to 8 weeks before the delivery.** The only exceptions on the matter are in **Spanish and Portuguese law**, where the possibility of using a fraction of the maternity leave before the delivery is not regulated, forcing women resort to the common illness permit in case of incapacity to work in weeks prior to the birth. These two regulations require the 6 weeks after birth to be enjoyed by the mother, whereas both spouses can divide the rest of the time. **Chilean law** also allows both parents to share the post-natal period of the maternity leave. It is also worth to mention the **Portuguese regulation**, which increases maternity leave by 30 days when at least 30 days have been used by the

other spouse. Conversely, the **Italian rule** recognizes maternity leave only to mothers, allowing fathers to use it only when the mother is not entitled to such right for not being employed. It is also interesting the **Peruvian legal system**, since it entitles mothers to go on holidays immediately after the maternity leave.

In the **majority of countries** analyzed, **maternity leave has the same length for birth and adoption**. However, there are relevant exceptions in **Belgium**, where maternity leave reduces from 15 to 6 weeks in case of adoption or foster care; in **France** adopting parents are entitled to 10 weeks –corresponding to postnatal leave– instead of 16 weeks; and in **Latin-American countries**, where maternity leave is generally shorter and only recognized after the adoption.

Finally, **in most of the countries analyzed, maternity leave entails the recognition of Social Security benefits**. In **European countries** public benefits range from 80 to 100% of the salary, while in **Latin America** and **Canada** they are slightly over 50%. The only exception is the **United States**, where maternity leave is not paid, with the exception of 3 state regulations and when the employer has a paid leave policy.

**9. Most of the countries** analyzed have established **paternity leave in addition to maternity leave**. The only exceptions are **Costa Rica, Canada** and the **United States**, although in the former two there are some states recognizing this right, such as California and Quebec, respectively. In **Italy**, the regulation that introduced the paternity leave is experimental and only applicable for three years.

Due to the low rate of fathers using the maternity or a parental leave (e.g. 1.9% in Spain), most legal systems analyzed recognize the paternity leave to the father. In this point, it is interesting to mention the effects of a compulsory paternity leave on work-life balance. While in **Canada** the percentage of fathers that use a parental leave is around 25%, in **Quebec** this percentage reaches 75% where there is a paternity leave of 5 weeks.

In relation to the duration of the paternity leave, there is a divergence between **European and non-European countries**. Whereas in **Latin America** it is between 2-5 days –except in **Uruguay** where it is 13 days or 20 days for public employees in **Brazil**–, in **European countries** the median is 10-15 days –except in **Greece** and **Italy** where its duration is 2 days. In **Spain**, there is a pending extension of the paternity leave of four weeks. In the majority of countries analyzed, the paternity leaves entails **the right to pay or public benefits**.

**10.** Finally, most of the international experts taking part on the current comparative study recognize the **important or potential role played by collective bargaining on the**

**promotion of equality, non-discrimination and work-life balance.** Amongst the analyzed **European countries**, collective bargaining plays an important role, specifically on the improvement of work-life balance rights and the adoption of affirmative actions to guarantee non-discrimination and promoting equality of opportunities between men and women in labor market.

Notwithstanding the former, there are skeptical authors in relation with the role of collective bargaining and its effectiveness. For example, in **Spain** –like **France** and **Portugal**– large companies have the obligation to negotiate and adopt an Equality Plan. However, this obligation is considered ineffective to improve the situation of women in the labor market, since it mainly includes general and abstract principles.

In the analyzed **Latin American countries**, collective bargaining agreements do not play a relevant role on the matter, as there is no obligation to negotiate measures to promote equality of treat and opportunity between men and women in the workplace. The biggest challenges are in **Costa Rica**, **Peru** and **Dominican Republic**, given the low level of bargaining culture. The most remarkable exception is found in **Argentina**, where work balance rights have been broaden through collective bargaining agreements. In the **United States** collective bargaining is not appreciated either as an effective tool to promote equality between men and women in the labor market.

## 2. «Top ten» conclusiones

El *Comparative Labor Law Dossier* (CLLD) de este número 2/2016 de IUSLabor está dedicado a la igualdad, no discriminación y conciliación de la vida laboral, familiar y personal e incorpora artículos, elaborados por académicos de prestigio a nivel internacional, sobre la regulación de esta importante materia.

En el actual contexto en que, desgraciadamente, persiste la desigualdad y discriminación de las mujeres en el mercado de trabajo, hemos considerado necesario analizar desde una **perspectiva comparada** como la promoción de la igualdad de oportunidades entre hombres y mujeres y la lucha contra la discriminación en el mercado de trabajo es abordada tanto a nivel comunitario como a nivel internacional. Así, en el presente dossier abordamos 10 cuestiones principales en materia de tiempo de trabajo y flexibilidad en los ordenamientos jurídicos de **Bélgica, España, Francia, Grecia, Italia, Portugal, Argentina, Brasil, Chile, Costa Rica, México, Perú, República Dominicana, Uruguay, Canadá y Estados Unidos**.

El CLLD ha partido del siguiente **test de preguntas** a las que han dado respuesta los colaboradores internacionales de la revista:

1. ¿El sexo es una causa de discriminación prohibida en su ordenamiento laboral? ¿Qué otras causas de discriminación están prohibidas? La prohibición de discriminación, ¿incluye también la discriminación indirecta?
2. ¿Cuál es la consecuencia jurídica de la discriminación por razón de sexo u otras causas prohibidas? Específicamente, ¿qué consecuencias jurídicas tiene el despido injustificado de una trabajadora embarazada o de un/a trabajador/a que ejerce derechos de conciliación?
3. ¿Existen ejemplos de discriminación salarial, en el acceso a la ocupación y/o promoción profesional entre hombres y mujeres? ¿Qué tratamiento legal y jurisprudencial reciben? ¿Qué medidas legales de promoción de la igualdad de trato y oportunidades se reconocen?
4. ¿Qué derechos de conciliación de la vida laboral y familiar se reconocen en su ordenamiento laboral? En concreto, ¿se reconoce el derecho de los trabajadores de adaptar su jornada de trabajo (distribución y/o reducción de la jornada)? ¿Qué capacidad tiene el empresario para limitar el ejercicio de dichos derechos de conciliación?
5. ¿El contrato a tiempo parcial es utilizado como instrumento de conciliación de la vida laboral, familiar y personal? En su caso, ¿es adecuado su régimen jurídico a tal fin de conciliación?

6. ¿La empresa puede alterar la jornada de trabajo de los trabajadores que ejercen derechos de conciliación mediante horas extraordinarias y/o distribución irregular de la jornada?
7. ¿Los trabajadores tienen derecho a permisos o suspensiones del contrato de trabajo (excedencias) a fin de facilitar la conciliación de su vida laboral, familiar y personal? En su caso, ¿tienen carácter retribuido? ¿Se reconoce el derecho de reserva de puesto de trabajo? ¿Qué capacidad se reconoce al empresario para limitar el ejercicio de dichos derechos?
8. ¿Existe permiso de maternidad? En su caso, ¿cuál es su duración? ¿Quién es titular del mismo? ¿Los trabajadores tienen derecho a retribución o prestación de Seguridad Social durante el mismo?
9. ¿Existe permiso de paternidad? En su caso, ¿cuál es su duración? ¿Quién es titular del mismo? ¿Los trabajadores tienen derecho a retribución o prestación de Seguridad Social durante el mismo?
10. ¿Qué papel juega la negociación colectiva en materia de promoción de la igualdad entre hombres y mujeres y conciliación de la vida laboral, familiar y personal? ¿Suele mejorar los derechos previstos en la normativa legal? ¿Tiene capacidad para limitar o condicionar los derechos de conciliación reconocidos normativamente?

A continuación se exponen, siguiendo el mismo orden de las preguntas, **las 10 conclusiones principales en materia de igualdad, no discriminación y conciliación de la vida laboral, familiar y personal** alcanzadas en base a los artículos elaborados por nuestros académicos internacionales.

**1. En todos los ordenamientos jurídicos analizados el sexo es una causa de discriminación prohibida.** Esta conclusión no sorprende excesivamente si tenemos en cuenta que la prohibición de la discriminación por razón de sexo se encuentra en **numerosos tratados internacionales**, entre los que destacan la Declaración Universal de Derechos Humanos (artículo 2), la Carta de Derechos Fundamentales de la Unión Europea (artículo 21) o el Convenio nº 111 sobre la discriminación (empleo y ocupación) de la OIT.

Sin embargo, **en todos los países analizados persiste la desigualdad y discriminación de la mujer en el mercado de trabajo.** La tasa de actividad entre las mujeres es consistentemente inferior a la de los hombres, desde el 36% en **México**, el 37,8% en **Perú** o el 46% en **Grecia** hasta el 76% en **Canadá**. La tasa de paro es superior, aunque existen algunas excepciones como en **Bélgica** o **Canadá**. El contrato a tiempo parcial es todavía un contrato fuertemente feminizado en la práctica totalidad de los países analizados, destacando los casos de **Bélgica** donde un 41.4% o **Francia** donde un 30% – incrementándose hasta el 47% a partir de tres hijos/as– de las mujeres dispone de un

contrato a tiempo parcial, frente al 13.1% en **Grecia**. También hay una mayor presencia de mujeres en formas atípicas de trabajo o en trabajo informal, destacando el caso de **Grecia**, donde el 14.7% de las mujeres trabajan en negocios familiares sin retribución, o el caso de **Perú** donde el subempleo femenino alcanza el 58.2% frente al 37% de los hombres, además de una diferencia considerable en el índice de ejecución de actividades no remuneradas (36.27% - 15.45%). La brecha salarial entre hombres y mujeres se estima por encima del 16% en la Unión Europea, aunque puede alcanzar el 27.8% en **Portugal** cuando calculada en términos anuales; entre los países extracomunitarios, la brecha salarial es también tozudamente presente, hasta alcanzar el 27.1% en **Brasil**, el 33% anual en **Canadá** o el 68% en **Uruguay**. Finalmente, la presencia de mujeres en posiciones de dirección es todavía insignificante, desde el 4% en **Grecia** o 4.2% en **Estados Unidos**; aunque lejos de la paridad, destacan el caso de **España** con un 17.3% o el caso de **Canadá** con un 32% de mujeres en puestos de dirección.

La **prohibición de discriminación** contenida en la totalidad de ordenamientos jurídicos analizados comprende también a otras causas, tales como **raza, nacimiento, opinión, edad, orientación sexual, nacionalidad, origen, discapacidad, idioma, afiliación sindical, situación económica**, etc.; extendiéndose, en algunos países, a apariencia física, estado de salud, características genéticas, etc.

Asimismo, en la **gran mayoría de países europeos y norteamericanos** analizados la **prohibición de discriminación incluye también la discriminación indirecta**, entendida como aquella disposición o práctica aparentemente neutra que genera un efecto adverso a un colectivo protegido por la prohibición de discriminación. La generalización de la prohibición de la discriminación indirecta entre los **países comunitarios** no resulta sorprendente, al encontrarse regulada en el artículo 2 de la Directiva 76/207/CEE<sup>3</sup> y ser doctrina consolidada del Tribunal de Justicia de la Unión Europea<sup>4</sup> –aunque la **jurisprudencia griega** parece desviarse de esta posición. Sin embargo, es interesante destacar como también entre algunos **países latinoamericanos** analizados –**Costa Rica, Chile, Perú y República Dominicana**– existe prohibición contra la discriminación indirecta. Sin embargo, en la mayoría de los casos se trata un mandato que surge de la interpretación del imperativo superior de prohibición de discriminación.

**2. Las consecuencias legales ante supuestos de discriminación por razón de sexo son también uniformes entre la mayoría de ordenamientos jurídicos analizados: nulidad.** Esto es, las disposiciones legales, convencionales, contractuales o prácticas empresariales

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<sup>3</sup> Directiva 76/207/CEE del Consejo, de 9 de febrero de 1976, relativa a la aplicación del principio de igualdad de trato entre hombres y mujeres en lo que se refiere al acceso al empleo, a la formación y a la promoción profesionales, y a las condiciones de trabajo.

<sup>4</sup> Véase, por todas, sentencia del Tribunal de Justicia de la Unión Europea de 28 de febrero de 2013.

discriminatorias por razón de sexo se entienden nulas y sin efecto, dando lugar a la reposición a la situación anterior a la discriminación. Las excepciones son **Perú** –que da lugar a la paralización de la conducta discriminatoria y a la imposición de sanción– y **Canadá y Estados Unidos** –donde las consecuencias son determinadas judicialmente.

En todo caso, en la **totalidad de ordenamientos jurídicos** analizados el **despido de una trabajadora embarazada o** de trabajadores en ejercicio de **derechos de conciliación** tiene la consideración de **despido discriminatorio**, aunque sus consecuencias varían entre los distintos países. Entre los **estados miembros de la Unión Europea**, el despido discriminatorio generalmente da lugar a la reincorporación del trabajador, abono de salarios dejados de percibir y/o compensación por los daños morales sufridos, además de sanciones económicas. Entre los **países Latinoamericanos** la consecuencia es homogénea, y consiste en la obligación de reincorporación en la posición ocupada al momento de la terminación. Sobre este efecto, cabe destacar la **regulación mexicana**, en la que el empleador puede resultar exonerado del deber de reintegrar a su empleado cuando existan razones de incompatibilidad en la etapa sobreviniente del nexo o cuando se trate de trabajadores del servicio doméstico, trabajadores eventuales o trabajadores de confianza. Finalmente, en **Canadá** el despido discriminatorio da lugar a la reincorporación del trabajador o a la compensación por daños y perjuicios, mientras que en **Estados Unidos** da lugar a la compensación de daños y perjuicios y daños punitivos.

**3. En la mayoría de países europeos** analizados existen **ejemplos jurisprudenciales de discriminación entre hombres y mujeres en materia salarial, acceso al empleo y/o promoción profesional**, con la única excepción de **Grecia** que, a pesar de contar con una prohibición específica en esta materia, cuenta con escasa jurisprudencia. A modo de ejemplo, en **Bélgica** la jurisprudencia ha calificado como discriminatorias todas aquellas diferencias salariales no basadas en criterios objetivos, tales como la duración o características de la experiencia profesional; en sentido similar, la **jurisprudencia española** también ha introducido la necesidad de criterios objetivos en la determinación salarial y promoción profesional a fin de evitar discriminaciones entre hombres y mujeres.

Sin perjuicio de la mayor o menor existencia de jurisprudencia en esta materia, **todos los países europeos han introducido medidas legales** a fin de evitar la discriminación y promocionar la igualdad entre hombres y mujeres en el mercado de trabajo. **La medida más generalizada es**, claramente, **la introducción de cuotas** en posiciones de dirección y/o consejos de administración en empresas públicas y/o privadas. Adicionalmente, en **Bélgica** se ha limitado las actividades (esencialmente relacionadas con espectáculos) en las que el sexo puede ser una condición de contratación y se ha introducido la obligación de elaborar un balance social en función de género e, incluso, un informe sobre la estructura salarial en empresas de más de 50 trabajadores. En **Francia** las empresas tienen

la obligación de elaborar un informe anual sobre la situación comparativa entre hombres y mujeres en la empresa, que deben dar traslado a los representantes de los trabajadores, a la inspección de trabajo y a cualquier empleado que lo solicite. En **Italia** se ha adoptado una reforma para evitar la práctica discriminatoria conocida como “*dimissioni in bianco*”, según la cual las mujeres firmaban una carta de dimisión sin fecha al inicio de la relación laboral, que era utilizada por la empresa en caso de embarazo. En **Portugal** la cláusulas convencionales consideradas discriminatorias devienen de aplicación general, se ha introducido preferencias de contratación de mujeres en aquellos sectores en los que se encuentran infrarepresentadas y en 2015 se elaboraron dos herramientas on-line para analizar las diferencias salariales entre hombres y mujeres en las empresas.

En **los países de Latinoamérica** también existen diversos ejemplos de discriminación entre hombres y mujeres en el mercado laboral, especialmente relacionados con brechas existentes en cuanto a empleabilidad y desigualdad salarial en países como **Brasil, Chile, Perú y Uruguay** y a la inobservancia de las disposiciones que promueven la igualdad de género en el mercado laboral en **Chile**. A pesar del bajo índice de litigiosidad en la región, destaca el impacto producido por la jurisprudencia en **Argentina**, mediante la cual se han trazado reglas relevantes en la materia. Con respecto a las medidas legales empeladas para promover la igualdad de trato y oportunidades, se observa una tendencia importante a la implementación de acciones afirmativas con el fin de garantizar el ingreso y permanencia de las mujeres dentro de ciertas dependencias públicas u organizaciones de carácter representativo –mencionadas en todos los países analizados con excepción de **Brasil y Chile**–, y al establecimiento de prohibiciones relativas al acceso al empleo o la discriminación salarial entre hombres y mujeres. En menor medida, destaca **Argentina** por la creación de dependencias gubernamentales dedicadas específicamente a la deliberación y ejecución de proyectos dedicados a la promoción de la equidad en el puesto de trabajo.

En **Canadá y Estados Unidos**, a pesar de existir una prohibición general de discriminación, la jurisprudencia en materia de discriminación salarial, acceso al empleo y promoción profesional es limitada. Más allá, en **Estados Unidos** las posibles diferencias salariales existentes entre hombres y mujeres no se consideran discriminatorias si están justificadas en factores de mercado. En cuanto a medidas legales, mientras que en **Estados Unidos** no existe la obligación de adoptar medidas de acción positiva, en **Canadá** existe la obligación empresarial de realizar estudios de la situación laboral y salarial de hombres y mujeres en la empresa.

**4. Existe una importante disparidad entre las regulaciones comunitarias y extracomunitarias en materia de derechos de conciliación de la vida laboral y familiar.** Entre los estados miembros de la **Unión Europea** analizados, aunque con

divergencias importantes, existe una **clara tendencia a reconocer medidas de conciliación** de la vida laboral y familiar.

En términos generales, se protege la lactancia materna mediante el reconocimiento de ausencias retribuidas de 1-2 horas para la lactancia materna de hijos hasta 9 meses en **Bélgica y España** o hasta 2.5 años en **Italia**. Asimismo, en la mayoría de ordenamientos jurídicos se reconocen derechos de reducción de la jornada hasta el 50% del tiempo de trabajo para atender a hijos (hasta una limitación de edad que oscila entre los 8 y 16 años) o familiares dependientes. No obstante lo anterior, existen diferencias importantes en su régimen jurídico: mientras que en **Bélgica** este derecho de reducción de la jornada se limita a un máximo de 48 meses (o 24 en supuestos de familiares dependientes) y **Francia** establece una limitación de dos años, pudiéndose prorrogar hasta cinco años en caso de parto múltiple, no existe en **España e Italia** limitación alguna, más allá de los 12 o 6 años del hijo/a, respectivamente. Adicionalmente, en muchos ordenamientos jurídicos, se reconocen derechos de conciliación específicos en supuestos de enfermedad del hijo/a, como en los casos de **España e Portugal**. Adicionalmente, en **Portugal y España** se reconoce el derecho de los trabajadores de –más allá de acceder a reducciones de jornada– adaptar la distribución de su tiempo de trabajo, introduciendo formas flexibles de gestión del tiempo de trabajo; incluso, en **Portugal** existe el derecho de teletrabajo en supuestos de hijo/a menor de 3 años y siempre que la actividad sea compatible con dicha forma de prestación de servicios. La excepción a lo anterior la constituye **Grecia**, que únicamente reconoce el derecho a 1 hora de reducción de jornada en empresas de más de 50 trabajadores a trabajadores con un hijo/a con alguna discapacidad.

Sin perjuicio de la relativa homogeneización entre países comunitarios en medidas de conciliación de la vida laboral y familiar, existe una **importante divergencia en cuanto al alcance de dichos derechos y las facultades empresariales de limitar su ejercicio**. Mientras que en **Grecia** todo derecho de determinación del tiempo de trabajo por necesidades de conciliación requiere acuerdo en convenio colectivo, el derecho de reducción de la jornada en **España** es un derecho individual de los trabajadores que no puede encontrar oposición empresarial –aunque no el derecho a adaptar la distribución de la jornada. En un término medio, **Italia y Portugal** admiten el derecho empresarial a oponerse a la reducción de la jornada justificado en causas empresariales. **Francia** también admite la facultad empresarial de oponerse a la reducción de jornada, aunque no cuando ésta se ejerce en modo de excedencia. **Bélgica** establece un doble régimen en atención a las dimensiones de la empresa: mientras que en empresas de más de 10 trabajadores se reconoce el derecho de reducción de la jornada como un derecho individual de los trabajadores –aunque con el derecho empresarial de posponer su ejercicio–, en empresas con menos trabajadores se requiere acuerdo para su ejercicio. En todo caso, en **ninguno de los países europeos** analizados **existe el derecho individual**

**de los trabajadores de –sin reducción de jornada– modificar la distribución del tiempo de trabajo.**

Entre los **países extracomunitarios** analizados, los derechos de conciliación de la vida laboral se encuentran mayormente desarrollados en **Chile** y **Uruguay**. Además de disponer de un período de ausencia para la lactancia natural de recién nacido –derecho garantizado en todos los países latinoamericanos–, en el primero los trabajadores cuentan con el derecho a modificar sus funciones, mientras que en el segundo se admite la modificación de la jornada de trabajo, con el fin de obtener un equilibrio entre sus obligaciones laborales y las responsabilidades familiares, estableciéndose en ambos una limitación a la facultad empresarial de modificar dichos derechos. En los demás **países latinoamericanos** analizados, los derechos de conciliación requieren acuerdo con el empleador. Similarmente, en **Canadá** y **Estados Unidos** los derechos de conciliación de la vida laboral y familiar son prácticamente inexistentes, existiendo únicamente en **Canadá** el derecho a adaptar la distribución de la jornada cuando las obligaciones laborales interfieran con la conciliación y no exista ninguna medida alternativa, salvo que suponga un perjuicio empresarial excesivo.

**5. El contrato a tiempo parcial, aunque mayoritariamente feminizado, no es considerado unánimemente una fórmula efectiva para la conciliación** de la vida laboral, familiar y personal, existiendo en muchos países un porcentaje elevado de trabajadores que acuden al trabajo a tiempo parcial por no encontrar empleo a tiempo completo. Asimismo, en algunos ordenamientos jurídicos analizados, como **Bélgica** o **España**, el contrato a tiempo parcial cuenta con una elevada flexibilidad en la gestión del tiempo de trabajo que dificulta dicha finalidad.

Existen países, no obstante, donde la regulación del contrato a tiempo parcial sí es adecuada a alcanzar el objetivo de conciliación de la vida laboral, familiar y personal, esencialmente por el **reconocimiento de un derecho de conversión**. En este sentido, en **Grecia, Italia** y **Portugal** existe el derecho a convertir el contrato a tiempo parcial para la cura de hijos/as menores, con alguna discapacidad y/o familiares dependientes. Adicionalmente, la **regulación griega**, que condiciona dicho derecho a una antigüedad mínima de 1 año, reconoce a los trabajadores el derecho a volver al tiempo completo. La **regulación francesa**, aunque sin reconocer un derecho de conversión, limita la facultad empresarial de oponerse a una solicitud de conversión a tiempo parcial a la ausencia de vacante o por razones organizativas; asimismo, los trabajadores empleados a tiempo parcial pueden oponerse a cambios en el tiempo de trabajo por razones familiares. Entre algunos **países latinoamericanos** analizados, la ausencia de derechos de conciliación, conlleva a utilizar el contrato a tiempo parcial como un mecanismo informal, que permite a los trabajadores atender a sus responsabilidades familiares.

6. Independientemente de los derechos de conciliación reconocidos, **la mayoría de ordenamientos jurídicos** analizados **no prevén una regulación** en materia de **horas extraordinarias y/o modificación de la distribución del tiempo de trabajo diferente para trabajadores que ejercen derechos de conciliación**. Destaca la **regulación española** que, mediante la distribución irregular de la jornada de forma unilateral por parte de la empresa, puede desvirtuar la efectividad de los derechos de conciliación. La única excepción la constituye la **regulación portuguesa**, que impide introducir formas de trabajo flexibles a trabajadores con hijos/as menores de 3 años sin consentimiento o el derecho de las trabajadoras embarazadas de rechazar trabajo nocturno, horas extraordinarias o formas de trabajo flexibles. En sentido similar, la **regulación francesa** reconoce el derecho de los trabajadores a oponerse a realizar trabajo nocturno, trabajar domingos o cambios de tiempo de trabajo por incompatibilidad con sus responsabilidades familiares, aunque la elevada tasa de desempleo puede reducir eficacia a dicho derecho.

7. **La mayoría de ordenamientos jurídicos** analizados **reconocen permisos o excedencias para la atención a responsabilidades familiares**.

Aunque con diferencias en su régimen jurídico, la mayoría de **países europeos** analizados reconocen excedencias para el cuidado de hijos/as menores, con alguna discapacidad y/o familiares dependientes. Esta excedencia es de corta duración (30 días por año) en **Portugal** o larga duración (máximo entre 2-3 años) en **Bélgica, Italia y España**. Generalmente esta excedencia no es retribuida y conlleva derecho a reserva de puesto de trabajo; en **Francia** incluso da lugar al reconocimiento de los incrementos salariales medios de los que se han beneficiado el resto de trabajadores. Las excepciones al carácter no retribuido las encontramos en **Bélgica** que reconoce prestaciones de la Seguridad Social e **Italia** respecto la excedencia por cura de familiar con discapacidad. Asimismo, también en la mayoría de ordenamientos jurídicos, se reconocen permisos en supuestos de enfermedad o atención médica de familiares: máximo 12 meses en **Bélgica** y con derecho a prestaciones de la Seguridad Social; 6 días no retribuidos por año en **Grecia** o 20 días retribuidos en caso de tratamiento de cáncer u hospitalización de hijo/a menor de edad; sin máximo para hijos/as menores de 3 años y máximo 5 días al año hasta 8 años en **Italia**; o máximo 30 días por año no retribuidos en **Portugal**. Finalmente, **Grecia** reconoce permisos adicionales de 6 días por año retribuidos para padres viudos o solteros para el cuidado de hijos/as o 4 días retribuidos por reuniones escolares hasta los 16 años; **Portugal** reconoce un permiso de 30 días a los abuelos para asistir al parto de la hija.

Nuevamente, también entre los países europeos, **existen diferencias importantes en relación con las facultades empresariales para oponerse o limitar dichos derechos**. Mientras que en **España y Francia** la empresa no puede oponerse al ejercicio de dichas excedencias por parte de los trabajadores, sí existe esta facultad empresarial en **Italia** y

el derecho a posponer su ejercicio en **Bélgica**. En **Portugal**, aunque la empresa no puede oponerse al ejercicio de dichos derechos, sí puede solicitar al trabajador prueba de la necesidad de la misma por no existir alternativa posible.

La mayoría de **países extracomunitarios** también reconocen permisos o excedencias en supuestos de cuidado de hijos/as, enfermedad de hijo/a, familiar y/o emergencias familiares; reconociéndose, generalmente, el derecho de reserva de puesto de trabajo. Sin embargo, dichos permisos son generalmente de corta duración en la mayoría de **países latinoamericanos**, destacando únicamente **Argentina** y **Uruguay** que reconocen permisos hasta 6 meses. Las excepciones las constituyen la **regulación estadounidense**, que únicamente reconoce el permiso por atención médica de familiares a los trabajadores protegidos por la *Family Medical Leave Act* y la **regulación mexicana**, que únicamente reconoce excedencias por acuerdo con la empresa.

**8. La totalidad de países analizados reconocen un permiso de maternidad.** La excepción la constituye, nuevamente, **Estados Unidos**, que únicamente reconoce dicho derecho a los trabajadores protegidos por la *Family Medical Leave Act*, estimándose que cubre únicamente a un 20% de nuevas madres. Asimismo, aunque **Canadá** sí que reconoce tal derecho, se encuentra condicionado a un tiempo de trabajo mínimo.

Entre los países comunitarios y extracomunitarios analizados, **el permiso de maternidad tiene una duración entre 12 y 18 semanas, requiriéndose mayoritariamente que entre 1-8 semanas se ejerzan antes del parto.** Las únicas excepciones las constituyen las **regulaciones española y portuguesa** que no prevé la posibilidad de utilizar una parte del permiso de maternidad previo al parto, exigiendo a las mujeres a acudir al permiso por enfermedad común en casos de incapacidad para trabajar en las semanas previas al parto. Estas dos regulaciones, no obstante, exigen que las 6 semanas inmediatamente posteriores al parto sean ejercidas por la madre, pudiéndose repartir las semanas restantes entre los dos cónyuges. También la **regulación chilena** permite al padre y a la madre repartirse el período postnatal del permiso de maternidad. En este punto, es interesante destacar la regulación de **Portugal**, que extiende el permiso de maternidad en 30 días, cuando mínimo 30 días son ejercidos por el otro cónyuge. En sentido contrario, la **regulación italiana** reserva el permiso de maternidad a la madre, pudiendo ejercitarlo el padre en supuestos de imposibilidad de la madre por no trabajar por cuenta ajena. Destacar el derecho que concede el **ordenamiento peruano** que permite a la madre disfrutar de las vacaciones de forma inmediata y continua al permiso de maternidad.

En la mayoría de ordenamientos jurídicos **el permiso de maternidad tiene la misma duración para supuestos de nacimiento y adopción.** Sin embargo, existen excepciones importantes como **Bélgica**, donde el permiso pasa de 15 a 6 semanas en caso de adopción

o acogimiento; **Francia** que únicamente reconoce 10 semanas –correspondientes al permiso postnatal–; o en los **países latinoamericanos**, donde el permiso de maternidad por adopción es generalmente más corto y solamente ejercitable después de la fecha en que se produce el encuentro con el menor.

Finalmente, destacar que también en la **mayoría de ordenamientos jurídicos analizados el permiso de maternidad da lugar al reconocimiento de prestaciones de la Seguridad Social**. Prestaciones públicas equivalentes al 80-100% del salario en los **países europeos** analizados y por encima del 50% en **Latinoamérica** y **Canadá**. La única excepción la constituye **Estados Unidos** que, salvo en tres estados o retribución empresarial, el permiso de maternidad no es retribuido.

**9. La mayoría de países analizados cuentan con**, además del permiso de maternidad, **un permiso de paternidad**. Las únicas excepciones las constituyen **Costa Rica, Canadá** y **Estados Unidos**, aunque en estos dos últimos supuestos existen algunos Estados que sí cuentan con un permiso de paternidad, como Quebec o California, respectivamente. Asimismo, destacar que en **Italia** la regulación que introdujo el permiso de paternidad es experimental y únicamente aplicable durante tres años.

Debido al reducido porcentaje de padres que utilizan el permiso de maternidad –alcanzando únicamente el 1.9% en **España**, por ejemplo– una característica común del permiso de paternidad entre los distintos ordenamientos jurídicos analizados es su uso por parte del padre. En este punto, destacar el impacto del permiso de paternidad en el ejercicio de permisos de conciliación por parte de los padres; mientras que en **Canadá** el porcentaje de padres que ejercen el permiso de maternidad se sitúa entorno del 25%, éste alcanza el 75% en **Quebec** donde existe un permiso de maternidad de 5 semanas.

En cuanto a la duración del permiso de paternidad, existe una clara divergencia entre los países comunitarios y extracomunitarios: mientras que en los países **Latinoamericanos** analizados la duración es entre 2-5 días –salvo 13 días en **Uruguay** o 20 días en el sector público en **Brasil**–, en los países **europeos** analizados tiene una duración superior de entre 10-15 días –salvo **Grecia** e **Italia** que tiene una duración de 2 días– y debiéndose destacar la ampliación pendiente hasta 4 semanas del permiso de paternidad en **España**. En la mayoría de ordenamientos jurídicos que reconocen un permiso de paternidad, éste tiene **carácter retribuido** o da lugar al reconocimiento de **prestaciones públicas**.

**10.** Finalmente, la mayoría de asesores internacionales participantes del presente estudio comparativo alegan el **papel importante o potencial que juega la negociación colectiva en la promoción de la igualdad, no discriminación y conciliación** de la vida laboral, familiar y personal. Entre los **países comunitarios** analizados, la negociación colectiva

juega un papel importante en la mejora de los derechos de conciliación y la adopción de medidas de acción positiva para garantizar la ausencia de discriminación y promocionar la igualdad de oportunidades entre hombres y mujeres en el mercado de trabajo.

No obstante lo anterior, también existen autores escépticos con el papel de la negociación colectiva y su efectividad. A modo de ejemplo, aunque en **España** –al igual que en **Francia** y **Portugal**– existe la obligación de adoptar un Plan de Igualdad en empresas grandes, se aprecia que este instrumento de la negociación colectiva no es efectivo para mejorar la situación de la mujer en el mercado de trabajo al contener generalmente compromisos o principios generales.

Tampoco entre los **países latinoamericanos** analizados juega la negociación colectiva un papel importante en esta materia, al no existir obligación legal de negociar medidas tendientes a promover la igualdad de trato y oportunidad de hombres y mujeres en el lugar de trabajo. En **Costa Rica**, **Perú** y **República Dominicana** se encuentran los mayores desafíos, debido a la escasa cultura negocial. La excepción la encontramos en **Argentina** donde la negociación colectiva sí es efectiva para mejorar los derechos de conciliación reconocidos legalmente. En **Estados Unidos** la negociación colectiva tampoco es apreciada como un instrumento efectivo para promocionar la igualdad entre hombres y mujeres en el mercado de trabajo.

### 3. Summary table

#### 3.1. Europe

	<b>Belgium</b>	<b>France</b>	<b>Greece</b>	<b>Italy</b>	<b>Portugal</b>	<b>Spain</b>
<p><b>1. Is sex a cause of discrimination in your legal system?</b></p> <p><b>What other circumstances are discriminatory?</b></p> <p><b>Does the prohibition of discrimination also include indirect discrimination?</b></p>	<p>Yes.</p> <p>Birth, race, beliefs, age, sexual orientation, marital status, capital, union conviction, language, health, disability, genetic or physical characteristics and social origin.</p> <p>Indirect discrimination: prohibited.</p>	<p>Yes.</p> <p>Religion, age, health, disability, moral, sexual orientation, gender identity, civil status, political opinion, genetic characteristics, appearance, union affiliation, residence, social precarious, etc.</p> <p>Indirect discrimination: prohibited.</p>	<p>Yes.</p> <p>Sex and family status.</p> <p>Race, color, religion, sexual orientation, descent, national or ethnic origin, sexual orientation, gender identity, disability.</p> <p>Indirect discrimination: different case law ECJ.</p>	<p>Yes.</p> <p>Race, religion, political opinion, age, sexual orientation, disability, union affiliation, language, etc.</p> <p>Indirect discrimination: prohibited.</p>	<p>Yes.</p> <p>Race, religion, beliefs, sexual orientation, disability, chronic disease, union affiliation, age, ancestry, language, origin, education, economic situation.</p> <p>Indirect discrimination: prohibited</p>	<p>Yes.</p> <p>Birth, race, opinion, religion, age, sexual orientation, disability, union affiliation, language, etc.</p> <p>Indirect discrimination: prohibited.</p>

<p><b>2. What is the legal consequence of discrimination on grounds of sex or other circumstances?</b></p> <p><b>Specifically, what is the legal consequence of an unfair dismissal of a pregnant worker or a worker exercising work-life balance rights?</b></p>	<p>Nullity.</p> <p>Discriminatory dismissal: invalid + indemnity (6 months).</p> <p>Burden of proof: employer.</p>	<p>Nullity.</p> <p>Discriminatory dismissal: reinstatement, full back pay, moral damages + sanction.</p>	<p>Nullity.</p> <p>Discriminatory dismissal: reinstatement, full back pay + moral damages.</p>	<p>Nullity.</p> <p>Discriminatory dismissal: reinstatement + compensation (min. 5 months).</p>	<p>Nullity.</p> <p>Discriminatory dismissal: reinstatement or compensation (15-45 days per year x 2) + sanction (no public benefits).</p>	<p>Nullity.</p> <p>Discriminatory dismissal: reinstatement, back pay, damages + sanction.</p> <p>Burden of proof: employer.</p>
<p><b>3. Are there examples of wage discrimination, access to employment and/or promotion development between men and women?</b></p> <p><b>What treatment do these cases receive by the legislation and case law?</b></p> <p><b>What measures does the legislation regulate to promote equal treatment</b></p>	<p>Yes.</p> <p>Specific prohibition wage, hiring and promotion discrimination.</p> <p>Wage: objective criteria (duration and nature professional experience).</p>	<p>Yes.</p> <p>Wage: objective criteria.</p> <p>Limited case law: inequalities part-time and discrimination promotion and hiring.</p> <p>Quotas: managerial positions and</p>	<p>Few case law.</p> <p>Specific prohibition wage, hiring and promotion discrimination.</p> <p>Quotas: services of the State.</p>	<p>Yes.</p> <p>Reform to avoid discriminatory “<i>dimissioni in bianco</i>” for pregnant women.</p> <p>Quotas: 33% women in board of directors, public companies.</p>	<p>Yes.</p> <p>Assessment system discriminatory clauses collective agreements.</p> <p>Hiring preference sectors women less represented.</p> <p>Quotas: 33% women in board of directors of</p>	<p>Yes.</p> <p>Specific prohibition wage, hiring and promotion discrimination.</p> <p>Wage and promotion: objective criteria.</p> <p>Quotas: parity in boards of</p>

<p><b>between men and women in the workplace?</b></p>	<p>Promotion only full-time workers = discrimination.</p> <p>Quotas: 1/3 women in boards of directors and government.</p> <p>Limitation activities where sex is a requirement.</p> <p>Obligation slip social balance to gender + companies &gt; 50 workers: report remuneration structure.</p>	<p>board directors big companies (not effective).</p> <p>Obligation to adopt equality measures or Equality Plan (companies &gt; 50 workers).</p> <p>Obligation annual report on comparative situation men and women in the company + workers' representatives + labor inspection.</p>			<p>public companies and alternate presidency.</p>	<p>directors, courts, etc.</p>
<p><b>4. What rights of work-life balance are recognized in your labor regulation? Specifically, does the labor regulation recognize workers the right to adapt</b></p>	<p>No specific right to work-life balance.</p> <p>Legal rights:</p>	<p>Work-life balance rights:</p> <p>(i) Reduction min. 1/5 and min. 16 hours/week: care child under</p>	<p>Work-life balance rights:</p> <p>(i) 1 hour paid absence</p>	<p>Work-life balance rights:</p> <p>(i) 1-2 hours paid absence breastfeeding</p>	<p>Work-life balance rights:</p> <p>(i) Flexible working arrangements: child under 12</p>	<p>Work-life balance rights:</p> <p>(i) 1 hour paid absence</p>

<p><b>their working time (distribution and/or reduction of working hours)?</b></p> <p><b>What capacity does the employer have to oppose or limit the exercise of these rights?</b></p>	<p>(i) 30 min. x 2 paid absences breastfeeding (max. 9 months).</p> <p>(ii) Reduction 1/5-1/2 working time (max. 48 months) care child under 8 years or dependent family member, medical assistance (max. 24 months) and palliative care.</p> <p>Workers' right. Except companies &lt; 10 employees: agreement required.</p> <p>Employer's right to postpone.</p>	<p>16 years, max. 1 year (right to extension, up to 5 times in case of multiple birth) or 3 years if illness or disability.</p> <p>Employer's right to oppose (except leave).</p> <p>(ii) Flexible work arrangements (part-time, telework): agreement employer or collective agreement.</p>	<p>breastfeeding (max. 2.5 years).</p> <p>(ii) Children with disability: 1 hour/day, unpaid, companies &gt; 50 workers.</p> <p>No workers' right to determine working time: collective agreement.</p>	<p>(max. 12 months);</p> <p>(ii) Hourly basis parental leave: max. 1/2 working time.</p> <p>No opposition employer.</p> <p>(iii) Flexible organization working time (e.g. reduction): care child under 6 years or disabled child under 18 years.</p> <p>Right to request + employer's obligation to consider, right to refuse on business grounds.</p>	<p>years or disabled child;</p> <p>(ii) Telework: child under 3 years, compatible activity;</p> <p>(iii) Reduction 5 hours/week: disabled or ill child under 1 year.</p> <p>Employer's' right to oppose based on business grounds.</p>	<p>breastfeeding (max. 9 months).</p> <p>(ii) Reduction 1/2 working time illness children.</p> <p>(iii) Reduction 1/8-1/2 working time children under 12 years.</p> <p>Workers' right + no opposition employer.</p> <p>(iv) Right to adapt distribution working time: agreement employer or collective agreement.</p>
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<p><b>5. Are part-time contracts used as an instrument to achieve work-life balance? If so, is the legal regime of part-time work adequate for this purpose?</b></p>	<p>No. High flexibility working time: higher threshold overtime and variable schedule 5 days advance.</p>	<p>Yes. Legal regime part-time: (i) min. 24 hours/week; (ii) right to reject changes working time due to family reasons. Employer's right to oppose transfer part-time if no vacancies or organizational reasons.</p>	<p>Yes. Right transfer part-time + return full-time: full-time workers &gt; 1 year seniority, unless productive needs.</p>	<p>Yes. Right transfer part-time: children max. 13 years, dependent family member or illness spouse. Decreased due to the economic crisis. Involuntary part-time.</p>	<p>No. Right transfer part-time: 2-4 years, child under 12 years or disabled child. Collective agreement preference part-time position workers family responsibilities. Involuntary part-time.</p>	<p>No. Involuntary part-time. High flexibility working time: irregular distribution working time and additional hours.</p>
<p><b>6. Can the employer alter working hours of workers exercising work-life balance rights through overtime and/or irregular distribution of working time?</b></p>	<p>Same regulation all employees.</p>	<p>Yes. Employer's right to introduce modifications to working time. Right to oppose night work,</p>	<p>Yes. Same regulation all employees: obligation perform overtime.</p>	<p>Yes. Same regulation all employees.</p>	<p>No. Flexible working arrangements not imposed workers with children under 3 years without consent.</p>	<p>Yes. Same regulation all employees. Irregular distribution working time:</p>

		Sunday work, variable schedule, etc.: incompatible family responsibilities.			Pregnant workers: right to refuse night work, overtime and flexible work.	10% unilateral employer.
<p><b>7. Do workers have permits or the right to suspend the employment contract (leave of absence) due to family and personal circumstances? If so, are they paid leave of absences? Do workers maintain the right to return to their previous job post?</b></p> <p><b>What capacity does the employer have to oppose or limit the exercise of these rights?</b></p>	<p>Yes.</p> <p>(i) Leave care children or dependent family member: max. 48 months, Social Security benefit, job reservation.</p> <p>(ii) Medical assistance: max. 12 months, Social Security benefit.</p> <p>(iii) Palliative care: max. 2 months, Social Security benefit.</p> <p>(iv) Paid/unpaid emergency leave.</p>	<p>Yes.</p> <p>(i) Leave care child under 16 years, max. 1 year (right to extension, up to 5 times in case of multiple birth) or 3 years if illness or disability, unpaid, right to reinstatement.</p> <p>(ii) Leave dependent family member, unpaid.</p> <p>(iii) Family circumstances: marriage, birth, death, etc., paid.</p>	<p>Yes.</p> <p>(i) Leave illness child or dependent family members: max. 6 days/year, unpaid.</p> <p>(ii) Cancer care (20 days/year, paid, max. 18 years) and hospitalization child (30 days/year, unpaid, max. 18 years).</p> <p>(iii) Widows or unmarried parents care child: 6 days/year, paid.</p>	<p>Yes.</p> <p>(i) Parental leave: max. 6 months, paid 30%, child under 12 years.</p> <p>(ii) Leave serious family reasons: max. 2 years, unpaid, employer's right to refusal.</p> <p>(iiI) Leave disabled family member: max. 2 years, paid.</p> <p>(iv) Leave illness child: no max. up to 3 years and 5 days/year both</p>	<p>Yes.</p> <p>(i) Leave serious family reason: max. 30 days/year, unpaid;</p> <p>(ii) Leave care child under 12, disabled or dependent family member: max. 30 days/year, unpaid.</p> <p>(iii) Grandparents leave: 30 days, assist birth minor daughter.</p> <p>Proof of inevitable leave.</p>	<p>Yes.</p> <p>(i) Leave care children or dependent family member: max. 3/2 years, unpaid, job reservation.</p> <p>No opposition employer.</p>

	Employer's right to postpone.	Right to reinstatement + wage increases. No opposition employer.	(iv) Visiting children's school: max. 4 days/year, paid, max. 16 years.	parents from 4-8 years. (v) Leave gender violence victims.	Employer no right to oppose or limit.	
<p><b>8. Is there maternity leave? If so, what is its duration? Who holds the right to maternity leave? Are workers entitled to compensation or Social Security benefits during this time?</b></p>	<p>Yes.</p> <p>Birth: 15 weeks: 1-6 prior + 9 after birth: mother.</p> <p>Adoption leave: 6 weeks.</p> <p>Foster care: 6s days/year.</p> <p>Social Security benefit: 82% first 30 days + 75% rest.</p>	<p>Yes.</p> <p>Birth: 16 weeks: 6 prior + 10 after birth.</p> <p>Adoption: 10 weeks.</p> <p>Social Security benefit: 90% wage.</p>	<p>Yes.</p> <p>Private sector: 17 weeks: 8 prior + 9 after birth + special leave six months.</p> <p>Public sector: 5 months: 2 prior + 3 after.</p> <p>Social Security benefits: 100% wage (breach EU law).</p>	<p>Yes.</p> <p>Birth, adoption or foster care: 20 weeks: 8 prior + 12 after birth.</p> <p>Father: possibility use maternity leave for impossibility of the mother.</p> <p>Social Security benefits: 80% wage.</p>	<p>Yes.</p> <p>Birth or adoption: 120-150 days: 6 weeks after birth: mother + other weeks mother/father (if father 30 days: additional 30 days maternity leave).</p> <p>Social Security benefits: 100% (120 days) or 80% (150 days) wage.</p>	<p>Yes.</p> <p>Birth, adoption or foster care: 16 weeks: 6 after birth: mother + 10 mother/father.</p> <p>Social Security benefit: 100% wage (less if not contribution).</p>

<p><b>9. Is there paternity leave? If so, what is its duration? Who can exercise this maternity leave? Are workers entitled to compensation or Social Security benefits during this time?</b></p>	<p>Yes. 10 days: father (except same sex couples). Salary first 3 days + Social Security benefit 82%.</p>	<p>Yes. 11 days: father (max. 4 months since birth) + 3 days leave birth.</p>	<p>Yes. 2 days: father.</p>	<p>Yes, experimental measure. 2 days: father. Paid: 100% wage.</p>	<p>Yes. 15 days: father + 10 days non-compulsory. Social Security benefit: 100% wage.</p>	<p>Yes. 13 days: father (except same sex couples). Pending extension 4 weeks. Social Security benefit: 100% wage.</p>
<p><b>10. What is the role of collective bargaining in promoting equality between men and women in the workplace and work-life balance? Does collective bargaining often improve the legal regulation in this matter? Or does it limit the exercise of work-life balance rights?</b></p>	<p>Important role. Effective improvement: equal treatment, equal pay, work-life balance measures, etc.</p>	<p>No effective improvement. Obligation to adopt equality plan (companies &gt; 50 workers).</p>	<p>Important role. Effective improvement: parental leaves.</p>	<p>Important role. Improving and anticipating legal regulation.</p>	<p>Important role. Obligation to adopt equality measures or Equality Plan. Possibility affirmative actions.</p>	<p>No effective improvement. Obligation to adopt equality measures or Equality Plan (companies &gt; 250 workers). Possibility affirmative actions.</p>

<p><b>11. Other relevant aspects and personal assessment</b> [<i>optional</i>]</p>	<p>The regulation affects only the private sector.</p>	<p>Negative impact on equality, non-discrimination and work-life balance of the French labor reform proposal.</p>	<p>Gender equality legislation: adequate but ineffective due to socio-economic situation.</p>	<p>Important reform Jobs Act 2015.</p>	<p>2015: two online tools to analyze gender gap in companies.  2016: bill proposal quotas public and private companies.</p>	<p>-</p>
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## 3.2. Latin America

	Argentina	Brazil	Chile	Costa Rica	Mexico	Peru	Dominican Republic	Uruguay
<p><b>1. Is sex a cause of discrimination in your legal system?</b></p> <p><b>What other circumstances are discriminatory?</b></p> <p><b>Does the prohibition of discrimination also include indirect discrimination?</b></p>	<p>Yes</p> <p>Economic and social situation, ideology, nationality, political opinion, race, religion, physical condition.</p> <p>Indirect discrim.: prohibited (by interpretation).</p>	<p>Yes.</p> <p>Birth, race, skin color, etc.</p>	<p>Yes.</p> <p>Age, ancestry, marital status, nationality, political opinion, race, religion, skin color, social origin and union affiliation.</p> <p>Indirect discrim.: prohibited.</p>	<p>Yes</p> <p>Age, ancestry, disability, economical situation, ethnic origin, filiation, health, marital status, race, political opinion, religion, sexual orientation, social origin, union affiliation, etc.</p>	<p>Yes</p> <p>Age, disability, ethnic origin, family resp., health, marital status, migratory status, nationality, opinion, pregnancy, religion, sexual orientation, social status, etc.</p>	<p>Yes</p> <p>Age, disability, economic situation, ethnic and cultural identity, filiation, genetic, language, opinion, race, religion and dressing.</p> <p>Indirect discrim.: prohibited (by case law).</p>	<p>Yes</p> <p>Age, ancestry, disability, economic situation, health (HIV) language, nationality, opinion, origin, race, religion, skin color, social origin, sexual orientation and union affiliation.</p> <p>Indirect discrim.:</p>	<p>Yes</p> <p>Age, disability, imprisonment, national and ethnic origin, opinion, race, religion, sexual preferences, skin color, union affiliation and appearance.</p>

				(Most applicable 25.6.2017).			prohibited (by interpretation).	
<p><b>2. What is the legal consequence of discrimination on grounds of sex or other circumstances? Specifically, what is the legal consequence of an unfair dismissal of a pregnant worker or a worker exercising work-life balance rights?</b></p>	<p>Nullity: public employees &amp; union rep.</p> <p>Discrim. dismissal: reinstatement (case law) + damages (special compensation: 1 year wages).</p> <p>Burden of proof: employer.</p>	<p>Nullity</p> <p>Discrim. dismissal: reinstatement + full back pay (doubled when no reinstatement) + moral damages (collective when frequent and serious discrim.).</p>	<p>Nullity.</p> <p>Discrim. dismissal: reinstatement or comp., judicial compensation (6-11 monthly payments) + sanction.</p> <p>Workers' decision reinstatement or comp.</p>	<p>Nullity</p> <p>Discrim. dismissal: reinstatement + comp. (12 monthly payments).</p>	<p>Discrim. dismissal: reinstatement or comp. + sanction (50-2.500 min. salaries) (pregnancy).</p> <p>Burden of proof: employer.</p>	<p>Injunction stop discrim. + sanction.</p> <p>Discrim. dismissal: reinstatement, compensation (1.5 salary per year, max 12 salaries), sanction + social benefits.</p>	<p>Nullity.</p> <p>Discrim. dismissal: compensation (legal comp.: 5 monthly payments), damages + sanction.</p> <p>Burden of proof: employer.</p>	<p>Invalid.</p> <p>Discrim. dismissal: damages.</p> <p>Union discrim: nullity: reinstatement, full back pay + compensation.</p>
<p><b>3. Are there examples of wage discrimination, access to employment and/or</b></p>	<p>Yes.</p> <p>Relevant case law.</p>	<p>Yes.</p> <p>Job advertisement</p>	<p>Yes.</p> <p>Wage gap.</p>	<p>Yes.</p> <p>Lower wages in domestic work.</p>	<p>Yes.</p> <p>Restrictions employer organization</p>	<p>Few case law.</p> <p>Hardship to prove discrim.</p>	<p>Yes.</p> <p>Wage gap.</p> <p>Quotas: public sector</p>	<p>Yes.</p> <p>Few case law</p> <p>Wage gap.</p>

<p><b>promotion development between men and women?</b></p> <p><b>What treatment do these cases receive by the legislation and case law?</b></p> <p><b>What measures does the legislation regulate to promote equal treatment between men and women in the workplace?</b></p>	<p>Special Commission equality in the labor market.</p> <p>Quotas: union governing positions and negotiating bodies.</p>		<p>Specific legal prohibition wage discrim.</p>	<p>Quotas: parity in specific institutions.</p>	<p>and discipline faculties.</p>	<p>Quotas: specific political positions.</p>	<p>(popular election, judiciary and control institutions). No measures private sector.</p>	<p>Legal duties equal treatment, opportunities and no wage discrimination</p> <p>No pregnancy certifications hiring process.</p> <p>Affirmative action.</p> <p>Quota: public sector 50% first hires young women (15-24 years).</p>
<p><b>4. What rights of work-life balance are recognized in your labor regulation?</b></p> <p><b>Specifically, does the labor regulation recognize workers</b></p>	<p>No specific right to work-life balance</p>	<p>No specific right to work-life balance.</p> <p>Legal measures</p>	<p>Work-life balance rights:</p> <p>(i) Breastfeed child &lt; 1 year, women.</p>	<p>No specific right to work-life balance.</p> <p>Legal measures:</p> <p>(i) 1 hour day breastfeeding;</p>	<p>Work-life balance rights:</p> <p>(i) ½ hour x 2 absence breastfeeding,</p>	<p>No specific right to work-life balance.</p> <p>Legal measures:</p> <p>(i) 1 hour paid absence</p>	<p>Work-life balance rights</p> <p>(i) 20 min. x 3 time day breastfeeding, during the time needed.</p>	<p>Work-life balance rights:</p> <p>(i) Change working time for female night workers (pregnant or</p>

<p><b>the right to adapt their working time (distribution and/or reduction of working hours)?</b></p> <p><b>What capacity does the employer have to oppose or limit the exercise of these rights?</b></p>		<p>(i) Right to breastfeed in the workplace</p> <p>(ii) Possibility to set holidays same time family members in the firm.</p>	<p>(ii) Child care serious illness (&lt; 1 year and other cases &lt; 18 years).</p> <p>(iii) Day-nursery.</p> <p>(iv) Change of duties with no remuneration reductions.</p> <p>No opposition employer.</p>	<p>agreement</p> <p>time of day.</p>	<p>max.6 months.</p> <p>(ii) Nursery (women, widower or divorced men).</p> <p>Agreement:</p> <p>(i) Worktime reduction (agreement)</p> <p>(ii) Right to determine working time: agreement.</p>	<p>breastfeeding (max. 1 year).</p> <p>(ii) Firms &gt; 20 women in fertile age (15-49): adapt breastfeeding place.</p>	<p>(ii) Worktime reduction after delivery (max. 6 months).</p>	<p>after 1 year delivery)</p> <p>(ii) ½ hour x 2 absence breastfeeding</p> <p>(iii) Reduction working time childcare, max. 6 years.</p> <p>No opposition employer.</p>
<p><b>5. Are part-time contracts used as an instrument to achieve work-life balance?</b></p> <p><b>If so, is the legal regime of part-time</b></p>	<p>Yes.</p>	<p>No.</p> <p>Change full-time to part-time: authorization collective agreement.</p>	<p>Yes/No.</p> <p>Limited effects: low part-time workers rate.</p>	<p>Yes/No.</p> <p>Used to meet employer needs.</p> <p>Social security contributions discourages</p>	<p>Yes.</p> <p>No complete regulation.</p>	<p>Yes/No.</p> <p>Used to meet employer needs.</p> <p>Upward trend part-time work.</p>	<p>No.</p>	<p>No regulation.</p> <p>Only stipulation: disabled workers.</p>

<b>work adequate for this purpose?</b>				part-time work.		Legal regime adequate to work-life balance.		
<b>6. Can the employer alter working hours of workers exercising work-life balance rights through overtime and/or irregular distribution of working time?</b>	Same regulation all employees.	Overtime: written authorization	Same regulation all employees.	Same regulation all employees.	Prior clause and agreement.	Same regulation all employees. Prior notification and bargaining.	No Modification: exceptional circumstances.	No regulation. Same regulation all employees.
<b>7. Do workers have permits or the right to suspend the employment contract (leave of absence) due to family and personal circumstances? If so, are they paid leave of absences? Do workers</b>	Yes (i) 3-6 months after maternity leave. No opposition employer. Other permits: unpaid, agreement.	No (i) Max. 2 days per year to accompany pregnant wife medical services.	Yes. (i) Serious accident, terminal illness or dead risk: mother, 10 days per year. (ii) Disabled child (< 6	No (i) Employee responsible of terminal patient: leave + comp. Other permits: agreement employer.	No. Agreed permits: unpaid, job reservation.	Yes. (i) Serious and terminal illness or accident family member: 7-30 days, paid (consideration as holidays).	Yes. (i) Medical consultation child < 1 year: 1/2 day per month. (ii) Weeding: 5 days, paid. (iii) Death grandparents,	No. (i) Birth or adopting disabled child: 6 months, unpaid. Other permits: unpaid, agreement.

<p><b>maintain the right to return to their previous job post?</b></p> <p><b>What the employer is recognized ability to limit the exercise of these rights?</b></p> <p><b>What capacity does the employer have to oppose or limit the exercise of these rights?</b></p>			<p>years), 10 days per year, parents.</p> <p>(iii) Feed child &lt; 6 years: 1 hour, paid + commuting costs.</p> <p>(iv) Medial assistance child &lt; 6 years: 1 day per year.</p> <p>(v) Weeding: 5 continuous days.</p> <p>Workers' rights.</p> <p>No opposition employer.</p>			<p>(ii) Medical assistance and therapy of child and dependent family member: max 56 hours per year, paid (consideration as holidays).</p>	<p>parents, children, spouse: 3 days, paid.</p>	
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<p><b>8. Is there maternity leave? If so, what is its duration? Who holds the right to maternity leave?</b></p> <p><b>Are workers entitled to compensation or Social Security benefits during this time?</b></p>	<p>Yes.</p> <p>Birth: 90 days: 30-45 prior + 45-60 after delivery.</p> <p>Max 6 months public employment.</p> <p>Adoption: collective agreement.</p> <p>Social Security benefits and medical services.</p>	<p>Yes.</p> <p>Birth: 120 days: 28 days prior delivery</p> <p>Adoption: only one parent right maternity leave.</p> <p>Social Security benefits.</p>	<p>Yes.</p> <p>Birth: 18 weeks: 6 prior: mother + 12 after delivery: mother or father.</p> <p>Times varies special cases.</p> <p>Social Security benefit.</p>	<p>Yes.</p> <p>Birth: 4 months: 1 prior + 3 after delivery</p> <p>Times varies medical prescription.</p> <p>Adoption: 3 months after adoption.</p> <p>Social Security benefit.</p>	<p>Yes.</p> <p>Birth: 12 weeks: 6 prior + 6 after delivery.</p> <p>Times varies special cases.</p> <p>Adoption: 6 weeks after adoption.</p> <p>Social Security benefit: (i) medical services, (ii) help in kind (6 months) and (iii) 1 layette.</p>	<p>Yes.</p> <p>Birth: 98 days: 49 prior + 49 after delivery.</p> <p>Times varies special cases.</p> <p>Addition: two periods + holidays after postnatal leave (information employer).</p> <p>Adoption (&lt; 12 years): 30 days.</p> <p>Social Security benefit.</p>	<p>Yes.</p> <p>Birth: 12 weeks: 6 prior + 6 after delivery.</p> <p>(Increase 14 weeks 2017).</p> <p>Addition: holidays after postnatal leave</p> <p>Social Security benefits: (i) pre and postnatal periods; (ii) incapacity &gt; 4 days after delivery; (iii) subsidy breastfeeding (1 year).</p>	<p>Yes.</p> <p>Birth: 14 weeks: 6 prior + 8 after delivery.</p> <p>Times varies disability.</p> <p>Adoption: 6 weeks.</p> <p>Social security benefit: 50% salary.</p> <p>Extensions maternity leave: unpaid.</p>
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<p><b>9. Is there paternity leave? If so, what is its duration? Who can exercise this maternity leave?</b></p> <p><b>Are workers entitled to compensation or Social Security benefits during this time?</b></p>	<p>Yes</p> <p>Private sector: 2 days, paid employer.</p>	<p>Yes</p> <p>Private sector: 5 days, paid employer.</p> <p>Public sector: 20 days.</p>	<p>Yes</p> <p>5 paid days.</p> <p>Possibility share maternity leave (12 weeks).</p>	<p>No</p> <p>Employer's decision.</p>	<p>Yes</p> <p>5 paid days.</p>	<p>Yes</p> <p>4 paid days.</p>	<p>Yes</p> <p>2 paid days.</p>	<p>Yes</p> <p>13 paid days: (3 employer + 10 Social Security).</p> <p>Adoption: 10 days.</p>
<p><b>10. What is the role of collective bargaining in promoting equality between men and women in the workplace and work-life balance?</b></p> <p><b>Does collective bargaining often improve the legal regulation in this matter? Or does it limit the exercise of</b></p>	<p>Important role, especially company-level agreements.</p> <p>Improvement legal regulation work-life balance (ex. paternity leave).</p>	<p>Potential role.</p> <p>Collective agreements focused mainly on other rights.</p>	<p>Potential role.</p>	<p>None.</p> <p>Collective agreements hardly used in private sector.</p>	<p>Important role.</p> <p>Effective improvement work-life balance measures and women unionization.</p>	<p>Reduced impact.</p> <p>Low rate of unionization, especially women.</p>	<p>None.</p> <p>Collective bargaining is hardly ever used.</p>	<p>Moderated.</p> <p>Promotes gender equality (upwards trend).</p> <p>Reduced impact on work-life balance.</p>

<p><b>work-life balance rights?</b></p>								
<p><b>11. Other relevant aspects and personal assessment</b> [<i>optional</i>]</p>	<p>Controversy: legal effects discriminatory actions.</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>Need of ratifying Covenant 156 (ILO)</p>	<p>-</p>	<p>-</p>	<p>Recent legislative developments.</p>

## 3.3. North America

	<b>Canada</b>	<b>United States</b>
<p><b>1. Is sex a cause of discrimination in your legal system?</b></p> <p><b>What other circumstances are discriminatory?</b></p> <p><b>Does the prohibition of discrimination also include indirect discrimination?</b></p>	<p>Yes.</p> <p>Race, ancestry, origin, color, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.</p> <p>No distinction direct and indirect discrimination: discrimination prohibited, unless bona fide occupational requirement.</p>	<p>Yes.</p> <p>Race, color, national origin, religion, sexual orientation, gender identity, age (&gt; 40 years), disability, service arm forces, union affiliation, etc.</p> <p>Indirect discrimination: prohibited, unless business necessity.</p>
<p><b>2. What is the legal consequence of discrimination on grounds of sex or other circumstances?</b></p> <p><b>Specifically, what is the legal consequence of an unfair dismissal of a pregnant worker or a worker exercising work-life balance rights?</b></p>	<p>Court decision.</p> <p>Discriminatory dismissal: compensation and/or reinstatement.</p>	<p>Different consequences.</p> <p>Discriminatory dismissal: compensatory and punitive damages.</p> <p>Right to dismiss failure to work full-time or overtime (except collective agreement).</p>
<p><b>3. Are there examples of wage discrimination, access to employment and/or promotion development between men and women?</b></p>	<p>General prohibition: includes wage, hiring and promotion discrimination.</p>	<p>Limited case law wage discrimination: justification wage differences on market factors.</p>

<p><b>What treatment do these cases receive by the legislation and case law?</b></p> <p><b>What measures does the legislation regulate to promote equal treatment between men and women in the workplace?</b></p>	<p>Legislative measures: workplace analysis, reviews of pay practices.</p>	<p>No requirement affirmative actions.</p>
<p><b>4. What rights of work-life balance are recognized in your labor regulation?</b></p> <p><b>Specifically, does the labor regulation recognize workers the right to adapt their working time (distribution and/or reduction of working hours)?</b></p> <p><b>What capacity does the employer have to oppose or limit the exercise of these rights?</b></p>	<p>Limited policy response.</p> <p>Duty to accommodation: work obligations interfere childcare + ineffective alternative arrangements + except undue hardship (very limited).</p>	<p>No.</p> <p>No right to accommodation.</p>
<p><b>5. Are part-time contracts used as an instrument to achieve work-life balance?</b></p> <p><b>If so, is the legal regime of part-time work adequate for this purpose?</b></p>	<p>Yes.</p> <p>Recent decline.</p> <p>Less rights part-time workers: wage and unemployment benefits.</p>	<p>No.</p>
<p><b>6. Can the employer alter working hours of workers exercising work-life balance rights through overtime and/or irregular distribution of working time?</b></p>	<p>Same regulation all employees.</p>	<p>Same regulation all employees.</p>

<p><b>7. Do workers have permits or the right to suspend the employment contract (leave of absence) due to family and personal circumstances? If so, are they paid leave of absences? Do workers maintain the right to return to their previous job post?</b></p> <p><b>What the employer is recognized ability to limit the exercise of these rights? What capacity does the employer have to oppose or limit the exercise of these rights?</b></p>	<p>Yes.</p> <p>(i) Emergency leave: 10 days, illness, medical emergency, death personal or family member, unpaid (exceptions), &gt; 50 workers.</p> <p>(ii) Family caregiver leave</p> <p>(iii) Critically ill childcare leave.</p> <p>Right to reinstatement and seniority.</p>	<p>Yes/No.</p> <p>Only covered workers Family Medical Leave Act.</p> <p>(i) Medical leave: 12 weeks/year, serious medical condition personal or family member, unpaid.</p> <p>Right to reinstatement.</p>
<p><b>8. Is there maternity leave? If so, what is its duration? Who holds the right to maternity leave?</b></p> <p><b>Are workers entitled to compensation or Social Security benefits during this time?</b></p>	<p>Yes.</p> <p>Birth and adoption: 15-18 weeks, prior and/or after birth, min. work qualification.</p> <p>Benefits: 55% wage.</p>	<p>Yes/No.</p> <p>Only covered workers Family Medical Leave Act.</p> <p>Birth and adoption: 12 weeks.</p> <p>Unpaid: (i) unless employer paid leave policy; (ii) exception 3 state laws.</p>
<p><b>9. Is there paternity leave? If so, what is its duration? Who can exercise this maternity leave?</b></p> <p><b>Are workers entitled to compensation or Social Security benefits during this time?</b></p>	<p>No.</p> <p>Parental leave: 35-52 weeks, mother or father, min. work qualification, benefits: 55% wage.</p>	<p>No.</p> <p>Exception: 3 state laws (ex: California law).</p>

	Exception: Quebec: 5 weeks paternity leave: father.	
<p><b>10. What is the role of collective bargaining in promoting equality between men and women in the workplace and work-life balance?</b></p> <p><b>Does collective bargaining often improve the legal regulation in this matter? Or does it limit the exercise of work-life balance rights?</b></p>	<p>Importance unions to negotiate and enforce equality measures.</p> <p>Examples: employer-paid leaves, flexible work arrangements, etc.</p>	<p>Insignificant role.</p> <p>Current debate between union members.</p>
<p><b>11. Other relevant aspects and personal assessment</b> <i>[optional]</i></p>	-	Important case law harassment based on sex.