



LATEST LEGAL LABOR NEWS FOR **THE END OF 2022** IN SPAIN

October 2022



SUMMARY

1. Law for equal treatment and non-discrimination
2. Law that guarantees sexual freedom of employees
3. Artificial intelligence in sanction proceedings by the labor inspection





LAW FOR THE EQUAL TREATMENT AND NON-DISCRIMINATION

- New law 15/2022 of July



PURPOSE

Regulate the rights and obligations of individuals and legal entities:
Both public or private



Provide measures to prevent.

Eliminate and correct all forms of direct and indirect discrimination.





LAW FOR THE EQUAL TREATMENT AND NON-DISCRIMINATION

HIGHLIGHTS TO BE AWARE OF

The law incorporates new grounds of discrimination to the already existing ones:

- **Existing grounds:** sex, racial or ethnic origin, discapacity, age, religion or beliefs and sexual orientation.
- **New grounds:** illness or health condition, serological status and/or generic predisposition to suffer pathologies and disorders, sexual identity, gender expression, language and socioeconomic status.
- **Retaliation is prohibited.** It includes adverse treatment for intervening, participating or cooperating in an administrative proceeding or Court process aimed at preventing or bringing to an end a discriminatory situation, or for having filed an **internal complaint** of any kind with the same object.





NEW MODALITIES OF DISCRIMINATION

- **Discrimination by association**

It applies to a person who has a relationship with another one who belongs to the discriminated group.

- **Discrimination by mistake**

Based on an incorrect appreciation of characteristics of the individual.

- **Multiple**

Discriminated against simultaneously or consecutively for two or more causes provided by the law.

- **Intersectional discrimination**

When various causes provided for in the law concur or interact generating a specific form of discrimination.





LAW FOR THE EQUAL TREATMENT AND NON-DISCRIMINATION

LAST BUT NO LEAST

- Denial of reasonable accommodation to disabled employees shall be deemed to be direct discrimination unless disproportionate or undue burden.
- Medical sick leave (even if it is short) can not be a valid reason for dismissal, because it could be declared null and void, and a possible compensation for damages.
- The burden will be on the employer to prove that there is a reasonable justification for the dismissal that is proportionate.





LAW FOR THE EQUAL TREATMENT AND NON-DISCRIMINATION

MUST PAY ATENTION I

Regulate the rights and obligations of individuals and legal entities:
Both public or private

- Minor offenses – fines between **€300 and €10.000**
- Serious offenses – fines between **€10.001 and €40.000**
- Very serious offenses – fines between **€40.001 and €500.000**

Additionally, even a deadlock or closure of the company by the Labour Authority, in very serious cases and up to 5 years.





MUST PAY ATENTION II

- Companies must take **preventive** and **appropriate measures** to put an end to discriminatory situations.
- **Non-compliance** will result in penalties, and damages, which can be very substantial because full and effective reparation is required for the victim(s).
- Once the **discrimination** has been **proven**, the existence of moral damage will be presumed, which will be assessed in accordance with the circumstances of the case. Audience in social media shall be taken into account.
- The company will also be jointly liable with the employee responsible for damages when it has **not prevented discrimination**.





 LAW FOR THE EQUAL TREATMENT AND NON-DISCRIMINATION
ACTIONS THAT COMPANIES SHOULD IMPLEMENT

- Have comprehensive anti-harassment and discrimination policies.
- Be more specific on the facts and grounds of breach of contract when drafting letters of dismissal, especially if the employee is on sick leave (even if it is short).
- Companies' dismissal letters should not be generic due to risks of nullity.
- It is forbidden to ask about the candidate's state of health in job interviews.



LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES

- New law 10/2022 of
September



 LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES

PURPOSE

Update for employers and employees to introduce **rights for victims of sexual violence**, connected to the current regulations for victims of gender violence.



 LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES

PRINCIPLE FOR EMPLOYERS

Sexual violence are acts of sexual nature that are not consented nor consensual, or acts that condition the free development of sexual life at work, including the digital domain.



 LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES
HIGHLIGHTS TO BE AWARE OF

Victims of sexual violence shall have the right to:

- Reduce or rearrange their working time.
- Geographical mobility.
- Change of workplace.
- Adaption of their job.



LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES

HIGHLIGHTS TO BE AWARE OF

- The support they would require due to their disability for their reincorporation.
- The suspension of the employment relationship up to 18 months with job reservation up to one year.
- The termination of the employment contract with right of compensation of 20 days salary per year of service (with one year's salary cap).





 LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES

LAST BUT NOT LEAST

Companies **must promote** specified working conditions to prevent wrongful conduct and crimes against sexual freedom and moral integrity at work, emphasizing on sexual harassment and harassment based on sex.



 LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES

ACTIONS THAT COMPANIES SHOULD IMPLEMENT

- Establish a complaints channel for victims, including also digital acts.
- Codes of good practice, preventive policies and training.
- Include sexual violence among the concurrent occupational risks in the risk assessment of the different jobs occupied by female employees and should train and inform them about it.




 LAW THAT GUARANTEES SEXUAL FREEDOM OF EMPLOYEES
**ACTIONS THAT COMPANIES
SHOULD IMPLEMENT**

- Establish measures that must be negotiated with the workers' representative.
- Promote **awareness** and offer training to all the staff for comprehensive protection against sexual violence.



ARTIFICIAL INTELLIGENCE IN SANCTION PROCEEDINGS BY THE LABOR INSPECTION

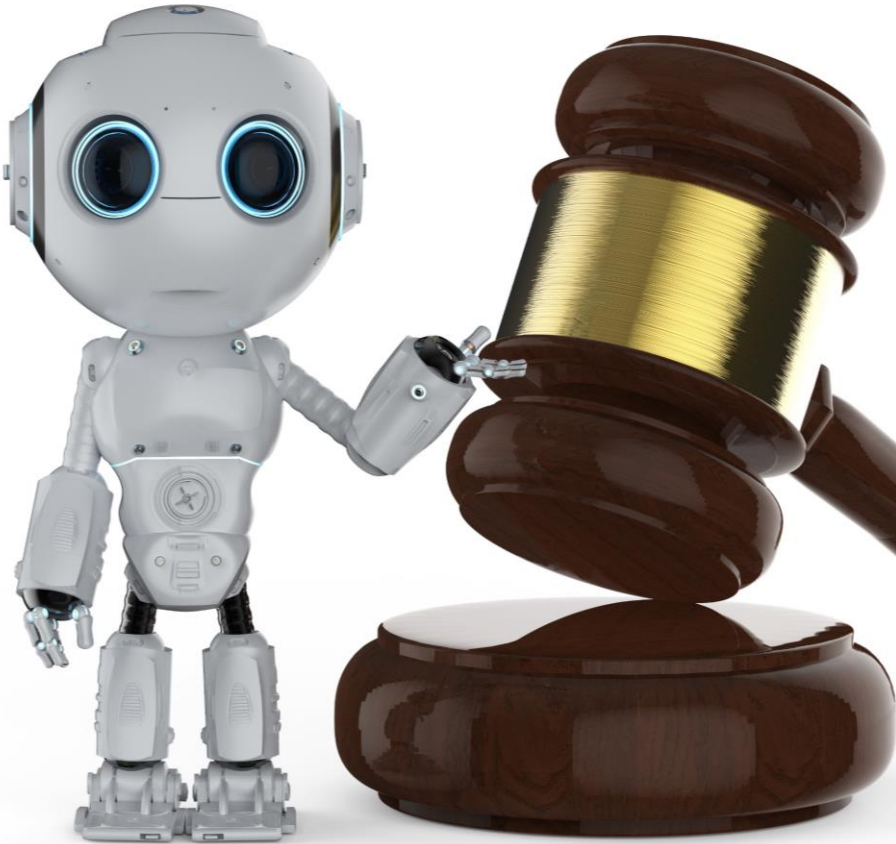
- Royal decree 688/2021
- Newly implemented in January 2022



IA IN SANCTION PROCEEDINGS BY THE LABOR INSPECTION
OBJECTIVE

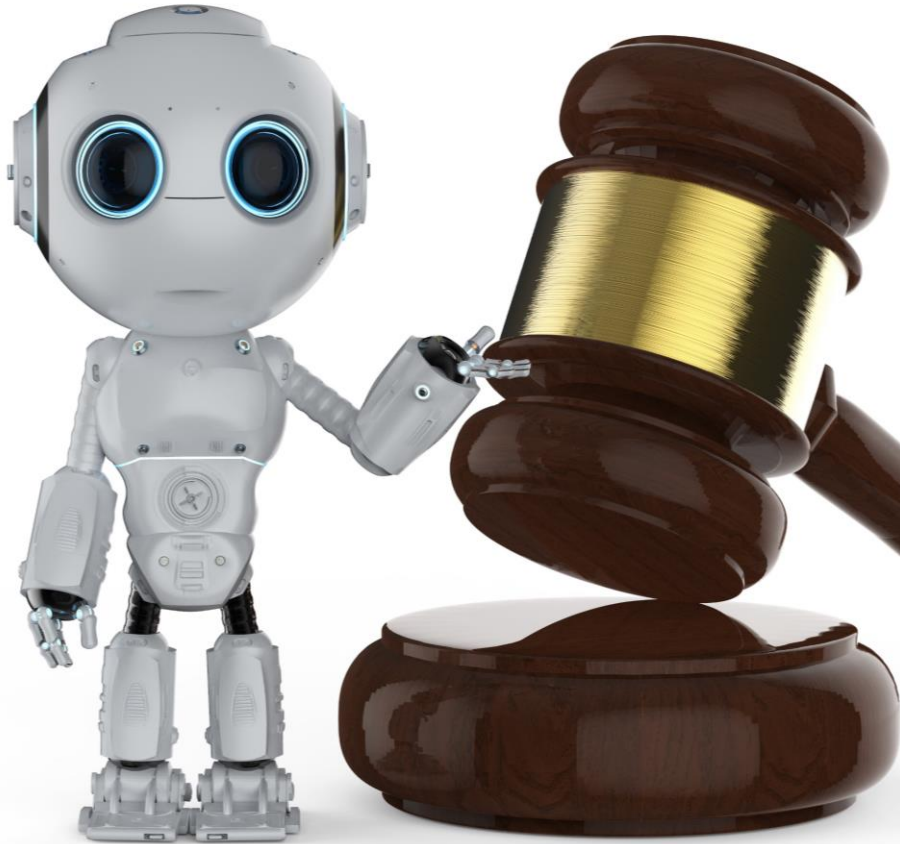
Computer programs will autonomously and automatically review areas that **don't require the intervention of the Labor and Social Security Inspection** such as:

- Detecting and fighting fraud.
- Failure to pay contributions within the deadline.
- Verification of the correct Social Security contribution based on the statutory wages set out by the applicable collective agreement.





IA IN SANCTION PROCEEDINGS BY THE LABOR INSPECTION
HIGHLIGHTS TO BE AWARE OF

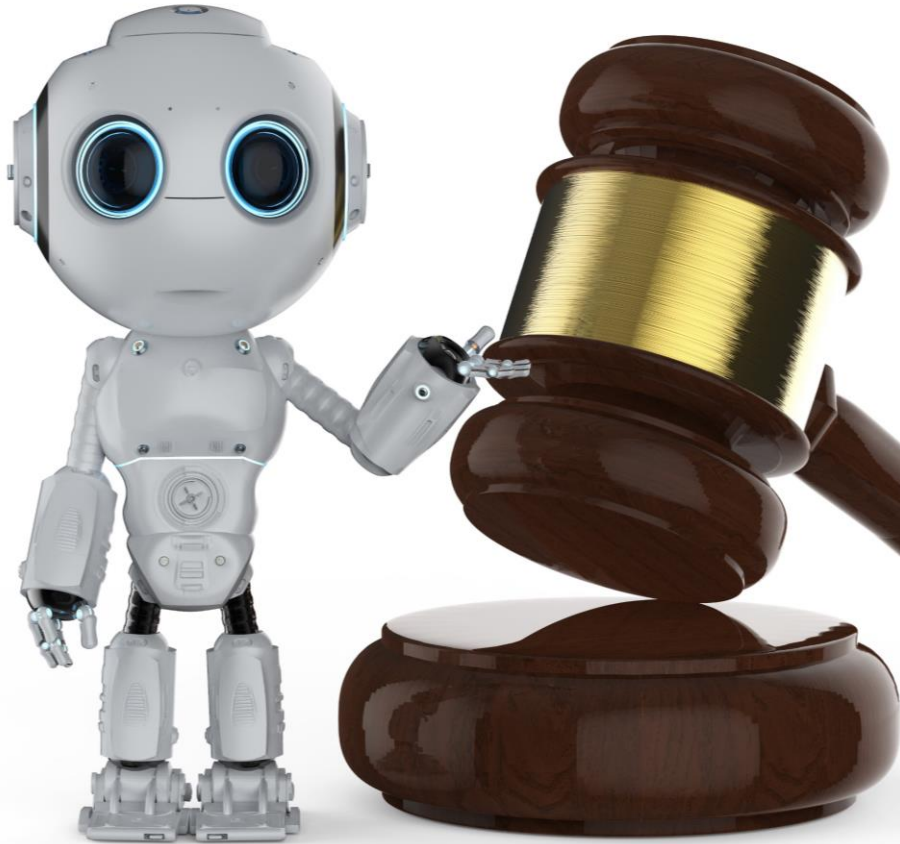


The **new automatic proceeding**:

- Speeds up and expands the sanctioning process.
- It is more efficient in analyzing data.
- Less public officers are involved.



IA IN SANCTION PROCEDINGS BY THE LABOR INSPECTION
HIGHLIGHTS TO BE AWARE OF



- Right of defense for companies is reduced. The **Inspector only intervenes if the company contests after receiving the sanction.**
- We anticipate an increase of sanctions and errors from the big data analysis derived from to the monitoring carried out by the Labour Authority.
- It is currently being applied in monitoring of use of **temporary contract.**



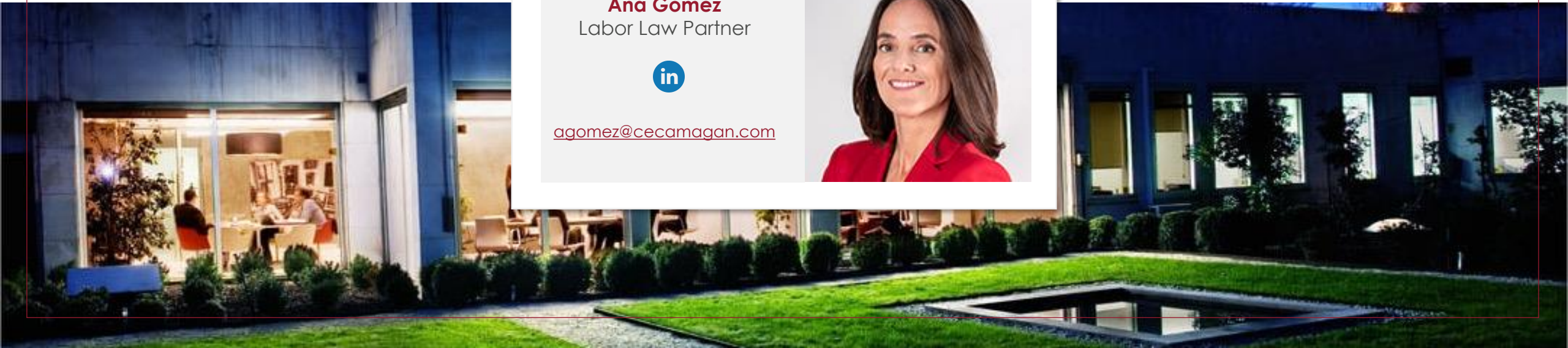


Can we help you ?

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