

OFFICIAL STATE GAZETTE

Number 265

Tuesday, 3 November 2009

Sect. I. Page 91703

I. GENERAL PROVISIONS

MINISTRY OF THE PRESIDENCY

17432 *Spanish Royal Decree 1615/2009 of 26 October regulating the grant and usage of the corporate "Equality in the Workplace" seal*

Article 14 of the Spanish Constitution establishes that all Spaniards are equal before the law and shall not be subject to discrimination on account of gender, among other reasons. Article 9.2 of the Constitution entrusts the public authorities with ensuring the necessary conditions for true and effective freedom and equality of individuals and the groups of which they form part, with removing any barriers that prevent or hinder the full enjoyment of this freedom and equality, and with facilitating the participation of all citizens in political, economic, cultural and social life.

Likewise, equality between men and women with regard to access to employment, training and professional promotion, and employment conditions is a fundamental principle of the European Union, and is set out in the treaties establishing the Union and in the EU gender equality directives.

Nevertheless, experience has shown that women encounter difficulties in achieving true and effective equality in various aspects of life, especially in the workplace.

As a step toward achieving full equality and implementing both constitutional and EU legislation, the Spanish government enacted Gender Equality Law 3/2007 of 22 March.

This legal provision requires companies to adopt measures to avoid any discrimination between men and women in the workplace and, where applicable, to design, agree and implement a gender equality plan.

In order to acknowledge and encourage the efforts of companies committed to the principles of equality, Article 50 of Gender Equality Law 3/2007 foresees the creation of a corporate equality seal. This accreditation would be awarded to those companies that apply outstanding equal treatment and opportunity policies regarding working conditions, organisational models and other areas, such as business services, products and advertising.

The most relevant aspects to be taken into account in awarding the corporate equality seal include balanced participation between both genders in the decision-making processes, access to positions of responsibility, a balanced proportion of men and women across the different professional groups and categories, the implementation of

gender equality plans and other innovative measures to promote equality, and non-sexist advertising for the companies' products or services.

Companies will also be assessed on the basis of whether their remuneration and professional classification criteria and systems enable equitable assessment of work performance of men and women, both in different posts and identical positions, and eliminate the negative effects of applying apparently "across-the-board" criteria that, for a number of decades, has actually been based on a biased appreciation of the value of certain positions from the perspective of gender.

Furthermore, efforts by companies to facilitate a balance between the personal, family and professional lives of all employees also have great bearing on the gender equality corporate seal. This includes the establishment of general objectives and flexible measures adapted to the variety of needs and situations arising among a company's staff.

The present Royal Decree contributes to securing these objectives by establishing the implementing regulations for the corporate equality seal, the procedures and conditions for grant, the entitlements it carries, the terms in which the Ministry will publically announce the names of the companies awarded the seal and the equality policies implemented by them, as well as the control procedures for maintaining the conditions and policies serving as grounds for grant or revocation, in the event companies fails to comply with these original conditions and policies, as established in Article 50.3 of the Gender Equality Law 3/2007 of 22 March.

This Royal Decree is issued in accordance with Article 149.1.7 of the Spanish Constitution, which establishes that the State is the sole party responsible for labour-related legislation, and in accordance with the third final provision of Gender Equality Law 3/2007 of 22 March, in order to effectively regulate the corporate equality seal established in Article 50 of that law.

Reports and information from the leading business and trade union organisations have been taken into account in drafting the present Royal Decree.

The Ministry of the Economy and Finance and the Ministry of Regional Public Administration have submitted reports supporting this Royal Decree.

Consequently, at the proposal of the Minister of Equality and the Minister of Employment and Immigration, and with the prior approval of the First Vice-President and Minister of the Presidency, in accordance with the Council of State and following consideration by the Council of Ministers at their meeting held on 23 October 2009,

THIS ROYAL DECREE ESTABLISHES THE FOLLOWING:

CHAPTER I

General provisions

Article 1. *Purpose*

The purpose of the present Royal Decree is to implement Article 50 of Gender Equality Law 3/2007 of 22 March in connection with the corporate equality seal, regulating the name given to the seal, the procedures and conditions for its grant, the entitlements it carries, the terms in which the Ministry will publically announce the names of the companies awarded the seal and the equality policies implemented by them, as well as the control procedures for maintaining the conditions and policies serving as grounds for grant or revocation, in the event companies fails to comply with these original conditions and policies.

Article 2. *Name of corporate equality seal*

The corporate equality seal regulated by the present Royal Decree shall be called "Equality in the Workplace" and shall be represented by the logo determined in an order issued by the Minister of Equality.

Article 3. *Ownership of the corporate equality seal*

Ownership of the logo and the name of the corporate equality seal regulated by the present Royal Decree shall lie exclusively with the Ministry of Equality. The logo and name shall be registered as a trademark in accordance with Trademark Law 17/2001 of 7 December and subject to the applicable regulations in that matter.

Article 4. *General application requirements for the "Equality in the Workplace" corporate seal*

Any public or private company operating in Spanish territory may submit an application to the Ministry of Equality for the corporate seal, providing the company meets the following requirements:

- a) The company is duly registered with the Social Security authorities and, where applicable, is duly incorporated and entered in the corresponding public registry.
- b) The company is fully compliant with all tax and Social Security obligations.
- c) In the three years prior to the application, the company has not been subject to unappealable sanctions for serious or very serious infringement in terms of equal opportunities or non-discrimination or for a very serious infringement in a social matter, in accordance with the revised text of the Law on Social Order Infringements and Sanctions, approved by Royal Legislative Decree 5/2000 of 4 August.
- d) The company must have implemented a gender equality plan, in those cases where it is required to do so under prevailing

legislation or applicable collective labour agreements. Where companies are not required to do so, they must have taken steps to implement a gender equality plan or gender equality policies.

e) The company must have a clear commitment to equal opportunities between men and women in employment conditions, internal organisation and operations, and corporate social responsibility. This commitment must be in writing and made available to the public.

CHAPTER II

Procedure for awarding the “Equality in the Workplace” corporate seal

Article 5. Call for applications and application process

1. Each year the Minister of Equality shall issue an order to call for applications for the “Equality in the Workplace” distinctive seal. The call for applications, which will be published in the Official State Gazette, will establish the terms and bases for grant, in accordance with the provisions of this chapter.

2. Those companies that meet the requirements set out in the preceding article may submit applications to the Ministry of Equality’s General Directorate for Equal Opportunity Employment, using the standard form set out in the call for applications. Applications may be submitted electronically or at any of the locations listed in Article 38.4 of Law 30/1992 of 26 November on the public administration legal framework and the common administrative procedure.

Article 6. Documentation

1. The following documentation must be submitted with the applications, except where any of these documents are already available to the public administration:

a) Unabridged or selected texts setting out the company’s gender equality plan or policies

b) Where companies are required to implement a gender equality plan under prevailing legislation, collective labour agreement or any other requirement, a copy of the documents setting out the agreement reached or the intention to negotiate such an agreement

c) An assessment of or report on the gender equality measures implemented in the company in connection with employment conditions, the organisational model, corporate social responsibility, and information and advertising relating to the company’s products and services

d) Any other documents that provide a fuller understanding of the gender equality plan or policies enacted in the applicant company

e) In those cases where the company has requested or obtained a similar corporate seal from any other public administration, a copy of the corresponding application or document attesting to grant of that seal

2. Additional documentation: Optionally, companies may submit a report on the gender equality plan or policies cited in the application, issued by the representatives of the company's personnel. If the company does not have a structure for employee representation, the report may be issued directly by the employees.

Article 7. *Evaluation Committee*

1. The Ministry of Equality will create an Evaluation Committee for granting the "Equality in the Workplace" seal. This committee will be chaired by the General Director for Equal Opportunity Employment and will comprise three individual members at least at sub-director general level. Two of these individuals shall be officials of the General Directorate for Equal Opportunity Employment and one shall be a representative of the *Instituto de la Mujer*, appointed by the director of that institution. In addition to the chair and the three members indicated, the committee shall also have a secretary, which shall be an employee of the General Directorate for Equal Opportunity Employment, at least at the technical director level.

2. The Evaluation Committee will verify and evaluate the documentation submitted on the basis of the assessment criteria set out in Article 10. Following this evaluation, the Committee will forward its recommendations to the Ministry of Equality.

3. In order to assist it in its evaluation, the Evaluation Committee may request reports from other public administrative bodies regarding the companies applying for the corporate seal.

4. The operations of the Evaluation Committee shall be governed by Chapter II, Title II, of Law 30/1992 of 26 November on the public administration legal framework and the common administrative procedure.

Article 8. *Resolution*

On the basis of the recommendations submitted by the Evaluation Committee, the Minister of Equality will issue a reasoned resolution on the applications for the "Equality in the Workplace" corporate seal. This resolution will be published in the Official State Gazette.

A resolution will be issued and applicants will be notified within six months from the date of closure of the application period set in each annual call for applications. If no resolution is expressly issued by the end of this six-month period, applications will be deemed accepted.

Article 9. *Presentation of the corporate seal*

The Ministry of Equality will present companies with the certificate and plaque attesting to the “Equality in the Workplace” corporate seal in an official and announced public ceremony.

Article 10. *Assessment criteria*

In its assessment of applications received, the Evaluation Committee established under Article 7 shall place special attention on the implementation and results of the measures set out in the companies’ gender equality plans or policies, their comprehensive nature, the application of affirmative action measures and the establishment of procedures and criteria for periodically reviewing the company’s gender equality plans or policies.

The evaluation will also take into account the size of the company and, specifically, the special characteristics of small and medium-sized enterprises.

Applicants will primarily be assessed on the following aspects:

1. General aspects of the gender equality plan or policies:

a) The clarity and strength of the measures contained in the gender equality plan or policies, in defining the objectives to be pursued and the means for implementing and developing the plan or policies

b) The suitability of the gender equality plan or policies for counteracting gender-based discrimination throughout the company

c) Whether the gender equality plan or policy measures are proportionate and reasonable, taking into account the balance between the objectives, resources and periods established

d) The possible coordination with similar actions performed by other companies, especially in the same activity sector(s)

e) The involvement of both employee representatives and the staff as a whole in the company’s commitment to gender equality

f) The participation of employee representatives, where applicable, and of staff as a whole in diagnosing gender-related needs and designing the measures forming part of the gender equality plan or policies and monitoring and evaluating their implementation

g) Participation of experts on gender equality and non-discrimination in the workplace in the diagnosis, design, implementation and evaluation of the gender equality plan or policies

h) Whether or not the company has established specific committees to monitor implementation of the gender equality plan or policies

i) The commitment of the company's senior management to achieving true and effective equality

j) The design, implementation and evaluation of affirmative action measures to counteract discrimination

k) The adoption of innovative measures that effectively contribute to eliminating and preventing situations of discrimination between men and women

2. Aspects regarding access to employment and work conditions:

a) Gender-specific statistics on the company's workforce, by age, type of relationship with the company, professional level, group, category or position, and trends in these statistics over recent years

b) Gender-specific statistics regarding remuneration of company personnel, by age, type of relationship with the company, professional level, group, category or position, and trends in these statistics over recent years

c) The application of employment access and professional promotion criteria that respect the principles of gender equality and non-discrimination and that do not create situations of direct or indirect discrimination

d) The application of remuneration and professional classification systems and criteria that eliminate and prevent situations of direct or indirect discrimination

e) The establishment of measures regarding organisation of the work day (work hours, shifts, vacations, etc.) that help create a positive work/life balance, and the establishment of other measures for the same purpose, such as those relating to employee benefits and improvements, working from home or geographic mobility

f) The implementation of training programmes that help remedy any deficiencies in the professional qualification of females, and help them access positions in which they are underrepresented, especially those entailing greater responsibility, diversification, creativity and remuneration

g) The implementation of specific measures to prevent sexual harassment and gender-based harassment in the workplace, such as codes of conduct, protocols and procedures for reporting harassment or related claims, and awareness-raising and training among both male and female employees and their representatives

h) The establishment of advanced and innovative occupational health and safety policies, especially in connection with maternity and paternity leave and leave for breastfeeding.

i) The presence of females in the different decision-making areas of the company

j) The presence of females in positions requiring high technological, technical and scientific knowledge, among others

k) The implementation of measures to review the different areas of labour relations, in order to achieve true and effective gender equality, such as absenteeism and possible sanctions therefor, conflict resolution procedures, training policies, occupational health and safety policies, commitments regarding quality of employment, maintenance and restructuring of staff, employee benefits and improvements, etc.

l) The effective publication and guarantee of rights and entitlements established under the gender equality plan or policies and, especially, under any anti-discrimination mechanisms

3. Aspects relating to the organisational model and to corporate social responsibility:

a) Information, training and awareness-raising regarding equality and non-discrimination, aimed at the company as a whole and at certain professional groups or profiles

b) The existence of equality agents, managers or units within the company's organisation and management or in other areas of labour relations

c) The incorporation of diversity management measures

d) The design and production lines that help eradicate and prevent situations of discrimination

e) The company's policies on corporate image and on the use of non-sexist language and advertising to contribute to eradicating and preventing situations of discrimination

f) The implementation of corporate social responsibility actions in connection with equality issues, such as economic, commercial, labour, assistance-related or other types of measures aimed at furthering gender equality within the company or its social environment

g) The integration of the commitment to effective gender equality in relations with stakeholders and other third parties (suppliers, clients, users, contractors, subcontractors, members of a group of companies, etc.).

h) Any other aspects that especially contribute to achieving effective gender equality

Entitlements and obligations derived from the “Equality in the Workplace” seal

Article 11. Entitlements

1. Without prejudice to other entitlements which may be established, recipients of the “Equality in the Workplace” seal are entitled to the following:

a) The Ministry of Equality will award the company a certificate and plaque attesting to the grant of the corporate equality seal in a public ceremony.

b) The company may use the seal in its trade relations and in advertising, in the terms and conditions established in Article 12 of this Royal Decree.

c) The seal will be taken into account in future requests for public subsidies where the achievement of gender equality has a bearing on evaluation, as established in Article 35 of Gender Equality Law 3/2007 of 22 March.

d) The seal will be taken into account in the grant of contracts, in the terms and conditions set out in Article 34.2 of Gender Equality Law 3/2007.

For these purposes, when the particular terms and conditions of a call for tenders indicate that preference will be given to those companies that establish measures to promote gender equality, this requirement will be deemed to be met by those companies holding the corporate equality seal. Nevertheless, this circumstance may also be documented through any other means established by the contracting body.

Companies that document their compliance through the corporate equality seal shall be required to maintain the equality parameters throughout the contract term.

e) The Ministry of Equality will publically announce the names of the companies awarded the equality seal and the equality policies applied in each company.

2. The grant of the equality seal is compatible with other seals and awards attesting to true and effective gender equality, extended by Spanish or foreign public administrations or public bodies connected with or reporting to those administrations, as well as by private Spanish or foreign entities.

Article 12. *General obligations of companies holding the equality seal*

1. Companies obtaining the equality seal shall be required to actively promote gender equality, especially in respect of compliance with and improvement of the measures forming part of the company's equality plan or policies that served as grounds for grant of the seal.

2. Use of the equality seal is subject to the following conditions:

a) The company must use the original logo and format determined for the seal, including the established colours and font.

b) The seal must always be accompanied by the name of the company awarded the seal and the year it was granted.

c) The “Equality in the Workplace” seal may only be used during the time period for which it was initially granted or extended. The seal must be used in accordance with the specific provisions of Chapter IV of this Royal Decree regarding the suspension, revocation or waiver of the seal.

Companies awarded the seal must cease use thereof upon expiry of the period during which the seal is valid, following notification from the Ministry of Equality of the temporary suspension or definitive revocation of the seal, or from the moment the company voluntarily requests a temporary suspension or waiver.

d) In any event, use of the “Equality in the Workplace” corporate seal shall be subject to full compliance with applicable regulations, especially with respect to advertising.

Article 13. *Annual report*

Companies holding the equality seal must submit an annual report to the General Directorate for Equal Opportunity Employment on the actions implemented under the gender equality plans or policies serving as grounds for award of the equality seal and the results of these actions.

In general, the annual report must be submitted within 30 calendar days from the date each year of the validity period expires. The first one-year period shall be understood to commence on the date of grant.

The third annual report submitted shall set out both the actions undertaken during the last one-year period and the results thereof, as well as all those actions relating to the gender equality plan or policies implemented throughout the three years the equality seal was in force.

The provisions of Article 6.2 regarding submission of the annual report shall apply.

Article 14. *Control procedures*

1. The General Directorate for Equal Opportunity Employment shall monitor and control the application and the effects of the gender equality plans or policies serving as grounds for grant of the equality seal.

2. In order to perform the aforementioned duties, the General Directorate for Equal Opportunity Employment shall evaluate the annual reports submitted by the companies holding the equality seal. The General Directorate may request further information from these companies as necessary in order to properly evaluate the equality plans and policies, their effective implementation and the results thereof.

CHAPTER IV

Validity, suspension and termination of the grant of the “Equality in the Workplace” corporate seal

Article 15. *Validity*

The corporate equality seal shall be valid for an initial period of three years.

Article 16. *Extension*

Prior to expiry of the three-year validity period, companies holding the equality seal may request an extension to this period.

In that regard, the company in question must provide the General Directorate for Equal Opportunity Employment with the corresponding request for extension, along with a three-year report describing the actions implemented under the equality plans or policies serving as grounds for grant of the equality seal and the effects thereof, as well as, where applicable, the additional documentation set out in Article 6.2.

Extensions shall be granted for further three-year periods and shall be subject to the same procedures and the same requirements and obligations as for initial grant.

Resolutions on requests for extension will be issued and the applicants will be notified within six months of submission. Where the request for extension is duly submitted in the established period, the entitlements and obligations derived from the “Equality in the Workplace” corporate seal shall remain effective until a resolution is issued on the extension request.

Article 17. *Suspension*

1. The Minister of Equality, either on initiative of the office itself or at the request of a third party, and following a meeting with the company in question, may suspend the validity of a corporate equality seal through a reasoned resolution published in the Official State Gazette, in the following cases:

- a) In the event the company fails to duly submit an annual report in the ordinary term stipulated in these regulations
- b) In the event the conditions serving as grounds for grant of the equality seal change, when this entails non-substantial diminishment of those equality parameters
- c) In the cases of minor non-compliance set out in Article 12 of these regulations.
- d) When a revocation procedure has been initiated as a precautionary measure, until a resolution is issued regarding definitive revocation of the seal

2. In the cases of non-compliance set out in section a) above, the suspension will remain in effect until the annual report is submitted in any extraordinary term the Ministry of Equality may set or until the circumstances serving as grounds for the suspension are remedied, as certified in the corresponding annual report.

3. Suspension of the validity of the corporate equality seal shall entail suspension of the entitlements derived from this seal, in the terms established in Article 11. The entitlements and obligations derived from the cases set out in sections c) and d) of Article 11.1 of the present Royal Decree shall be subject to the specifications set out in each call for applications, subsidy notices or calls for contract tender bids.

Article 18. *Revocation*

1. Without prejudice to the responsibilities that may be derived from other orders, the Minister of Equality, either on initiative of the office itself or at the request of a third party and following a meeting with the company in question, may revoke the corporate equality seal in a reasoned resolution published in the Official State Gazette, in the following cases:

a) In the event the company fails to duly submit the annual report to the General Directorate for Equality Opportunity Employment within the extraordinary term established for that purpose

b) In the event the conditions serving as grounds for grant of the equality seal change, when this entails substantial diminishment of those equality parameters

c) If the company ceases to meet any of the requirements for requesting the corporate equality seal

d) In the event conditions or circumstances that are incompatible with the subject evaluation criteria occur or are perceived in the company, or that are incompatible with true and effective gender equality

e) In cases of serious or reiterated non-compliance with the obligations derived from grant of the equality seal, and specifically if the company resorts to illegal advertising

2. Revocation of the corporate equality seal shall always entail the loss of the entitlements derived from the seal. The entitlements and obligations derived from the cases set out in sections c) and d) of Article 11.1 of the present Royal Decree shall be subject to the specifications set out in each call for applications, subsidy notices or calls for contract tender bids.

3. Companies whose equality seals have been revoked may not apply for a new seal for three years. Companies whose equality

seals are revoked for a second time may not apply for a new seal for ten years.

Article 19. *Voluntary suspension and waiver*

Companies holding an equality seal may request that the General Directorate for Equal Opportunity Employment temporarily suspend the seal. These companies may also waive grant of the seal.

Voluntary suspension shall entail the suspension of the entitlements derived from grant of the seal, as set out in Article 17 of this Royal Decree.

Waiver of the seal shall entail the loss of the entitlements derived therefrom, as set out in the preceding article.

CHAPTER V

Registration of grant, renewal, voluntary waiver, suspension and revocation of the corporate equality seal

Article 20. *Registration of companies awarded the “Equality in the Workplace” seal*

The Ministry of Equality, through the General Directorate for Equal Opportunity Employment, shall keep a public record of grants, renewals, voluntary waivers, suspensions and revocations of the “Equality in the Workplace” seal.

CHAPTER VI

Collaboration among public administrations

Article 21. *Collaboration among public administrations*

Public administrations shall guarantee the necessary coordination and collaboration regarding grant and revocation of the equality seal and any other seals or awards mentioned in Article 11.2. To that end, these administrations may issue notifications of any resolutions to grant, suspend, renew or revoke such distinctions, as well as of any requests for voluntary waivers received.

Single transitory provision: *Equal opportunity collaborating entity*

Companies recognised as “equality opportunity collaborating entities” in accordance with the Ministerial Order of 25 January 1996 may continue to use that recognition in their advertising and corporate communications until the Ministry of Equality issues resolutions on the first call for applications for the equality seal regulated in this Royal Decree. After that date, no company may continue to use the earlier recognition.

In the event any of the companies referred to in the preceding paragraph participate in the Ministry of Equality’s call for applications for the “Equality in the Workplace” seal, that company shall be subject to the legal framework set out in this Royal Decree for initial application for the seal. However, their recognition as an “equal opportunity

collaborating entity” shall be taken into account along with the other evaluation criteria established in Article 10.

First additional provision. *Responsibility*

This Royal Decree is issued in accordance with Article 149.1.7.a of the Spanish Constitution, which establishes that the State has exclusive responsibility for labour legislation.

Second final provision. *Implementation*

The Minister of Equality is authorised to issue as many regulations as necessary to implement and fulfil the provisions of the present Royal Decree.

Third final provision. *Entry into force*

The present Royal Decree shall enter into force on the day following its publication in the Official State Gazette.

Madrid, 26 October 2009

JUAN CARLOS R.

First Vice-President and Minister of the Presidency,

MARÍA TERESA FERNÁNDEZ DE LA VEGA SANZ