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# Critical Issues Concerning the Protection of Women's Occupational Health and Safety (OHS)

Giovanna Pistore \*

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**Abstract:** Work-related health and safety risks for women have historically been underestimated and neglected, despite Article 28 of the Italian Consolidated Law on Safety at Work stipulating that gender differences should be considered when assessing risks. However, the law does not specify the exact procedures for conducting such an assessment. Risk analyses indicate that, among the protective measures, the exercise of employer organisational powers may interfere with safety obligations.

**Keywords:** *OHS; Gender; Equality; Risk assessment; Protective measures.*

## 1. Towards a Gender Approach in Italian OHS Legislation

As is frequently asserted, equality between men and women in the workplace must be ensured through a gender-sensitive approach to risk assessment. However, in the Italian legal system, this approach was largely overlooked for a considerable period. Legislative Decree No. 626 of 19 September 1994, concerning health and safety at work, adopted a gender-neutral concept of the worker, failing to account for gender differences. Nonetheless, the principle of equality was enshrined in the Italian Constitution, particularly in Articles 3 and 37. Article 3 promotes both

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formal and substantive equality, while Article 37 stipulates that female workers must enjoy the same rights and receive the same remuneration as their male counterparts for equal work, with working conditions also accommodating women's family responsibilities, including the protection of mothers and children<sup>1</sup>. Consequently, female workers were historically viewed primarily in their role as mothers, as reflected in Legislative Decree No. 151 of 26 March 2001, the Consolidated Law on the Protection and Support of Maternity and Paternity.

In 2008, the implementation of the Consolidated Law on Safety at Work (Legislative Decree No. 81 of 9 April 2008) marked a significant shift towards an occupational health and safety (OHS) framework that recognises gender differences, moving beyond the previous neutral approach. This shift is highlighted at the outset of the Decree, which aims to ensure consistent protection for workers across the national territory through compliance with essential service levels concerning civil and social rights, including gender differences (Art. 1, par. 1).

In a similar vein, Article 28 of the Decree mandates that employers, when assessing risks, take gender differences into account. As such, the "gender issue' cannot be addressed in a specific phase of the OHS evaluation process, but rather is a cross-cutting element in OHS, thereby reducing the overall hazard aggregation by effectively doubling the 'homogeneous group of hazard situations' that an enterprise must consider"<sup>2</sup>.

Furthermore, Article 8 of the Decree establishes the National Information System for Prevention, which also incorporates a gender perspective in risk assessments<sup>3</sup>. Article 40 requires the appointed physician to report health information and workplace hazards to public authorities, highlighting any gender-specific differences.

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<sup>1</sup> P. Perlingieri, *Commento alla Costituzione italiana*, Napoli, 2001.

<sup>2</sup> E. Sorrentino, R. Vona, D. Monterosso, A.M. Giammarioli, *Gender issues on occupational safety and health*, in *Annali dell'Istituto Superiore di Sanità*, 2016, 2, 190. See also R. Nunin, *Lavoro femminile e tutela della salute e della sicurezza: nuovi scenari per una prospettiva di genere dopo il d.lgs. n. 81/2008*, in *Rivista del diritto della sicurezza sociale*, 2011, 2, 383; A. Ninci, *Le differenze di genere e l'impatto su salute e sicurezza in ambito lavorativo*, in *Diritto delle relazioni industriali*, 2009, 3, 800.

<sup>3</sup> The *Sistema Informativo Nazionale per la Prevenzione* (SINP) provides valuable data to guide, programme, plan, and assess the effectiveness of accident and occupational disease prevention, with reference to both registered and non-registered workers under public insurance bodies. It also facilitates the planning and evaluation of supervisory activities through the integrated use of information available in various systems, specific archives, and the creation of unified databases. The system is managed by INAIL (the Italian National Institute for Insurance against Accidents at Work).

## 2. Gender, Hazards, and Risks

It is important to clarify what is meant by gender differences in occupational health and safety (OHS). These differences extend beyond biological sex—defined as the physical characteristics of an individual—and encompass a variety of other factors, such as behaviour, lifestyle, and the roles traditionally assigned to men and women. As emphasised by the ILO “this approach also improves the understanding that the sexual division of labour, biological differences, employment patterns, social roles, and social structures all contribute to gender-specific patterns of occupational hazards and risks. This needs to be taken into account if OHS policies and prevention strategies are to be effective”<sup>4</sup>. A comprehensive understanding of risk exposure must consider all these factors, alongside the complexity of individuals’ lives outside of work and at various life stages.

Indeed, the law does not provide a precise definition of a “gender hazard factor”. Rather, gender serves as a lens through which to examine the interaction between hazards and risks. To recall some established definitions, a hazard refers to an inherent characteristic of a factor—such as a substance, tool, or work method—that has the potential to cause harm (e.g., electricity, chemicals, working at height, noise, repetitive tasks, workplace bullying, stress). Risk, on the other hand, is the likelihood that a hazard will actually result in harm (see Article 2, par. 1, letters r and s of Legislative Decree No. 81/2008). Although the terms “hazard” and “risk” are often used interchangeably, they have distinct meanings. A hazard may exist in the workplace, but its potential for harm depends on the specific conditions in which it occurs. The interaction between risk and hazard can ultimately result in harm, manifesting as an adverse health outcome.

In the triptych of hazard, risk, and harm that defines risk assessment, gender serves as an important criterion for evaluation. It is undeniable that: a) certain hazards disproportionately affect women compared to men; and b) the outcomes of exposure to hazards may vary by gender, particularly in terms of physical effects, such as reproductive harm.

Data from INAIL—the Italian National Institute for the Insurance against Injuries at Work—in its 2024 Women’s Dossier<sup>5</sup> reveals that between 2018 and 2022, nearly a third (32.9%) of accidents involving

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<sup>4</sup> ILO, *10 Keys for Gender Sensitive OSH Practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health*, 2013, in *ilo.org*.

<sup>5</sup> INAIL, *Dossier donne 2024*, in *inail.it*.

women were due to “overflow, spillage, and vaporisation” (including COVID-19). The second most frequent cause was “body movements under physical effort” (19.2%), which, conversely, was the leading cause for men. The third most common cause was “slipping or tripping with fall” (17.3%).

In 2022, mental health issues among female workers (accounting for 1.2% of total illnesses) were more than three times as prevalent as those among men (0.4%). Traffic accidents involving female workers outnumbered those involving men, both in absolute and relative terms (17% for women compared to 15% for men). Fatal outcomes represented 61.7% of cases for women, compared to 44.2% for men.

According to the Institute, this discrepancy is largely due to traditional family and social roles, which place additional burdens on women, compelling them to balance work and family responsibilities. This situation may result in more frequent travel and insufficient recovery time, contributing to an increased risk exposure. These differing social roles and the associated workload are key factors in the variation in risk exposure.

Moreover, some employment trends, while not inherently hazardous, can have significant occupational health and safety implications when combined with other factors. For instance, different types of employment contracts (such as part-time, informal, or casual jobs), occupational segregation, work organisation, and working hours can lead to both physical and psychological harm<sup>6</sup>. Additionally, the risks arising from multiple jobs and their combined effects require further exploration in light of the forthcoming social, economic, and technological changes. The financial and labour market crisis has prompted a trend of multiple employment, especially among the most vulnerable segments of the workforce, such as young people and women. This trend is driven by the need to compensate for the lack of income from part-time, casual, and fixed-term jobs<sup>7</sup>.

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<sup>6</sup> K. Sjöberg Forssberg, A. Vånje, K. Parding, *Bringing in gender perspectives on systematic occupational safety and health management*, in *Safety Science*, 2022, 152; see also EU-OSHA, *Risks and Trends in the Safety and Health of Women at Work*, in *osha.europa.eu*: «Occupational segregation, overall, the concentration of female activity in a few sectors seems to be increasing rather than falling over time. The move to service sectors particularly affects women, who work in the growing sectors health care, education and retail. Consequently, if it should be effective, OHS policy should continue to address and enhance its activities for these sectors»; R. Masike, B. Mwanza, L. Masiyazi, *A gender sensitive framework to safety and health at work*, in *European Scientific Journal*, 2014, 11, 155.

<sup>7</sup> INAIL, *La valutazione dei rischi in un'ottica di genere*, 2024, in *inail.it*.



### 3. Practical Hints for Dealing with a Gender-Oriented Approach

The introduction of a gender-sensitive approach to risk assessment has not been accompanied by specific regulations outlining how to implement this innovation. As previously mentioned, the only provisions in this area concern working mothers and encompass both physical and organisational protective measures, but only for a limited period.

In particular, Legislative Decree No. 151/2001 outlines the following provisions:

- Article 7: Specifies the activities and jobs that are prohibited from the start of pregnancy until the end of the work restriction period, with particular emphasis on Annex A (hazardous, strenuous, and unhealthy work) and Annex B (special agents and working conditions).
- Article 11: Requires that risk assessments take into account specific conditions that could pose risks to pregnancy and breastfeeding, with reference to agents, processes, and working conditions listed in Annex C (agents, processes, and working conditions to be evaluated in relation to pregnancy) and in accordance with European directives.
- Article 12: Details preventive measures and the outcomes of these evaluations, including the possibility of reassignment to a non-hazardous role or the option to request early maternity leave.
- Article 53: Imposes restrictions on night work.

Apart from these provisions, there is a lack of specific protective measures from a gender perspective. No further guidance is offered in this regard by collective agreements.

In 2014, the CGIL, CISL, and UIL unions put forward the document titled *Proposals for Negotiation on the Topic of Health and Safety at Work*<sup>8</sup>. The document emphasises that the organisation of work is a critical aspect of collective bargaining, directly affecting workers' health and safety. Work organisation should be designed to create a reliable and safe system, using parameters that reconcile efficiency, protection, and workers' satisfaction. However, it is often the case that health and safety management systems are unable to integrate with the actual organisation of work, even though they formally comply with regulatory obligations. In this respect, the paper raised concerns that many employers fail to recognise the direct link between these two issues, treating them as independent variables. As a

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<sup>8</sup> Cgil-Cisl-Uil, *Proposte per la Contrattazione in tema di Salute e Sicurezza sul Lavoro*, 2014, in *olympus.uniurb.it*.

result, the responsibility for implementing necessary measures is relegated to second-level collective bargaining.

Collective agreements that explicitly link work organisation issues with gender-related matters are rare. Such connections are mainly made in relation to the monitoring, research, and consultation activities carried out by commissions or other bodies established to promote gender equality and prevent discrimination<sup>9</sup>. In contrast, unions should take the lead in ensuring that women's health and safety at work are given due attention<sup>10</sup>. Some suggestions have emerged from non-binding documents. In 2017, the Autonomous Province of Trento issued guidelines for drafting a risk assessment document with a gender perspective<sup>11</sup>. These guidelines emphasised the need to consider gender-specific indicators, particularly in evaluating work-related stress, taking into account household responsibilities, working hours, career development, harassment, and emotional stress factors. They also highlighted the importance of addressing reproductive risks for both men and women.

Earlier, in 2013, the Milan Women's Health Work Group, comprising CGIL, CISL, and UIL unions, released a paper titled *Risk Assessment with Gender in Mind*<sup>12</sup>, identifying several quantitative and qualitative indicators for assessing risks. Their analysis was based on the following observations: 1) women and men often perform different tasks; 2) they follow different career paths both in the labour market and within companies; 3) women

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<sup>9</sup> M.D. Ferrara, *Il ruolo della contrattazione collettiva e la tutela della salute nei luoghi di lavoro: la prospettiva di genere*, in G. Sclip (ed.), *Sicurezza accessibile. La sicurezza sul lavoro in una prospettiva di genere*, Trieste, 2019, 59.

<sup>10</sup> Trades Union Congress, *Gender in occupational safety and health*, 2017, in [tuc.org.uk](http://tuc.org.uk). But also CGIL, in its Guidelines *Una prospettiva di genere su salute e sicurezza*, 2023, in [nidil.cgil.it](http://nidil.cgil.it), stresses that: Unions should work to ensure that adequate health programmes are provided in the workplace, addressing the specific needs of female workers. They should campaign against any gender discrimination and the harmful practices that may result from it, while also pressuring national, regional, and local governments to adopt international laws and conventions. Furthermore, unions should incorporate collective bargaining clauses that mandate the inclusion of occupational health as a vital tool in eliminating workplace violence, while also considering the needs of a diverse workforce. Additionally, they should advocate for the creation of independent occupational health and safety committees, which are crucial for maintaining safe working conditions. These committees should be fully inclusive of women and tasked with monitoring the conditions, organisation, and working methods within the workplace, ensuring that they account for both the biological and social needs and differences of workers.

<sup>11</sup> Provincia Autonoma di Trento, *Indicazioni per la redazione di un documento di valutazione dei rischi in un'ottica di genere*, 2017, in [trentinosalute.net](http://trentinosalute.net).

<sup>12</sup> Gruppo Donne Salute Lavoro CGIL CISL UIL Milano, *La valutazione dei rischi tenendo conto del genere*, 2013, in [lombardia.cisl.it](http://lombardia.cisl.it).

and men are frequently exposed to different risks, including those that are less visible, such as violence and harassment; 4) outside of work, women and men face different constraints related to time and family care.

In the same year, the ILO released guidelines, which set out the need to “carefully explore the effects of gender roles on safety and health; analyse risks in both male- and female-dominated occupations; develop sex-disaggregated OHS data; incorporate the findings from OHS research into policymaking and workplace action; and fully involve both men and women workers in the decisions that affect their safety and health at all levels, from bodies such as national safety councils to occupational health services and workplace-level safety committees”<sup>13</sup>.

Most recently, in 2024, INAIL issued recommendations on gender-sensitive risk assessment<sup>14</sup>, which included risk assessment sheets tailored to a gender-oriented approach. These sheets analyse risk exposure, harm, and necessary protective measures, distinguishing between neutral, female, and male-related risks.

#### 4. How to Address a Gender-oriented OHS Approach?

In the absence of clear regulatory directives, how can we determine which measures are compulsory for employers in a gender-sensitive OHS approach?

Article 2087 of the Italian Civil Code, which is central to safety obligations, requires employers to adopt measures that, considering the specific nature of the work, experience, and current techniques, are necessary to safeguard both the physical and moral well-being of workers. This article functions as a “closing rule” within the occupational health and safety system<sup>15</sup>, open to broad interpretation in light of the right to health (Article 32 of the Constitution) and the principles of fairness and good faith (Articles 1175 and 1375 of the Italian Civil Code), which also govern the employment relationship. The employer’s obligation to

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<sup>13</sup> ILO, *10 Keys for Gender Sensitive OSH Practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health*, 2013, in *ilo.org*.

<sup>14</sup> INAIL, *La valutazione dei rischi in un’ottica di genere*, 2024, in *inail.it*.

<sup>15</sup> Court of Cassation, Fourth criminal chamber, 30 November 2007, no. 44791; Id., Third criminal chamber, 26 January 2005, no. 6360. See S. Aprile, *Art. 2087 c.c.*, in G. Amoroso, V. Di Cerbo, A. Maresca (eds.), *Diritto del lavoro*, I, Milan, 2017, 752; P. Albi, *Adempimento dell’obbligo di sicurezza e tutela della persona – art. 2087 cod. civ.*, in *Commentario Schlesinger*, 2008; Id., *La sicurezza sul lavoro e la cultura giuridica italiana fra vecchio e nuovo diritto*, in *Diritto della Sicurezza sul Lavoro*, 2016, 1, 83.

«protect the physical integrity and moral personality of workers» involves both typical and atypical measures. Typical measures are those established by law, collective agreements, or other binding provisions, whereas atypical measures focus on protecting workers' health and safety, such as implementing safety precautions within the technical and operational organisation of work to prevent potential harm.

However, in this context, the rule outlined in Article 2087 of the Civil Code does not imply an obligation to adopt every conceivable or unspecified precaution. Rather, the duty is to exercise due diligence, which must be concretely identified. For protective devices, jurisprudence has clarified that the benchmark is the “highest technologically possible level of safety”<sup>16</sup>. In contrast, the benchmark for organisational measures has not yet been fully clarified, though it has been traced to behavioural obligations imposed by legal sources. Thus, it can be concluded that the obligations involved **could** arise from contractual good faith<sup>17</sup>, as explained by law and collective bargaining in areas not primarily focused on security.

Furthermore, we must consider that the Consolidated Law adopts a holistic notion of health, defined as the “state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity” (Article 2, par. 1, lett. o). This rule reflects a comprehensive vision of the worker, whose risks are addressed in their entirety to ensure full health. In addition to more “traditional” physical risks, employers must also evaluate those risks that can be summarised as psycho-social, linked to the interaction between the subjective characteristics of the worker (such as gender, age, and geographical origin), the objective factors (such as the type of contract), and the organisation of work<sup>18</sup>.

Applying these conclusions to our analysis, with respect to exposure to physical hazards, workplace health and safety legislation traditionally did not distinguish between genders. As a result, workplaces, machinery, equipment, workstations, and even personal protective equipment were designed primarily for men of average, standardised body size and age.

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<sup>16</sup> Constitutional Court, 25 July 1996, no. 312; Court of Cassation, Labour chamber, 21 June 2019, no. 16749.

<sup>17</sup> Court of Cassation, Labour chamber, 11 November 2022, no. 33428; Id., 26 November 2021, no. 37035; Court of Appeal of Rome, Labour chamber, 2 March 2020, no. 75.

<sup>18</sup> S. Laforgia, *Tutela della salute e sicurezza, benessere dei lavoratori e legalità: interconnessioni organizzative e giuridiche*, in *Diritto della Sicurezza sul Lavoro*, 2016, 1, 126. See also M.P. Monaco, *Benessere, organizzazione e contratto di lavoro: una ricomposizione*, Bergamo, 2023.

This male-centric approach has also been applied to the calculation of exposure limits for hazardous substances. “Exposures to dangerous substances in service occupations are frequent but remain under-assessed. Women’s exposure in healthcare, hospitality, dry cleaning, hairdressing, and waste management may also involve carcinogens. Exposures in these occupations, as well as in other tasks such as cleaning, can vary and are often unpredictable. This underscores the importance of avoiding assumptions about what women are exposed to and applying the same risk assessment principles, including substitution and elimination, and the hierarchy of prevention measures as defined in the EU prevention approach, as for other workers. Gender differences in the uptake and metabolism of dangerous substances should also be further explored”<sup>19</sup>.

Only in recent years have work clothing, safety footwear, and certain types of PPE been made available in sizes suitable for various body types. However, there are still relatively few studies analysing gender-specific susceptibility to hazardous substances and biological agents. This highlights the need for new scientific research on gender differences in the workplace, which could help develop targeted strategies for preventing chemical and biological work-related risks. In 2018, the adoption of Law no. 3 of 11 January, specifically Article 3, promoted the application and dissemination of gender medicine, aimed at ensuring the quality of services provided by the National Health Service<sup>20</sup>.

The issue becomes more complex when considering “organisational hazards”. In this regard, it is difficult to assert an absolute right of the worker to obtain certain benefits or changes, as it involves a legal situation that requires balancing the interests of different workers. The criterion to follow could arise from the connection between safety obligations and contractual good faith, as explained by jurisprudence. From this perspective, many regulations that may initially appear unrelated to preventive aspects ~~can~~ could serve to define the organisational scope of the safety obligation. On the other hand, we must not lose sight of the fact that there is also a need for legal certainty on the part of the employer.

One example might be the use of anti-discrimination regulations, where a worker demonstrates sex-based discrimination. Despite some judicial and

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<sup>19</sup> EU-OSHA, *Risks and Trends in the Safety and Health of Women at Work*, 2014, in [osha.europa.eu](http://osha.europa.eu), Id., *Mainstreaming gender into occupational safety and health practice*, 2014, in [osha.europa.eu](http://osha.europa.eu)

<sup>20</sup> See the monographic issue of *The Italian Journal of Gender-Specific Medicine*, *La normativa sulla medicina di genere in Italia*, Supplement to Volume 5, Issue 3, 2019.

doctrinal developments, proof of a relational element is required. Specifically, it must be shown that the treatment received is less favourable compared to that received or which would be received by individuals not subject to the protected characteristic and in a similar situation<sup>21</sup>.

Another example is the refusal to apply reasonable accommodation to a worker who provides assistance to a disabled person. In 2008, the Court of Justice, in its judgment of 17 July 2008, Case C-303/06, *Coleman*, stated that if an employer treats a worker less favourably than another in a similar situation, and it is proven that the treatment is due to the disability of their child, for whom they provide essential care, such treatment constitutes direct discrimination under Article 2(2)(a) of Directive 2000/78/EC. Consequently, the caregiving worker is entitled to “reasonable accommodations”, including organisational adjustments, as provided for by the Directive. Furthermore, in a recent order dated 17 January 2024, the Court of Cassation referred to the Court of Justice the question of whether EU law entitles the caregiver of a severely disabled child to invoke the anti-discrimination protections granted to disabled individuals under Directive 2000/78/EC, even in cases of indirect discrimination<sup>22</sup>.

Additionally, the provisions of collective bargaining addressing work-life balance measures may come into play: leaves and scheduling flexibility measures, such as remote work, flexible daily working hours, solidarity time banks, and provisions for reducing working hours to support employees' needs during specific life periods. Viewing these clauses from a preventive perspective would help define the obligation of organisational safety and also carries several implications<sup>23</sup>. In the event of an injury, if a causal link is established between the injury and the failure to implement the measure, the employer could be held liable.

Nevertheless, it is undeniable that, in this way, the employer is burdened with a significant safety obligation, without clear guidance. The sensitivity of the issue would require, for reasons of legal certainty, the intervention of sources capable of managing the employer's powers, namely the law

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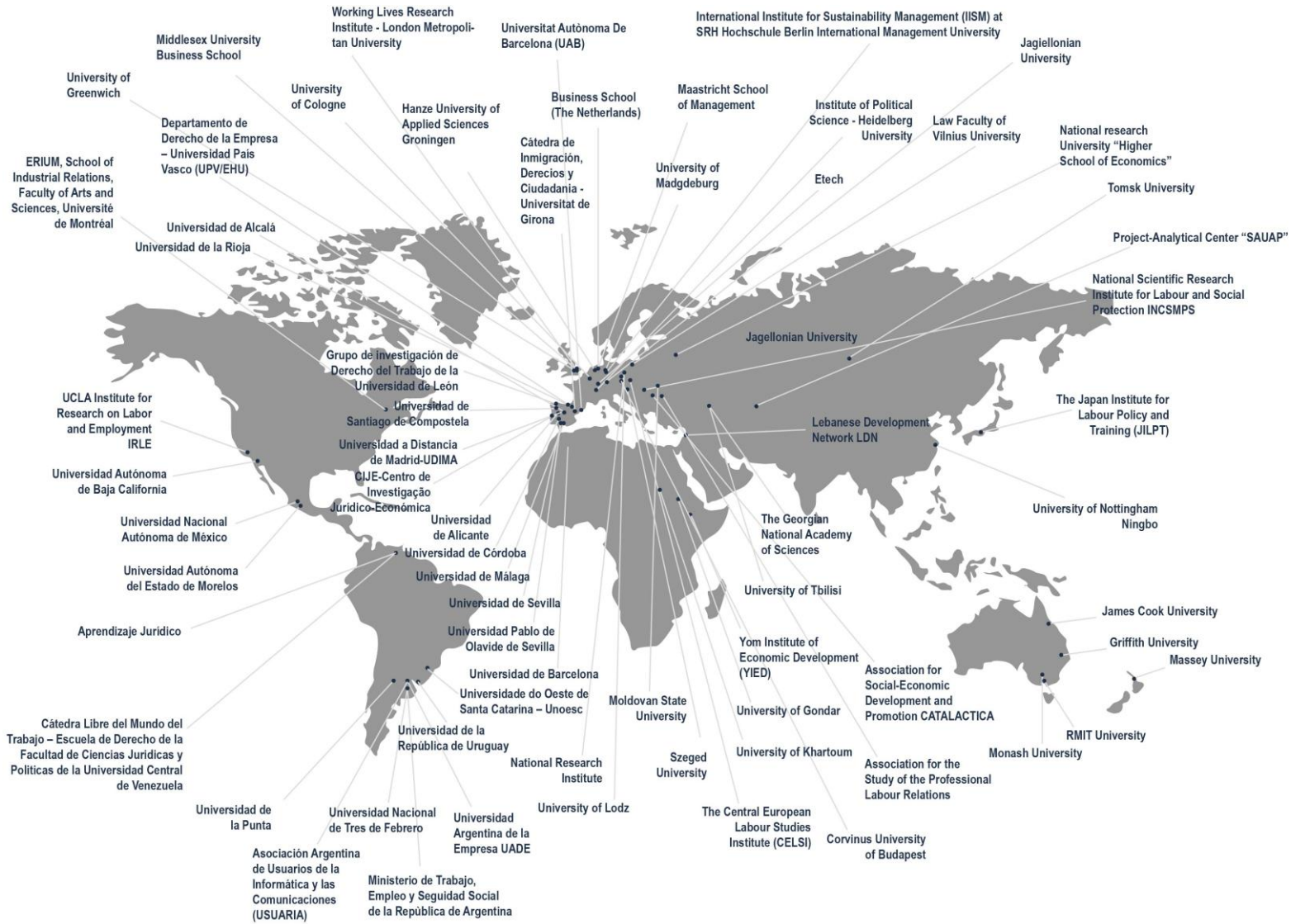
<sup>21</sup> E. Consiglio, *Che cosa è la discriminazione? Un'introduzione teorica al diritto antidiscriminatorio*, Turin, 2020; M. Barbera, A. Guariso (ed.), *La tutela antidiscriminatoria*, Turin, 2020.

<sup>22</sup> Court of Cassation, Labour chamber, 17 January 2024, no. 1788, with the comment of F. Andretta, *La centralità della figura del caregiver nell'assistenza ai disabili: effettività della tutela e adattamenti ragionevoli. La resilienza è donna*, in *Labor, Rubrica Aggiornamenti*, 1 February 2024.

<sup>23</sup> See the analysis of M. Tiraboschi (ed.), *Welfare for People. Settimo rapporto su welfare occupazionale e aziendale in Italia*, Bergamo, 2024.

and collective bargaining. Nonetheless, the silence on the matter continues to make the gender approach an unresolved problem, still lacking a defined framework.

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