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Spain's Government Response and Preparedness for the COVID-19 Pandemic: Lessons Learned on How Best to Ensure A Safe and Healthy Working Environment

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Abstract:

The Covid-19 pandemic presented huge challenges for essential workers and for the global workforce as a whole. As the true burden on human capital continues to be unravelled, national systems are now in the process of identifying the gaps and learning from experiences so as to be able to better understand the occupational impact when managing future epidemics, pandemics or public health crisis. This paper, based on the Spanish pandemic performance response, provides an analysis of how OSH regulatory frameworks responded to the circumstances of key workers during this exceptional period. The review assesses OSH-related interventions and exposes deficiencies in response to this public health emergency, through an examination of legislative and regulatory enforcement, the country's preparedness and resilience, as well as the roles and interventions from central government, devolved administrations, regional and local authorities with a responsibility on OSH.

Keywords: *Occupational safety and health; Essential workers; Covid-19 pandemic; Pandemic preparedness;*

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1. Background to the OSH system

1.1. Introduction

The Spanish occupational safety and health framework is based around Law 31/95, the Prevention of Workplace Risks Law (Prevención de Riesgos Laborales) that aims to protect workers regarding occupational risks and set standards on the work environment. This law comprises 54 Articles and amounts to a comprehensive codification of health and safety law. It brought the Spanish system into line with European Union law, mainly through EEC Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work. It constitutes a general framework, complemented by a significant number of statutory regulations that set out specific obligations in other technical fields of occupational safety and health (OSH).

Spain is based on a decentralised system divided into 17 autonomous communities. Each of these communities has its own government and Parliament. There are also 52 provinces and more than 8,000 municipalities. When it comes to the articulation of legislative developments, there are two levels of legislation in the Spanish system: the law of the central state and rules created by the autonomous communities. National OSH regulations are executed by the 17 autonomous communities through their own OSH specialists in Ministries and OSH institutes.

This national and regional separation requires an efficient level of coordination and collaboration to succeed not only in tackling key OSH challenges, but also in managing historical issues such as the worrying figures relating to the segments of the workforce who are in the informal economy, in undeclared forms of work, or not registered with social security authorities. This was the case for professions such as those in digital labour platforms with a significant concentration of essential workers, many in forms of undeclared work and lacking from the implementation of OSH risk prevention and management systems.^{1,2} This

¹ Stephany, F. et al. 'Distancing bonus or downscaling loss? The changing livelihood of US online workers in times of COVID-19'. *Journal of Economic and Human Geography*, Vol. 111, No 3, pp. 561-573. 2020.

² ILO. *World employment and social outlook: the role of digital labour platforms in transforming the world of work*. ILO Flagship Report. 2021. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_771749.pdf

had a knock-on effect for workers employed in essential services, as, according to the European Commission,³ more than 80 per cent of undeclared work detected in 2015 was found in four economic sectors: hospitality and restaurants (34.4 per cent); services (25.2 per cent – including professional services (12.4 per cent) and education, healthcare, sport and leisure services (10.4 per cent)); retail trade (13.1 per cent); and construction (7.5 per cent). Agriculture accounts for a further 6.5 per cent of cases.

The Spanish public health system has perpetuated a series of structural issues since the 2008 global financial recession:

- The public health system is of a fragmented nature, with key responsibilities transferred, as a result of the institutional division into 17 health regions, leaving restricted room for manoeuvre and weakening the capacity of the Ministry of Public Health.
- There has been a historical deficiency in investment in the public health system in comparison with similar countries in the European region.

There are other figures that play a key role in the overall continuity of the system. The Ministry of Employment and Social Economy (Ministerio de Trabajo y Economía Social, MITES) is primarily responsible for health and safety. The National Institute for Occupational Safety and Health (Instituto Nacional de Seguridad y Salud en el Trabajo, INSST) is the scientific and technical body of the state general administration, whose mission is the promotion of improvements in health and safety conditions. The Spanish worker compensation system works through a hybrid division between public and private sectors. Compensation is organised by Mutual Insurance Societies for Accidents at Work (Mutuas de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social, MATEPSS), which are private entities with dependence from the Ministry of Employment and Social Security. They are responsible for insuring against work-related accidents, injuries and occupational diseases as well as providing risk prevention support and awareness of occupational safety and health. The Labour and Social Security Inspectorate (Inspección de Trabajo y Seguridad Social, ITSS) is a national public service with general responsibility for labour, industrial relations and health and safety at work. The enforcement authority oversees both

³ European Commission. *Factsheet on Undeclared Work – Spain*. <https://ec.europa.eu/social/ajax/BlobServlet?docId=18178&langId=en>

the monitoring and supervising the correct application of health and safety rules.

1.2. Special Characteristics of the Spanish Occupational Safety and Health Regulatory Framework

The overall decentralised structure of health and safety at work in Spain relies on a significant number of provisions applied from European law under the umbrella of a complex regional hierarchy in which many of the regions implement their own laws. The basic Spanish law is set out in a general statute, supplemented by numerous regulations covering specific aspects of health and safety.

Prior to the occupational safety and health law, Spain had adopted the International Labour Organization Convention 155 in June 1981. This contributed to the setting of standards on the level of provisions and protections on occupational safety and health. This instrument, together with the support of the transposition of the European Framework Directive, required fit-for-purpose legislative frameworks.

When it comes to specific attributions to the number of essential workers, the OSH regulatory framework classifies as vulnerable workers the following groups: pregnant and lactating workers, young workers and professions operating in hazardous environments and activities (for example, working at height and in confined spaces). During the pandemic there was a remarkable amendment to the term “vulnerable worker”⁴. It was now to include groups vulnerable to the coronavirus, namely those affected by lifelong conditions such as diabetes and cardiovascular diseases, or those living with hypertension, chronic lung disease, cancer, immune deficiency, or who were pregnant or aged above 60 years old.

The new system did not make a distinction with workers classed as essential, nor did it apply to domestic workers, self-employed workers without workers under their management, public service workers, the police and armed forces, customs officers, as well as civil protection officers and forensics in case of severe risk or disaster. Public health legislative frameworks, such as the *Ley General de Salud Pública 33/2011*⁵, provides some level of protection to healthcare workers. On a similar

⁴ Ministerio de Sanidad. Procedimiento de actuación para los servicios de prevención de riesgos laborales frente a la exposición al SARS-CoV-2. Madrid, June 2022.

⁵ Ley 33/2011, de 4 de octubre, General de Salud Pública. BOE» núm. 240, de 05/10/2011. <https://www.boe.es/buscar/act.php?id=BOE-A-2011-15623>

note, *Royal Decree 258/1999*⁶ establishes minimum occupational safety and health conditions and medical coverage for seafarers.

Several factors have converged, clearly damaging the ability of the system to face traditional workplace safety issues and unprecedented challenges such as the Covid-19 pandemic. Among these are the short period of time for the Spanish OSH law to consolidate (27 years since its inception). Other structural issues include the abuse of outsourcing practices, low uptake from small and medium-sized enterprises (SMEs) and the flawed institutional approach from public authorities to regulate the commercialisation of this function. The strong territorial dimension and the historically ineffective decentralised system of OSH regulators were placed under stress in their ability to apply policy responses (through national and regionally led measures) and adapt to the unexpected challenges of the Covid-19 crisis. This happened at a time when the key public institutions were facing a declining trend in capacity-building and human resources, affecting the national OSH body and the labour inspectorate authority, which has one of the lowest ratios in Europe of inspectors (1 per 19,000 workers, against the International Labour Organization recommendation of 1 per 10,000 in industrialised countries). This issue was shared by the regional labour and OSH counterparts, who have also lacked the staff and funding necessary for conducting OSH inspections effectively. Measures to reverse this situation did not prove successful. Among these were the creation of a specific Management Unit⁷ to deal with the impact of Covid-19 in work and a spectrum of temporary labour regulation proceedings.

National governments, regions and municipalities implemented a series of interventions at national and sub-national levels, in many cases partially redundant measures during transition stages of alarm, de-escalation and the spread of new coronavirus variants. Other measures had a strong economic protection remit, such as the approval of a new minimum income scheme (Ingreso Mínimo Vital – IMV) entering into force on 15 June 2020, and the introduction of temporary employment adjustment schemes (ERTEs – Expedientes de Regulación Temporal de Empleo) that

⁶ Real Decreto 258/1999, de 12 de febrero, por el que se establecen condiciones mínimas sobre la protección de la salud y la asistencia médica de los trabajadores del mar. BOE» núm. 47, de 24 de febrero de 1999. <https://www.boe.es/buscar/doc.php?id=BOE-A-1999-4527>

⁷ La Inspección de Trabajo y Seguridad Social crea una Unidad de Gestión específica para afrontar la incidencia del COVID-19 en el ámbito laboral, available at: <http://prensa.mitramiss.gob.es/WebPrensa/noticias/laboral/detalle/3753>

helped to protect unemployment and business continuity. ERTes were also extended to sectors considered essential that had suffered a reduction in revenue due to confinement measures.

2. The OSH system and the Covid-19 pandemic

2.1. Initial Work-Related Steps in Tackling the Pandemic

The first confirmed case of SARS-CoV-2 in Spain was reported on 31 January 2020. The main governmental initiative to tackle this issue consisted of a batch of Royal Decrees (*Real Decreto-ley 6/2020*, 10 Marzo⁸, *por el que se adoptan determinadas medidas urgentes en el ámbito económico y para la protección de la salud pública*; *Real Decreto-ley 8/2020*⁹, 17 March, *de medidas urgentes extraordinarias para hacer frente al impacto económico y social de la Covid-19*) that went alongside the declaration of a state of alarm on 13 March.¹⁰

On 29 March, the Government announced the closure of non-essential workplaces until 9 April 2020, including compulsory paid leave from 30 March until 9 April 2020. On 22 April, it approved the right of employees who had to take care of dependent family members to adapt their working conditions and reduce working hours under specific circumstances due to Covid-19. Measures involving temporary derogations from working time and leave provisions¹¹ were one of the measures to ensure the smooth functioning of essential services.

On 10 June, the Spanish Government published several urgent measures in relation to the prevention, containment and coordination of the health crisis caused by Covid-19, to take effect on expiration of the declaration of alarm. The key OSH measures to be applied to workplaces can be

⁸ Real Decreto-ley 6/2020, 10 Marzo, por el que se adoptan determinadas medidas urgentes en el ámbito económico y para la protección de la salud pública. BOE» núm. 62, de 11/03/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3434>

⁹ Real Decreto-ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19. BOE» núm. 73, de 18/03/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3824>

¹⁰ Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por la covid-19. «BOE» núm. 67, de 14 de marzo de 2020. <https://www.boe.es/buscar/doc.php?id=BOE-A-2020-3692>

¹¹ Eurofound, 2020b, Long-term care workforce: Employment and working conditions, Publications Office of the European Union, Luxembourg, available at:<https://www.eurofound.europa.eu/publications/customised-report/2020/long-term-care-workforce-employment-and-working-conditions>.

summarised in the following measures,¹² and complemented by existing occupational safety and health regulations. Protocols for cleaning, ventilation and disinfection, a set of hygiene measures for workers, interventions addressing organisational issues (minimum safety distance, changes in location of workstations or staggering shift patterns), reducing the number of employees and clients in common areas, phased return-to-work strategies and facilitating telework were all possible.

While many of these measures had a general approach, there were others that included a more specific prevention and hygiene focus by targeting essential sectors of activity (health facilities, educational settings, the social care sector, retail spaces, hotel and accommodation, hospitality and so on).

An important distinction was made (and further clarified by the labour inspectorate¹³) on how to implement these measures practically in workplaces. This was based on workplaces that were previously exposed to and had experienced risks of a biological nature. These included the health and social care sector, in which SARS-CoV-2 was added to the risk group of biological agents (covered by Royal Decree 664/1997¹⁴) to be covered by prevention and risk management strategies. On the other hand, a distinction was made with those workplaces that had to apply the guidance and recommendations from the public health authority to avoid the spread of infections, but didn't have previous experience with work-related risks of a biological nature.

One of the issues in relation to the previously exposed list of measures was the mandatory or voluntary remit of the advice provided. The most significant weakness concerned the low level of compliance with the suggested public health rules when workers were affected. While the enforcement prerogative to monitor compliance with this batch of measures was initially given to the labour inspectorates, employment, labour and OSH proceedings and compliance inspections were suspended

¹² Real Decreto-ley 21/2020, 9 Junio, de medidas urgentes de prevención, contención y coordinación para hacer frente a la crisis sanitaria ocasionada por el Covid-19. <https://www.boe.es/boe/dias/2020/06/10/pdfs/BOE-A-2020-5895.pdf>

¹³ Dirección del Organismo Estatal Inspección de Trabajo y Seguridad Social. Criterio Operativo nº 102/2020 Sobre medidas y actuaciones de la Inspección de Trabajo y Seguridad Social relativas a situaciones derivadas del nuevo Coronavirus (SARS-CoV-2). <https://documentacion.eu/criterios/criterio-operativo-102-2020-inspeccion-de-trabajo-coronavirus.pdf>

¹⁴ Real Decreto 664/1997, de 12 de mayo, sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo. BOE» núm. 124, de 24/05/1997. <https://www.boe.es/buscar/act.php?id=BOE-A-1997-11144>

throughout the declared states of alarm. This decision to not to support businesses to stay on top of health and safety guidance and therefore trust on the employers and employee's good faith was seen as an obstacle to their ability to tackle health and safety issues.

To correct these deficiencies, the Ministry of Public Health published a series of mandatory rules for workplaces and prevention services which added to an employer's pre-existing duty to regularly monitor working conditions and activities to detect potentially dangerous situations and risks. Some of these measures entailed the evaluation of the specific risk of coronavirus exposure through risk management and prevention strategies, providing adequate information and training to workers and establishing tailored occupational health surveillance and monitoring to the prevention services.

2.2. Strengthened Occupational Safety and Health Measures

One of the most controversial measures in the occupational safety and health regulatory framework is the entitlement of employees to stay away from work in the hypothetical case of being at risk of serious and imminent danger in the workplace or by returning to work. In light of the Covid-19 guidance given, employees could action the right to refuse to attend work on health and safety grounds. Exercising that right required an effective breach on the employer's legal duty to protect their workforce from any health and safety risks. In discharging this duty, employers would have to take proactive steps by carrying out or updating risk assessments, and mitigating the risks identified from the pandemic.

In the practice it has proven complex for employees to justify staying away from their activity, or to refuse returning to their workplace, when either subjectively or objectively they consider that the performance of their duty carries a serious and imminent risk to their lives, health, or welfare. Under this premise, workers can challenge the managerial decision by claiming compensation for damages on the provisions of the existing occupational safety and health framework. Here the notion of "serious and imminent" occupational risk gains relevance.¹⁵ This threat to the worker's safety and health needs to be tangible (the severity of damage and imminent risk of infection by Covid-19). In reality, this has yet to be interpreted by the lawmaker and jurisdiction in the case of workers (or

¹⁵ Monereo, J. Rivas, P. Moreno, M. Vila, F. Álvarez, J.. Salud y asistencia sanitaria en España en tiempos de pandemia Covid-19. 2021. Aranzadi.

their representatives, where they exist) deciding to stop their activity or not returning to the workplace when required. For employers who demonstrate effective organisational and prevention measures that lead to the assurance of a safe working environment (for instance, by minimising the risk of infection) the burden of proof will be on the worker to provide evidence that the system compromised their health and safety.

2.3. Recognition of Covid-19 as an Occupational Disease and its Impact on Different Professional Groups

In relation to reporting duties, employers have a general duty to record occupational accidents and diseases which prevent an employee from working for more than one day. Written notice of occupational accidents and diseases which have harmed workers' health must be provided to the competent labour authorities. This disclosure duty suffered some important alterations during the course of the public health crisis.

In the early stages of the pandemic the coronavirus was classified as a common disease for economic compensation and social coverage purposes. This was swiftly changed by the articulation of Royal Decree 13/2020¹⁶, 7 April, that accepted the definition of work-related accident for cases in which the spread of the infection was part of the work-related activity. This inclusion – that also had to be ratified by the operating prevention service – only affected health and social care workers who contracted SARS-CoV-2 virus, from the official declaration of the pandemic by the World Health Organization until the easing of public health prevention measures. This recognition had the same level of social security coverage as that established for occupational diseases.¹⁷ Even more interesting is the fact that prior to this formal recognition and the availability of specific guidance on the issue, the public health authority¹⁸ recommended following the advice from bodies such as the Occupational Safety and Health Administration in the United States (OSHA) when classifying the level of SARS-CoV-2 occupational exposure.

¹⁶ Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario. BOE» núm. 98, de 08/04/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4332>

¹⁷ Real Decreto-ley 3/2021, 2 Febrero, por el que se adoptan medidas para la reducción de la brecha de género y otras materias en los ámbitos de la Seguridad Social y económico. BOE núm. 29, de 3 de febrero de 2021. <https://www.boe.es/buscar/act.php?id=BOE-A-2021-1529>

¹⁸ Revista seguridad y salud en el trabajo. Prevención de riesgos laborales frente a COVID-19. Número 103, June 2020.

Protection and compensation attributed for other non-health and social care-related professions were provided by the classification of Covid-19 as a common disease. On this basis, the Government established that the preventive isolation or infection of employees due to Covid-19 should be considered a temporary incapacity for accidents at work – regardless of whether the employees were infected during their work-related activity or during their personal time. This qualified the employees to claim sick leave benefits for occupational hazards. This decision was made despite the classification of the very acute respiratory syndrome coronavirus (SARS-CoV-2) that induces coronavirus-19 disease, as a group 3 biological agent.¹⁹

This arrangement should not stop pursuing employer responsibilities in the case of work-related accidents, claims for compensation or damages caused by the activity, social security surcharges and the prosecution of a potential offence to workers' health and safety. That said, the reality for workers' ability to challenge the non-classification of a common disease as an occupational disease is certainly complex.

2.4. Tailored Measures for Essential Workers

Much focus has been placed on the scaling-up the occupational safety and health of hospital worker capacities. In countries such as Spain, primary health care delivered the first line of response and care in communities during the early phase of the health crisis. This trend was replicated in many parts of Europe where family doctors and primary care nurses are usually the first point of contact for healthcare. This system has been under-funded and under-staffed for a long time. Many of the staff have been developing their functions on temporary working arrangements. While the pandemic made the resulting frailties in the system more visible, this did not have a counter-effect in the number of regulations improving their working conditions. The Ministry of Public Health reacted to this situation by publishing a technical document²⁰ for primary healthcare

¹⁹ Orden TES/1180/2020, 4 December, por la que se adapta en función del progreso técnico el Real Decreto 664/1997, 12 May, sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo. <https://www.boe.es/boe/dias/2020/12/10/pdfs/BOE-A-2020-15871.pdf>

²⁰ Public Health Ministry. *Documento técnico Manejo en atención primaria y domiciliaria del COVID-19*. June 2020. https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Manejo_primaria.pdf

workers on 28 February 2020, which included a series of recommendations and prevention measures when dealing with patients. During this period there were many workers who had not received OSH training or information from their management on how to improve the way they coped with the infection.

Just over 41 per cent of all Spanish workers are employed in critical industries,²¹ with these jobs representing about 43 per cent and 41 per cent of total female and male employment, respectively. Focusing on the healthcare sector, women represent an approximate 66 per cent of the total workforce, with 84 per cent in nursing jobs.²² According to the Working Population Survey (EPA), published by the Spanish Statistics Institute (INE), women make up 74 per cent in the joint health and social care sectors. With the pandemic, women in these sectors saw an unprecedented rise in workload, health risk and challenges to work-life balance. Other popular measures implemented in other countries such as mandatory vaccination for health workers were not particularly welcomed in Spain. While many regions demanded this approach, this was not required as the levels of vaccination with these, and other workers have been high in comparison with other countries.

Other interventions were driven by economic imperatives but had a positive effect on the levels of work intensification and workload in particular sectors. This was the justification behind easing the temporary and flexible hiring of workers in agriculture (intervention of a temporary nature – 07 April–30 September 2020 approved by the Council of Ministers – Royal Decree-Law 13/2020²³), approving a temporary set of urgent measures in agricultural employment, to guarantee the availability of labour to meet the needs of agriculture and farming industries. These measures favoured the temporary hiring of workers in the agricultural sector by establishing extraordinary measures to make employment more flexible, to ensure the maintenance of agrarian activity, during the state of alarm. To accompany the initiative, the European Commission

²¹ Spanish labour force survey (Spanish National Statistical Institute or INE, 2019, second quarter. ESADE. Covid-19 and gender inequality in Spain. April 2020.

²² Instituto Nacional de Estadística. *Working Population Survey*. National Statistics Institute <https://www.ine.es/up/rTBuNOB2i5>

²³ Real Decreto-ley 13/2020, de 7 de abril, por el que se adoptan determinadas medidas urgentes en materia de empleo agrario. BOE» núm. 98, de 08/04/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-4332>

strengthened the guidance available²⁴ for this high-risk group – considering how poor occupational safety and health was rampant during this period at an EU level – by calling on Member States to raise awareness of health and safety requirements affecting seasonal workers.

As an aside, the Spanish Government was publicly reprimanded²⁵ for hiring seasonal workers from Morocco for strawberry picking without providing adequate basic health and safety provisions or health insurance coverage. At a time when the demand for an effective food supply chain was huge, seasonal workers (many of them migrant) suffered death, infections, and outbreaks. Contributing factors included the geographical isolation of the work, poor health and hygiene measures, precarious contracts and social security protection and harsh working conditions.

Other measures had a regional dimension. The regional government of Madrid developed economic grants with the objective of helping manufacturing companies²⁶ (extractive industries, supply of electricity, gas, steam and air conditioning, water supply, sanitation activities, waste management, activities related to transport and so on) to adapt workplaces to Covid-19 and other agents and elements harmful to workers' health. Businesses in these industries had to implement novel adaptation strategies or acquire equipment for non-disposable protection. Aid was also granted for activities to manufacture equipment, elements, computer programs and consumables for protection against Covid-19 and for treatment of the disease, and for protection against other agents and elements harmful to the health of workers and the population in general.

2.5. Adequate Control Measures Including Adapted Work Arrangements, Engineering Controls, PPE.

Policies aimed to reduce workers' exposure to Covid-19 in the workplace involved, on the one hand, the adoption of individual protection equipment and, on the other, the adoption of guidelines and specific

²⁴ European Commission. Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak (16 July 2020). Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (30 March 2020). Brussels.

²⁵ United Nations. Human rights. *España mantuvo a trabajadores migrantes completamente desprotegidos durante la pandemia, dice experto de la ONU*. June 2020. <https://news.un.org/es/story/2020/06/1476662>

²⁶ Eurofound (2021), *Aid to industrial companies in the Community of Madrid*, case ES-2020-44/1898 (measures in Spain), COVID-19 EU PolicyWatch, Dublin, <http://eurofound.link/covid19eupolicywatch>

orientations established by health and safety at work authorities.²⁷ Many of the control measures and engineering controls were proposed in the document published by the Ministry of Public Health²⁸ in the guidance provided to prevention services on how to manage the OSH impacts of the pandemic. These recommendations and the supporting document for their interpretation were replicated at regional level.²⁹

While the shift to employees working remotely or from home falls apart from the remit of this review, the significant impact of this legislative development and its amplified effects cannot be disregarded. With that in mind, it is fair to state that the most significant change in Spain triggered through legislative developments was in relation to the implementation of novel long-term legislation for remote working, initially introduced on 12 April 2020 Preference for remote work - Teleworking arrangements, together with the urgent measures on teleworking in public administrations (Royal Decree-Law 29/2020³⁰) that build the framework for a future Royal Decree to regulate telework for public services, later known as 'Urgent measures on teleworking in public administrations' (24 September 2020).

The health crisis caused by Covid-19 forced different public administrations to dedicate all their personal and material resources to guaranteeing the essential operation and provision of public services by their employees remotely. For this to happen, a prerequisite was an assessment of the risks of teleworking. Also required was an assessment of the tasks assigned, the corresponding evaluation and preventive planning, as well as training in the digital skills necessary for the provision of the service.

²⁷ Ramos (2021): IZA COVID-19 Crisis Response Monitoring: Spain (December 2021).

²⁸ Subdirección General de Sanidad Ambiental y Salud Laboral. Ministerio de Sanidad. Procedimiento de actuación para los servicios de prevención de riesgos laborales frente a la exposición al nuevo coronavirus (SARS-CoV-2). Junio 2022. https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos/Proteccion_Trabajadores_SARS-CoV-2.pdf

²⁹ Recomendaciones de prevención en el trabajo frente al coronavirus ISSGA, Galicia o el Compendio de directrices (IAPRL, Principado de Asturias). April, 2020.

³⁰ Real Decreto-ley 29/2020, de 29 de septiembre, de medidas urgentes en materia de teletrabajo en las Administraciones Públicas y de recursos humanos en el Sistema Nacional de Salud para hacer frente a la crisis sanitaria ocasionada por la COVID-19. BOE» núm. 259, de 30/09/2020. <https://www.boe.es/buscar/act.php?id=BOE-A-2020-11415#:~:text=Ayuda-.Real%20Decreto%20de%20septiembre,de%202020>

The new Royal Decree-Law 28/2020³¹ to regulate remote working in Spain granted remote workers the same rights as those who carry out their activities on the company's premises. It is based on voluntarism and the agreement of workers and employers. Briefly speaking, under the new legislation, any employee who works from home more than 30 per cent of the time (approx. 1.5 days per week) in a three-month period is considered a remote worker. A key element of Spain's remote working law is the requirement for employer and employee to sign a 'remote working agreement', setting out how remote work will proceed.

This regulatory development was a positive outcome of a tripartite social dialogue and placed Spain at the forefront of many jurisdictions³² during the economic and social crisis caused by the Covid-19 pandemic, despite the historical lack of a flexible working culture.

While an overarching principle of the law is that remote employees need to be protected with the same rights as traditional office employees, including OSH protections, in the reality this has not been effectively articulated in the regulation. Under the remote working law employers must also consider the health, safety and wellbeing of remote workers, paying special attention to physical, ergonomic and mental health risks stemming from isolation and stress as well as organisational risks (communication). Employers are therefore required to conduct home-office risk assessments. Increasingly, protection can be extended to regulate the lack of a work-life balance or to deal with toxic control, monitoring or surveillance practices that can have a negative impact on the health and wellbeing of the employee.

As a result of these developments, the national OSH body published a set of technical criteria that recommended the incorporation of teleworking into an OSH management system, together with the integration of prevention aspects for departments directly involved in the design and management of teleworking-associated positions in the business.

On the matter of personal protective equipment (PPE), Spain like many other jurisdictions applies a general protection system in which PPE must be suitable for the work to be performed and properly adapted for that purpose. PPE must be used where risks cannot be avoided or adequately limited by technical methods or procedures. Employers must provide

³¹ Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia. BOE» núm. 253, de 23/09/2020. <https://www.boe.es/boe/dias/2020/09/23/pdfs/BOE-A-2020-11043.pdf>

³² Eurofound (2020), *Regulation of remote work, case ES-2020-39/1321 (measures in Spain)*, COVID-19 EU PolicyWatch, Dublin, <http://eurofound.link/covid19eupolicywatch>

appropriate equipment and ensure not only its effective use but also adequate training on its use in different scenarios (for example, the control of infectious diseases). The required competence, training and awareness were rather poor, and many healthcare workplaces had to react by providing the basics, instead of having a more fit-for-purpose framework with practical stress-testing exercises in clinical settings, or by adapting health workers' educational curriculum to the evolving healthcare needs. To some extent, this infringed existing laws and the basic principles of prevention as indicated in occupational safety and health Law 31/1995³³, as well as the Royal Decree 664/1997³⁴, for biological risk.

It would not be fair to put all the blame on the PPE deficiencies. There were other contributing factors to the staggering figures of healthcare workers becoming infected. These included human resources shortages, issues in relation to diagnostic testing, poor investment in occupational health internal and external services, irregularly updating of practical training, or not incorporating lessons learned from previous experiences (for example, SARS and MERS which caused hospital-acquired outbreaks affecting healthcare workers). As reported in April 2020 by the European Centre for Disease Prevention and Control (ECDC), Spain led the world in numbers of healthcare workers infected with Covid-19,³⁵ despite the known under-reporting practices.

Another contributing factor to the numbers of infections among healthcare professionals³⁶ was due to emerging contradictory measures at governmental level. In the early stages of the pandemic, the Ministry of Public Health did not recommend testing asymptomatic healthcare professionals with mild or no symptoms or testing them when in contact with confirmed cases. Other preventive measures specific for this sector were not widely implemented or recommended, such as reviewing

³³ Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales. BOE» núm. 269, de 10/11/1995. <https://www.boe.es/buscar/act.php?id=BOE-A-1995-24292>

³⁴ Real Decreto 664/1997, de 12 de mayo, sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo. BOE» núm. 124, de 24/05/1997. <https://www.boe.es/buscar/act.php?id=BOE-A-1997-11144>

³⁵ El País. España es el país con más contagios entre el personal sanitario. April 2020. <https://elpais.com/sociedad/2020-04-24/espana-es-el-pais-con-mas-contagios-entre-el-personal-sanitario.html>

³⁶ *The bmj opinion*. Widespread covid-19 infection among Spanish healthcare professionals did not occur by chance. June 2020. <https://blogs.bmj.com/bmj/2020/06/01/widespread-covid-19-infection-among-spanish-healthcare-professionals-did-not-occur-by-chance/>

different options for setting up a triage service, based on the circumstances of the healthcare facility to prevent the transmission of SARS-CoV-2 to patients and healthcare workers.

Like several other countries, Spain struggled to secure an adequate supply of personal protection gloves, suits, and face masks for health workers early in the pandemic. Not surprisingly, there were cases of healthcare professionals filing lawsuits for workers whose safety was put at risk by not being supplied the proper PPE to treat patients during the first months of the pandemic. Outcomes of one claim confirmed that the shortage of personal protection suits created “a serious safety and health danger for all health workers, especially for doctors due to their direct exposure to the risk of contagion.” The ruling said that the region’s health administration had failed to meet its duty to protect the doctors “from the moment it knew of the existence of Covid-19 and, in particular after the declaration of a national state of emergency.”

With regard to vaccinations, Spain is known for having one of the highest vaccination rates in the European Union. One of the cornerstones of Spain’s effective vaccine uptake among workers is the historic trust in the public health system and the well-regarded professionals. Added to this is the fact that within the population (including the working population) there have been low levels of vaccine hesitancy. It should be noted that in Spain vaccinations are not compulsory either for health workers or even for employees who provide services in direct contact with elderly people. A similar principle applies to mandatory testing in the workplace, which was considered as a disproportionate measure.

The government vaccination strategy initially covered health and social care workers, army and security forces as well as the education sector (primary and secondary schools). Outside this prioritisation were other groups such as agriculture or transport workers. Employers may request some information on vaccination status only with the general aim of adopting measures to ensure health and safety in the workplace.

2.6. Sector-orientated Guidance

Both nationally and regionally, health and safety guidelines have been updated or are in the process of being revised to fully address the specific challenges of work in the era of Covid-19. Many of these instructions and the guidance coming from the Ministry of Public Health suffered a notable delay in publication, which made them reactive once the state of alarm was formally declared.

On 4 March 2020, the Spanish Ministry for Employment published a practical guide in relation to implications of Covid-19 at a workplace level³⁷. This set of recommendations based its principles on existing Spanish law and mandatory regulations regarding the prevention of occupational hazards. It included a series of recommendations for preventive measures, the implementation of teleworking as a temporary organisational measure and the total or partial suspension of activity for businesses. The latter could be made either by the decision of the Health Authorities or due to economic, technical, organisational or production reasons covered by *force majeure*.

As the pandemic evolved, a stronger focus was placed on the role of prevention services as a catalyst of information. Guidance for the prevention services on the management of occupational safety and health³⁸ was binding for companies and prevention services throughout the state of alarm. The guidance included an obligation for these services to compile, register and verify records of workers being infected (clusters and outbreaks at a workplace level), and to disclose this information to the public health authorities so that they could decide on isolation and quarantine measures. The guidance also recommended a risk-based approach based on the type of industry or activity, adapting the prevention measures to the particular outcomes from the risk assessment process. It should be noted that coordination between the public health authorities and the prevention services was inadequate in practice, as it did not incorporate a fluid and constant communication.

Another important document was the *Guidance for the management of vulnerabilities and occupational risk in the health and social care sector*³⁹ that established a hierarchy of risk, from low exposure (such as general public exposure) to the highest level that entailed health and social care workers performing their tasks close to sources of aerosol generation (CPR, intubation and so on). The document also made this distinction for non-healthcare workers exposed to direct interactions with symptomatic

³⁷ Ministerio de Trabajo y Economía Social. Guía para la actuación en el ámbito laboral en relación al nuevo coronavirus. March, 2020. https://www.mites.gob.es/ficheros/ministerio/inicio_destacados/Gua_Definitiva.pdf

³⁸ Ministry of Public Health. Plan de respuesta temprana en un escenario de control de la pandemia por Covid-19. July 2020. <https://www.sanidad.gob.es/gabinetePrensa/notaPrensa/pdf/13.07130720131534059.pdf>

³⁹ Instituto Nacional de Seguridad y Salud en el Trabajo. Directrices de buenas prácticas en el sector de servicios sociales. Medidas para la prevención de contagios del SARS-CoV-2. Madrid, Mayo, 2020.

persons. Under this new guidance, companies and employers have to update their health and safety regulations to reflect new guidelines and ensure that all changes are communicated to employees.

It is also worth noting that not all the guidance provided had a safety remit. During the Covid-19 mandatory containment, the Spanish Government launched an information campaign on stopping gender-based and domestic violence.⁴⁰ This included sharing resources and information for victims, with the ability for victims to go out into the street to seek out help without sanction. This was followed up by other regional awareness initiatives to prevent the effects of gender-based violence, work-related violence and harassment to essential workers such as healthcare workers, those working in clinical settings, security forces, hospitality and retail workers or delivery workers.

As for essential services, there were tailored examples of best practice from the Spanish National Occupational Safety and Health Institute, *Best practice guidelines in the manufacturing sector*⁴¹, that collected a non-exhaustive set of measures and recommendations to guarantee the protection of workers' health and safety. Similar initiatives took place at a regional level, such as the prevention guidance for different industries (food and drink, textile) from Madrid, Cantabria, and the Basque country.

There were also cases of guidance targeting a particular audience, vulnerable workers (for example, those with pre-existing health conditions or who are of an age that makes them susceptible to serious complications from Covid-19).

One complex policy loophole referred to the extent of employees' right to refuse to return to work because of the threat posed by the coronavirus. Article 21 of the occupational safety and health law guarantees that in situations involving serious and imminent risk to workers' health and safety, workers have a right not to fulfil the work. Arguably, an employee's belief (even if justified) that they would be exposed to potential danger is not enough on its own. Employers must demonstrate a plausible inability to manage and eradicate risk. Throughout the state of alarm, further guidance facilitated the adoption of specific measures such as the decision of the company or employees to interrupt the activity. In practice, however, this right was not exerted.

⁴⁰ International Labour Organization. *In the face of a pandemic: Ensuring safety and health at work*. Geneva: ILO 2020.

⁴¹ Instituto Nacional de Seguridad y Salud en el Trabajo. *Directrices de buenas practicas en el sector industrial*. Madrid, Junio 2020.

Table 1. Example of sector specific guidance for agriculture, farming and seasonal workers⁴²

Authority	Guidance
European Agency for Safety and Health at Work	Covid-19: Back to workplace
National Institute of Occupational Safety and Health	Best practice guidance for the agricultural and farming sector
Ministry of Agriculture and Fishery	Practical guidance for the agricultural and fishing industry
Institute of Public and Occupational Health, Navarra	Covid-19 prevention recommendations for agricultural, farming and food industries use
Agriculture, farming and rural development office (Castilla and León)	Covid-19 guidelines for rural and food manufacturing settings
Institute of Public and Occupational Health, Navarra	Prevention guidelines, basic guidance, and safety protocols against Covid-19; Prevention guidelines for seasonal workers in agricultural settings
EFFAT (Trade Union European Federation for food and drink, agriculture, and tourism) and GEOPA-COPA (Employer European Group of agriculture companies),	Joint declaration of the European social partners of agriculture – GEOPA-COPA and EFFAT – on the deployment of seasonal workers from European countries in the European Union
Aragonés Institute of Occupational Safety and Health (ISSLA)	Standards of practice for the prevention of coronavirus in agricultural settings
PROEXPORT, CCOO Industria, UGT	Rules of procedure against coronavirus AGRO
Regional Andalusian office for agriculture, farming, fishing and sustainable development.	Guidance for prevention and control of COVID-19 in agricultural industries for seasonal workers
Ministry of Public Health	Acuerdo de 28 de julio de 2020, del Consejo de Gobierno – Guidance for prevention and control of Covid-19 in agricultural industries for seasonal workers

⁴² Instituto Nacional de Seguridad y Salud en el Trabajo. *Prevención de riesgos laborales vs. COVID-19 - Compendio no exhaustivo de fuentes de información*. Madrid, June 2020.

2.7. The Role of Prevention Services under the Spotlight

The Spanish OSH framework relies on the foundations of the prevention and awareness prerogatives from the prevention services. While prevention services are considered key in the Spanish system for ensuring OSH compliance and better practice, the institutions behind this public/private service have rather tenuous links to innovative regulatory approaches.⁴³

These services were severely under-staffed, despite the reported contribution⁴⁴ of a million hours by healthcare professionals and 2 million hours of technical advice by OSH professionals under external prevention services during the critical March–May 2020 period. Yet these figures were not sufficient to have a positive impact on the vast Spanish business landscape. The overwhelming spectrum of small and medium-sized enterprises in the Spanish labour market makes this an essential service, as these companies lack internal OSH capacity. In this context, the protection of the health and safety of the workforce derives from the service provided by these external entities. While many have a national reach, their potential to improve working conditions was often diffused as they had to adapt their approaches and responsibilities to decentralised levels of compliance required by the different autonomous communities. Prior to the pandemic, the ability of these services to provide good quality services to the enormous number of companies had already been called into question. (In some regions an OSH practitioner must manage a portfolio of 250 companies.) This, in addition to other issues, such as the lack of flexibility and coordination in the way they performed their operations, poor health surveillance and occupational health (OH) expertise, the commercialisation and externalisation of services, and their associated bureaucracy, made them lag behind in providing effective protection to workers and business continuity. This certainly goes against the overarching prevention principle as stipulated in the occupational safety and health Law.

⁴³ European Agency for Safety and Health at Work. *Improving compliance with occupational safety and health*

regulations: an overarching review. European Risk Observatory. Bilbao, 2021.

⁴⁴ Servicios de Prevención ajenos ASPA-ANEPA. El valor de los Servicios de Prevención Ajenos y los profesionales de la Prevención. April, 2020. <https://www.aspaprevencion.com/wp-content/uploads/2020/10/El-valor-de-los-SPA.pdf>

It is worth noting that while the requirement for external prevention services is to have the necessary facilities, material, and human resources to properly carry out the preventive activities (bearing in mind the type, extent and frequency of the services they must provide), in reality this was unachievable. National and regional governments placed an excessive burden on their capacity to carry out their prevention activity by imposing an endless number of responsibilities. These ranged from investigation and reporting duties in outbreaks to delivering a proactive strategy for tracing contacts or searching for potential cases. They also included increasing their activity in risk management practices and monitoring safety and hygiene measures to make workplaces Covid-secure. In the longer term this approach proved unsustainable, creating a burden on the services and significant levels of workload for the OSH professionals employed in these services.

3. Conclusions

The Covid-19 pandemic brought a large-scale loss of life and human suffering, with key workers being exposed to higher mortality rates than non-key workers, as a result of their greater exposure to the virus. It also tested the Spanish collective capacity to guarantee safe and healthy working conditions to this segment of the workforce. It is for that reason that it will be vital to incorporate lessons learned from the mistakes and failures in order to strengthen national-level response to the essential workforce. We are not there yet, and for opaque reasons. In August 2020, scientific experts⁴⁵ urged the Spanish Central Government and regional governments to independently evaluate different aspects of the Covid-19 response to identify areas where public health, the health and social care system and others would need to be improved, following the approach used by the World Health Organization, the All-Party Parliamentary Group model used in the UK, or national inquiries.⁴⁶ The publication of this independent review⁴⁷ suffered a significant delay and only saw the

⁴⁵ García-Basteiro A, Alvarez-Dardet C, Arenas A et al. The need for an independent evaluation of the COVID-19 response in Spain. *Lancet*. 2020; 396: 529-530

⁴⁶ García-Basteiro AL, Legido-Quigley H; 20 signatories. Evaluation of the COVID-19 response in Spain: principles and requirements. *Lancet Public Health*. 2020 Nov;5(11):e575. doi: 10.1016/S2468-2667(20)30208-5. Epub 2020 Sep 21. PMID: 32971009; PMCID: PMC7505572.

⁴⁷ Equipo de Planificación y Coordinación de la evaluación. Evaluación COVID-19. Evaluación del desempeño del sistema nacional de salud español frente a la pandemia de COVID-19. Lecciones de y para una pandemia Madrid, 30 abril 2023.

light in December 2023. The report recommended improvements on the coordination of the key OSH bodies and called for the recognition of OSH prevention and occupational health services as essential to the economy and the labour market, as well as the development of workplace mental health programmes for healthcare workers.

While this review has highlighted a wide spectrum of public health and employment-related measures to tackle the impacts of the pandemic, this did not have a positive effect on the number of specific OSH interventions for key workers. Countries like Spain as well as many other Member States of the European region⁴⁸ seem to remain sceptical about their internal capacity to carry out tailored discretionary policies on OSH. One reason for this situation is probably given by the European regulatory system, in which the European Commission calls on Member States to update and draw up their national OSH systems. Community directives on OSH set only minimum requirements. Member States need to lead the process of introducing laws that ensure a higher level of protection for workers. In practice it is not common to see Member States developing novel legislative requirements or applying stricter rules for the protection of workers when transposing EU directives into national law.

This “light touch” approach to legislative developments makes it difficult for governments to embark on targeted-reaching labour and occupational safety and health reforms, even during the course of a public health crisis. A representative example of this can be seen on the lack of OSH improvements for essential workers, linked to unclear employment status and non-standard working arrangements that are common in workers employed in digital labour platforms (for example, the Spanish “riders law”). On the contrary, an element that was clearly missed from a public policy standpoint was the development of measures to strengthen and expand the key public institutions as authorities on a particular remit or area.

https://www.sanidad.gob.es/areas/alertasEmergenciasSanitarias/alertasActuales/nCov/documentos/EVALUACION_DEL_DESEMPEÑO_DEL_SNS_ESPAÑOL_FRENTE_A_LA_PANDEMIA_DE_COVID-19.pdf

⁴⁸ European Trade Union Institute. *Hesamag*. Special report: workplaces in a pandemic. Autumn, Brussels, 2021.

4. Recommendations

This paper resulted in the following list of recommendations and suggestions.

(a). Barriers in the management of the intensified job demands and the mental workloads of essential workers. Having one of the highest percentages of healthcare workers infected with SARS-CoV-2 precipitated responses of anxiety, depression and acute stress⁴⁹ among the workforces. This was not due just to organisational or work-related factors, with many healthcare workers being blamed or subjected to violence by members of the public due to the stigma⁵⁰ attached to the virus at the beginning of the pandemic. Health and social care workers also shared similar stressors, with high levels of physical and emotional fatigue, overload, tension, and anxiety.

In many cases, mental exhaustion and work intensification manifested in insomnia, anxiety, post-traumatic stress, depression, job uncertainty burnout and mental load. Even though issues such as the initial lack of protective resources and professional training seem to have been resolved, the levels of emotional fatigue have not improved and job demands continue to be overwhelming.⁵¹ This is mainly for frontline healthcare professionals due to their increased workload, the difficulty of the work tasks and traumatic events resulting from the pandemic.⁵² Examples of these deficits could be seen when some categories of essential workers were required to carry out new tasks and functions⁵³ without adequate training and familiarisation. For instance, healthcare workers were moved

⁴⁹ García-Fernández, L., Romero-Ferreiro, V., López-Roldán, P. D., Padilla, S., Calero-Sierra, I., Monzó-García, M., Pérez-Martín, J., and Rodríguez-Jimenez, R. (2020). Mental health impact of COVID-19 pandemic on Spanish healthcare workers. *Psychological medicine*, 1–3. Advance online publication. <https://doi.org/10.1017/S0033291720002019>

⁵⁰ International Labour Organization. In the face of a pandemic: Ensuring safety and health at work. Geneva: ILO 2020. English edition.

⁵¹ Molina-Mula, J., González-Trujillo, A., Perelló-Campaner, C., Tortosa-Espínola, S., Tera-Donoso, J., Otero De la Rosa, L. and Romero-Franco, N. *The emotional impact of COVID-19 on Spanish nurses and potential strategies to reduce it*, Collegian, 2021.

⁵² Molina-Mula, J., González-Trujillo, A., Perelló-Campaner, C., Tortosa-Espínola, S., Tera-Donoso, J., Otero De la Rosa, L. and Romero-Franco, N. *The emotional impact of COVID-19 on Spanish nurses and potential strategies to reduce it*, Collegian, 2021. ISSN 1322-7696, <https://doi.org/10.1016/j.colegn.2021.12.004>.

⁵³ Samek Lodovici, M. et al., 2022, Revaluation of working conditions and wages for essential workers, Publication for the committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. January, 2022.

to different departments and sometimes deployed to new working environments (e.g. Isabel Zendal Covid-19 specific hospital) that required the adaptation to new and additional tasks at a really fast pace.

All these issues have clearly shown the need for public institutions to engage more effectively in strategies for improving workplace mental health issues and the psychological distress of essential of the health workforce and of other essential workers.⁵⁴ in addition to the management of work-related psychosocial risks, for frontline healthcare workers and essential workers. This needs to be more explicitly reaffirmed at a policy level, as the current regulatory framework makes no specific mention of psychosocial risks (though they are implicitly included in the main body of legislation), but it also requires a more holistic approach to potentially recognise anxiety, depression, and burnout as occupational diseases⁵⁵ for labour-intensive workers.

While developments such as the novel technical criteria⁵⁶ from the labour inspectorate for the management of work-related psychosocial risks are welcomed, they do not have a particular focus on essential industries and their complexities. More overarching frameworks such as the update of the EU strategic framework on health and safety at work for 2021-2027 in light of the Covid-19 pandemic are also not expected to be a game-changer in the protection of essential workers mental health and wellbeing. Other developments such as the recent ISO 45003 will still take time to settle within businesses, which is another reason why a more overarching approach is required.

(b). The profusion of conflicting and confusing guidance and regulations. As previously exposed, there was a profusion of Royal Decrees from the ministry of Public Health and the numerous versions of the updated documents (such as the *Prevention services conduct procedure against the coronavirus*, which had 12 different versions in a short period of time) when providing guidelines for worker safety. Mixed messages, the lack of one common voice, sudden policy changes and information overload contributed to some confusion between employers and employees, especially since the rules seem to be in constant flux, changes, and

⁵⁴ European Commission. Expert Panel on effective ways of investing in Health, supporting the mental health of health workforce and other essential workers. Luxembourg, 2021.

⁵⁵ Walsh, M. Mental health in the Digital World of Work. European Parliament Committee on Employment and Social Affairs. Brussels, February 2022.

⁵⁶ Inspección de trabajo y seguridad social. Criterio para la gestión de riesgos psicosociales. December, 2021.

updates. The rules from national public bodies often contradicted others from regional authorities. This made that on many occasions workers employed in high-risk industries were forced to fulfil their tasks without taking into account the serious health and safety implications. On other occasions, issues in relation to mixed messages led to questions about who was leading the efforts the health and safety of workers.

The more proactive involvement of health and safety representatives, membership associations employing essential workers or occupational safety and health professionals could have helped to not only lead on effective public health-related communications but interpret the content of the guidance or legislative developments and therefore reduce the exposed ambiguity.

(c). Return to work and rehabilitation of essential workers dealing with long Covid: an excuse for inaction. Millions of workers across Europe were hit by the Covid-19 pandemic,⁵⁷ thousands fatally and many more with serious, debilitating and often long-term effects, reporting prolonged and significant disability. From those cases, it is still uncertain how many essential workers are in the process or will struggle to recover from the infection, or that will incur in longer term disabling symptoms. This situation, known as long Covid or post-Covid syndrome, can place severe limitations on these workers' ability and capacity to perform their job functions or to return to work in a sustainable way.

The Spanish Public Health Ministry reviewed the operational guidance for the prevention services, including for the first-time OSH procedures, risk management mitigation and adaptation strategies for dealing with long Covid cases in public services and private businesses. This will be of critical importance for workers classed as essential, as many have been forced out of work without the needed support. The role of occupational health professionals will become important in the rehabilitation process, with support and guidance on flexible arrangements and workplace adaptations as part of the return-to-work process. On this matter, some authors point out to the need for more holistic supportive practices through a robust safety net⁵⁸ that includes a combination of *'sick leave, family leave, disability benefits, and workplace protections and flexibilities'*.

⁵⁷ European Federation of Public Service Unions. Oates, Andrea. Covid as an occupational disease. September 2021.

⁵⁸ Davis HE, Assaf GS, McCorkell L, Wei H, Low RJ, Re'em Y, Redfield S, Austin JP, Akrami A. Characterizing long COVID in an international cohort: 7 months of symptoms and their impact. *EClinicalMedicine*. 2021 Aug;38:101019. doi:

(d). The perils for better work-life balance and workplace wellbeing. The pandemic has produced a still-to-be-determined impact on employees who, due to guardianship and care reasons, had children, elder or dependent relatives to take care of. Despite the availability of some economic measures, such as the entitlement to a reduction in working hours of up to 100 per cent with the employee's salary being reduced in proportion to the reduction in working hours, these measures were not sustainable over time. Some of them also clashed with long-established cultural attitudes and the lack of family-friendly working environments in particular for essential industries.

Women - more likely to workplace exposure to the coronavirus due to many working in essential positions such as the healthcare sector – struggled with children home schooling issues and caregiving for parents or loved ones. To face this disproportionate burden on female workers some countries opted to allow the children of essential workers to use childcare facilities. This was not the case in Spain due to the closure of all childcare facilities and schools during the second quarter of 2020. This decision made conditions for essential workers and those working remotely especially hard, particularly for women.⁵⁹ For this reason, the concept of flexible working needs to be better integrated into legislative development strategies and businesses management systems and practices, by prioritising workers employed in functions classed as essential. This needs to be done by nurturing an inclusive approach that goes against a one-sided flexibility approach suitable only for office-based workers or remote workers. This will help other essential workers who have struggled to enjoy any form of flexibility to achieve stable, secure, and sustainable employment. While the focus of work-life balance issues has been placed on office-based positions, essential workers suffered an endless amount of issues that impacted in their ability to balance family and work life, from seafarers and transport workers being outside their homes for long periods of time, to healthcare workers that had to leave their accommodation due to stigma or to find alternative accommodation during the outbreak to avoid infection of their relatives, or the case of social care workers⁶⁰ that were obliged to stay at their care centres to avoid

10.1016/j.eclinm.2021.101019. Epub 2021 Jul 15. PMID: 34308300; PMCID: PMC8280690.

⁵⁹ Farre, L., Fawaz, Y., Gonzalez, L., Graves, L. (2020), *How the COVID-19 Lockdown Affected Gender Inequality in Paid and Unpaid Work in Spain*, IZA DP 12434.

⁶⁰ BBC News, 2020, Spain lockdown: How domestic workers became prisoners, available at: <https://www.bbc.com/news/av/world-54895114>.

exposing to elder residents to the risk of infection. The effect of these circumstances came as part of the job reason why they have not been an object of study by the legislator.

(e). Public administration deficits and institutional weaknesses. The public health crisis has illustrated the poor role of prevention services. Rather than leading and enhancing OSH advice and practice, they have played a more passive role that has exposed their weaknesses. From an institutional perspective, the pandemic has also put in the spotlight the lack of investment and human resources in the national labour inspectorate and the relaxed approach to improving OSH capacity-building of the different administrations, from national to local.

There was a reactive approach by the different public administrations with a strong involvement in the national prevention system or the delivery of OSH-related measures (Labour and Social Security Inspectorates, Autonomous Communities, Foundation for Occupational Risks Prevention, National Commission of Safety and Health at Work and National Institute of Safety and Health at Work). This did not facilitate the development and strengthening of cross-collaboration and participation mechanisms and the exchange of key information in a timely and effective manner. Particularly at field level, the occupational safety and health system, that heavily relies on the work carried out by internal practitioners or outsourced specialists for health and safety, have increased the demand from companies to completely or partially outsource the responsibility to external professionals and services. Conversely, this peak on the use of these services has not led to a true embedded compliance culture. The purpose of these contractual relationships has been utilised more as an instrument to avoid occupational safety and health liability and compliance breaches.

On a similar note, the public institutional system had difficulties when integrating occupational health into the public health structure. To this extent, the review has exemplified several coordination issues between the public health and labour ministries at both national and regional level.

(f). Working conditions of civil servants and other public employees. While the impacts on health professionals have been extensively studied, little is known about other essential public worker groups, such as police forces, army forces, civil servants, bus drivers, firefighters, and education staff. This was particularly challenging for professions that are not used to adopting, integrating, and implementing prevention and risk management strategies or contingency plans to deal with occupational issues.

With Spain leading Europe in terms of the largest share of temporary employees, the case of the nearly 700,000 public sector workers employed

on temporary contracts was certainly distressing. The use of temporary employment in the Spanish public administration system is widespread at all levels (including general administration, autonomous communities, and local bodies) covering a wide spectrum of contractual arrangements (contract workers, provisional employees, temporary substitutes). Many of these contracts were of a short fixed-duration term lasting less than a week or a month (even for workers employed in healthcare). The national, regional and local institutional abuse arising from the use of successive fixed-term employment contracts or relationships for civil servants had a toll on the health and safety of these workers, leading to a lack of protection and the erosion of OSH basic rights. This public health crisis proved that the universality characteristic of the occupational safety and health regulatory framework is not fit for purpose and can leave behind some workers such as those in temporary arrangements.

A solution to this situation can be given by improving the working conditions and more specifically to safeguard the occupational safety and health of essential workers employed in public services (cleaners, call-centre workers, outsourced care workers, security guards and so on) through sustained changes in public procurement processes and in collective bargaining coverage⁶¹. In such manner 100 members of the European Parliament⁶² have claimed for public contracts, procurement and tenders to only go for those companies that have robust collective agreements with their workers in place, and that commit to decent work principles rather than cutting prices over labour provisions.

(g). Protection of seasonal and agency workers. The Covid-19 crisis has shed light on the poor working conditions as well as occupational safety of seasonal and agency workers employed in essential services and industries. Spain, and other countries of the European region such as Germany, Italy, France and Poland, employs high numbers of migrant seasonal agricultural and farming workers. The increasing demands of these services, together with pre-existing labour shortages on the sector

⁶¹ European Parliament. Equal times. Procuring decent work: changing the rules of public procurement can deliver lasting improvements for essential workers. <https://www.equaltimes.org/procuring-decent-work-changing-the?lang=en#.YiIvTnrP02y>

⁶² UniGlobal Europe. Over 100 MEPS call for public contracts to only go to decent work employers. November 2021. Brussels. <https://www.uni-europa.org/news/procuringdecentwork-updated-list-of-mep-endorsements/>

made that several categories of essential workers experienced an increased workload⁶³, with deteriorating working conditions.

The Spanish labour market, known for having a strong dependence and over-reliance on agency workers, did not see a robust effort from temporary employment agencies (*empresas de trabajo temporal*, ETTs) to make adequate OSH provisions to workers employed in essential services. The European Parliament and the European Commission have highlighted the need for better evidence on the employment, health and safety conditions of seasonal workers. This includes the role of temporary work agencies, recruitment agencies and other intermediaries and subcontractors. The aim is to identify protection gaps, including OSH.

This is of the utmost importance given that recent research from the Organization for Economic Co-operation and Development indicates that on average migrant workers account for 14 per cent of key workers across Europe⁶⁴ and that, in most regions, migrants are as likely to work in key professions⁶⁵ as native-born citizens. This issue must be a priority for national governments and agencies of the European Union, including the European Labour Authority, EU-OSHA and EUROFOUND.

Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Institution of Occupational Safety and Health. This work was carried out on an independent capacity and some of the outcomes of this study contributed to the International Labour Organization's World Employment and Social Outlook 2023: The value of essential work⁶⁶ and an accompanying working paper OSH and the COVID-19 pandemic: A legal analysis⁶⁷.

⁶³ Eurofound, 2020a, COVID-19: Policy responses across Europe, Publications Office of the European Union, Luxembourg, available at: <https://www.eurofound.europa.eu/publications/report/2020/covid-19-policy-responses-across-europe>.

⁶⁴ OECD. Policy Responses to Coronavirus (COVID-19). *COVID-19 and key workers: What role do migrants play in your region?* 26 November 2020.

⁶⁵ European Trade Union Institute. Staunton, B. *Hesamag*. Europe's undocumented workers in a time of pandemic. Autumn, Brussels, 2021.

⁶⁶ World Employment and Social Outlook 2023: The value of essential work. Geneva: International Labour Office, 2023.

⁶⁷ Cooney, Sean, & Pasqualetto, Olívia de Quintana Figueiredo, & Radoslavova, Tzvetomira, & Spieler, Emily, & Jiménez, Iván Williams,, 2023. "OSH and the COVID-

19 pandemic a legal analysis," ILO Working Papers 995232593502676, International Labour Organization.

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