



Europe, Spain and France

What's new in the employment landscape?

Ana Cid and Laurence Harvey Wood

April 27, 2021

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





Legal Disclaimer

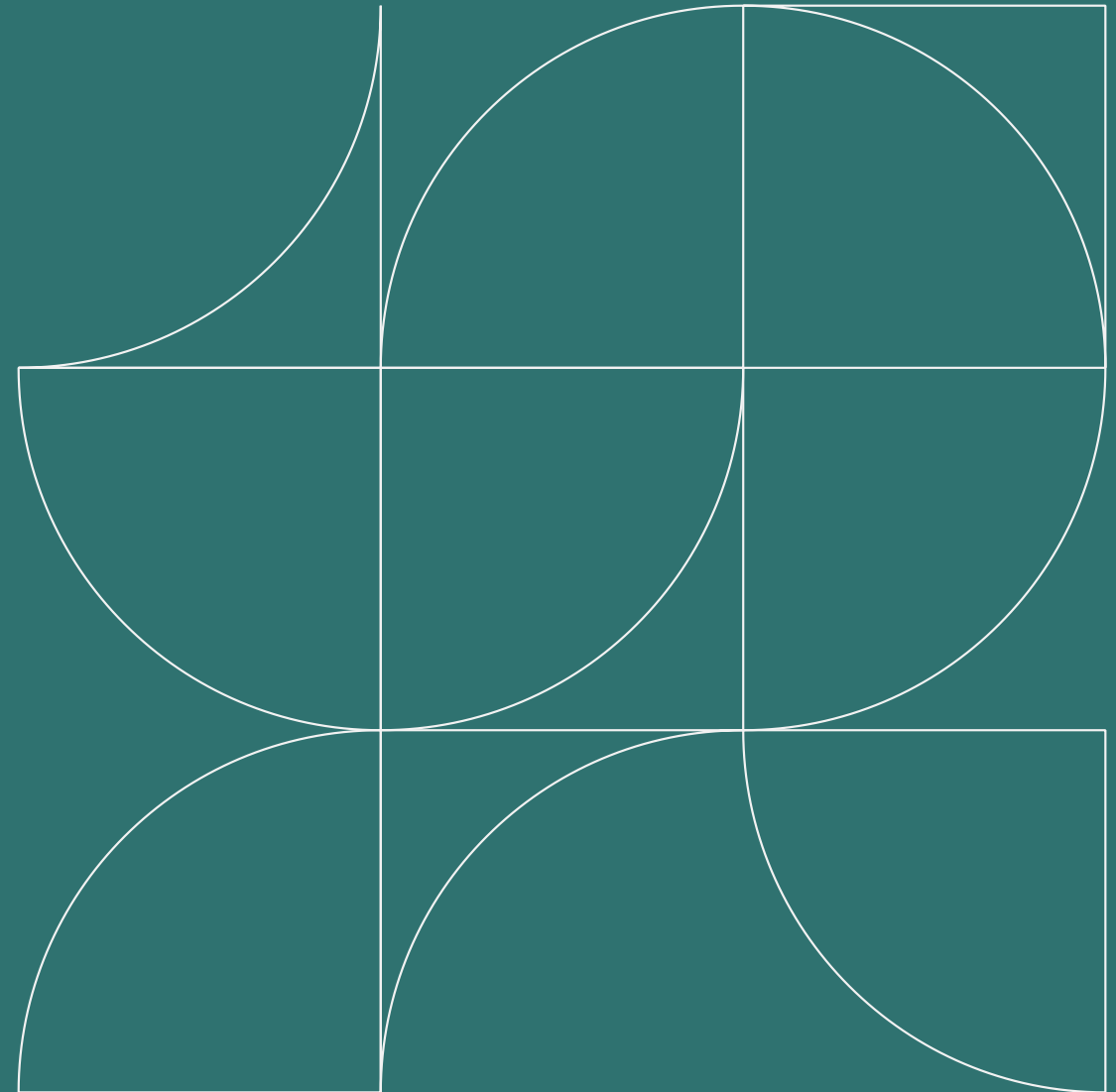
This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

How are France and Spain addressing key strategic trends in the workplace?



Your speakers today



Ana Cid
Partner

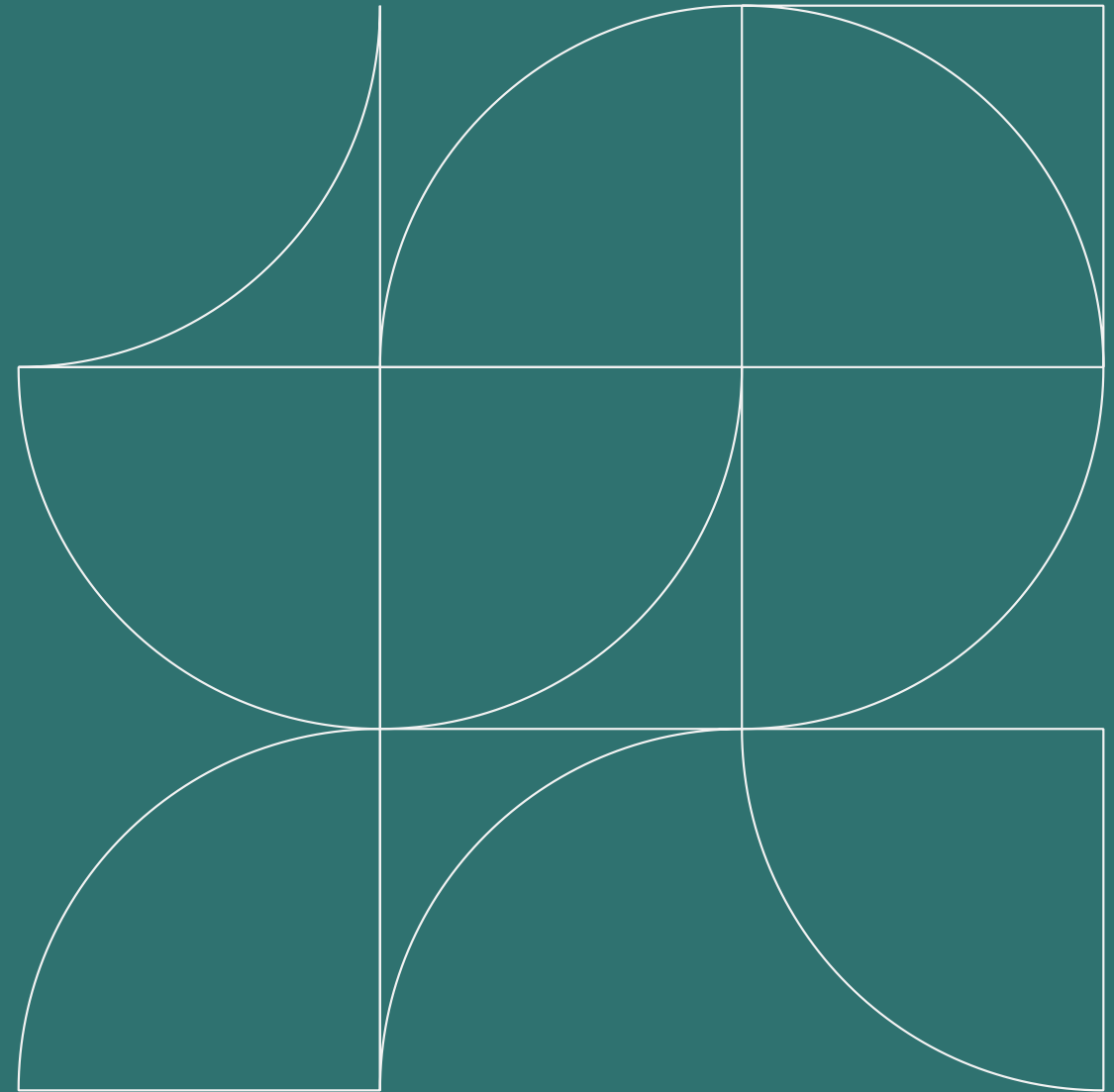


Laurence Harvey Wood
Partner

Today's agenda

1. The gig economy
2. Remote working policies and regulations
3. Gender pay equity developments
4. Latest news on lockdown rules

The gig economy



The gig economy: Employee/worker status

- Digital platforms providing PHV (private hire vehicle) or delivery services (Uber, Deliveroo, ...)
- Drivers and riders sign standard terms and conditions under which they operate as independent contractors
- The platform operator retains a degree of control over how drivers/riders perform their work: hours, geographic area, consequences if gigs are not accepted, etc.
- Drivers/riders have brought court claims in various European countries aimed at obtaining employee status
- Recent court decisions in Belgium, France, Italy, Spain and the UK illustrate the difficulty of analysing gig-based work according to traditional criteria
- New regulations are expected

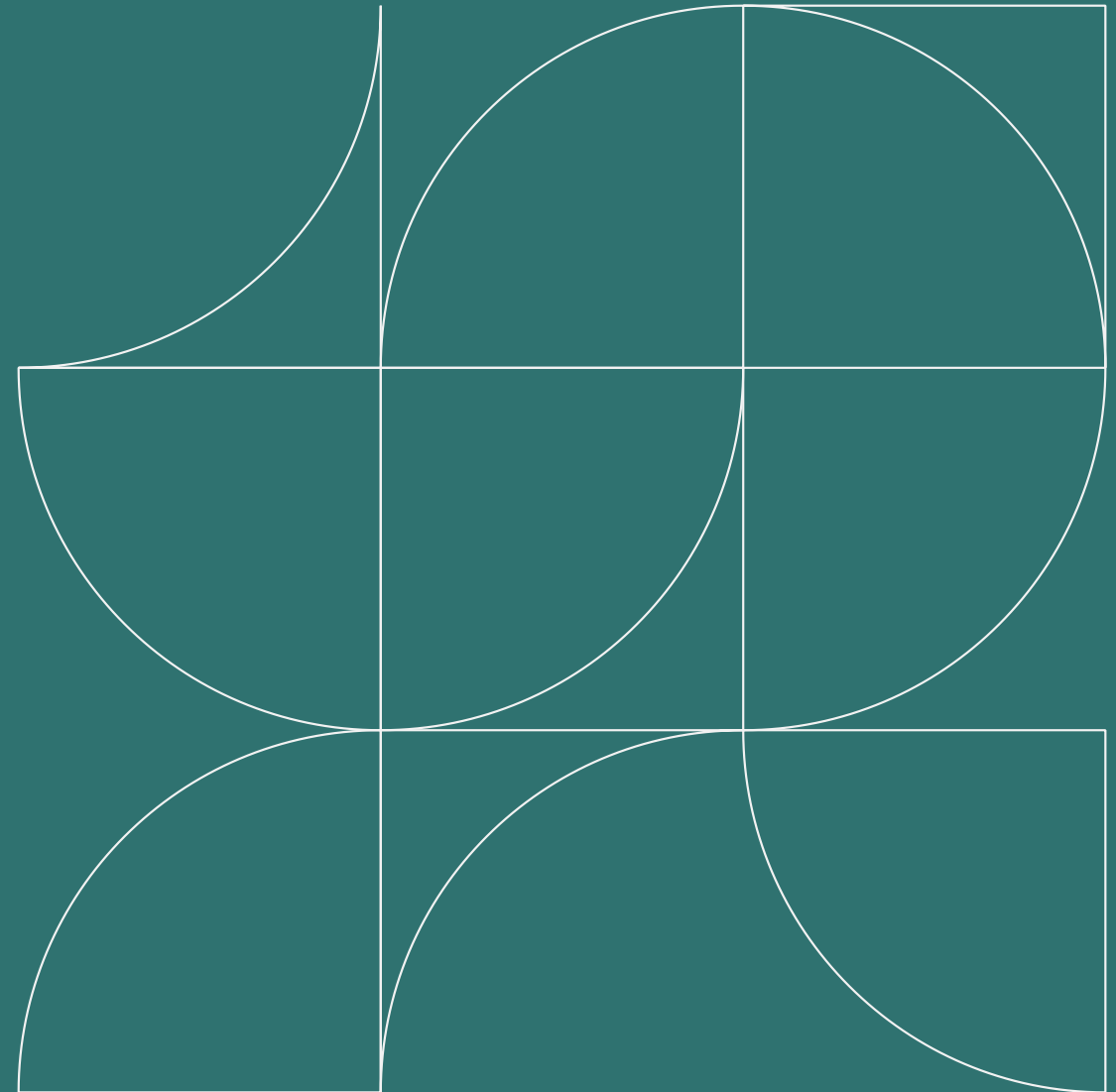
The gig economy: Court decisions in France

- November 2018: Take Eat Easy claim – rider was a *de facto* employee under the “link of subordination” test (instructions, supervision, sanctions)
- March 2020: Supreme Court dismisses an appeal by Uber, confirming that claimant drivers were employees
- February 2021: Paris labour court orders Deliveroo to pay damages for “concealed work” to a rider who was paid by the hour
- 7 April 2021: Paris court of appeal rules that a different Deliveroo rider engaged under revised contractual terms was an independent contractor

The gig economy: Developments in Spain

- Multiple case law from low instance courts declaring the employment nature of the relationship
- Supreme Court declared the employment nature of the relationship in ruling on September 2020 (Glovo Case), which basically applies to delivery services using digital platforms.
- Since then, Social Courts and labor inspections have declared the employment nature of delivery drivers
- Government is currently negotiating the “Riders law” and the proposal includes the assumption that riders delivering services for digital platforms will be presumed employees.

Remote working policies and regulations



Remote working

Latest developments

- More and more countries regulating remote working, even outside the context of the global pandemic
- In addition to remote working in-country, many employers are fielding requests from employees on cross-border remote working
- Cross-border remote working may also trigger implications from tax, corporate, immigration and data protection standpoints
- Common legal obligations for countries that have introduced new regulations on remote working include those relating to health and safety, contributions towards utility expenses increased by home working, obligation to introduce contractual amendments to implement remote working or additional regulations to protect confidential information and data privacy

Remote working in Spain (I)

- Pre Covid 19 legal framework included minor regulations on this topic, mainly subject to what the parties agreed.
- Covid 19 exceptional measures mandated to prioritize home working whenever possible
- New remote working act was approved in September. New law is based on the following pillars:
 - Equal treatment for remote employees
 - Voluntary nature of the remote working
 - Collective agreements and agreements with employee representatives will regulate main aspects of the relationship

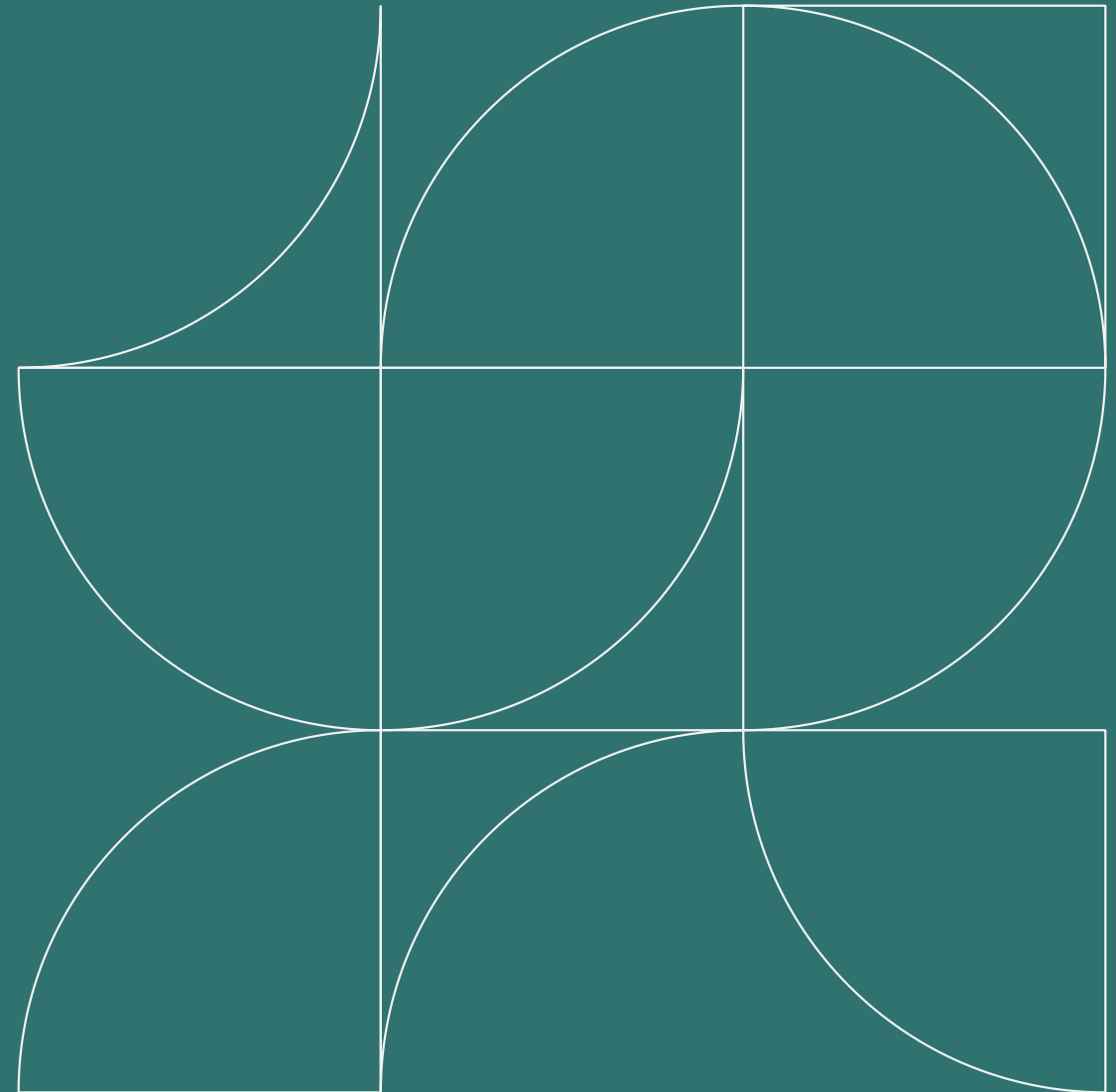
Remote working in Spain (II)

- Main obligations under the new remote working act are:
 - Obligation to execute a remote working agreement
 - Serve a copy of the agreement to employee representatives and Labor authority
 - Make sure that the following areas are duly covered for employees working remotely:
 - Access to training and professional promotion;
 - Access to employee representation rights;
 - Working hours tracking system and respect to working hours limits and breaks;
 - Health and safety evaluation and planning;
 - Policy on the exercise of the right to disconnect digitally;
 - Set tools for the exercise of management powers and supervision of work performance.

Remote working in France

- Pre-Covid legal framework:
 - implement remote working by collective agreement or unilateral charter
 - remote working had to be voluntary, except in exceptional circumstances such as an epidemic or air pollution spike
- National collective agreement on “teleworking” signed on 26 November 2020
- Obligation to reimburse remote working expenses
- Case law requirement to pay compensation for inconvenience, if remote working is at the request of the employer
- Common practice: fixed monthly allowance (limited exemption from social security contributions)

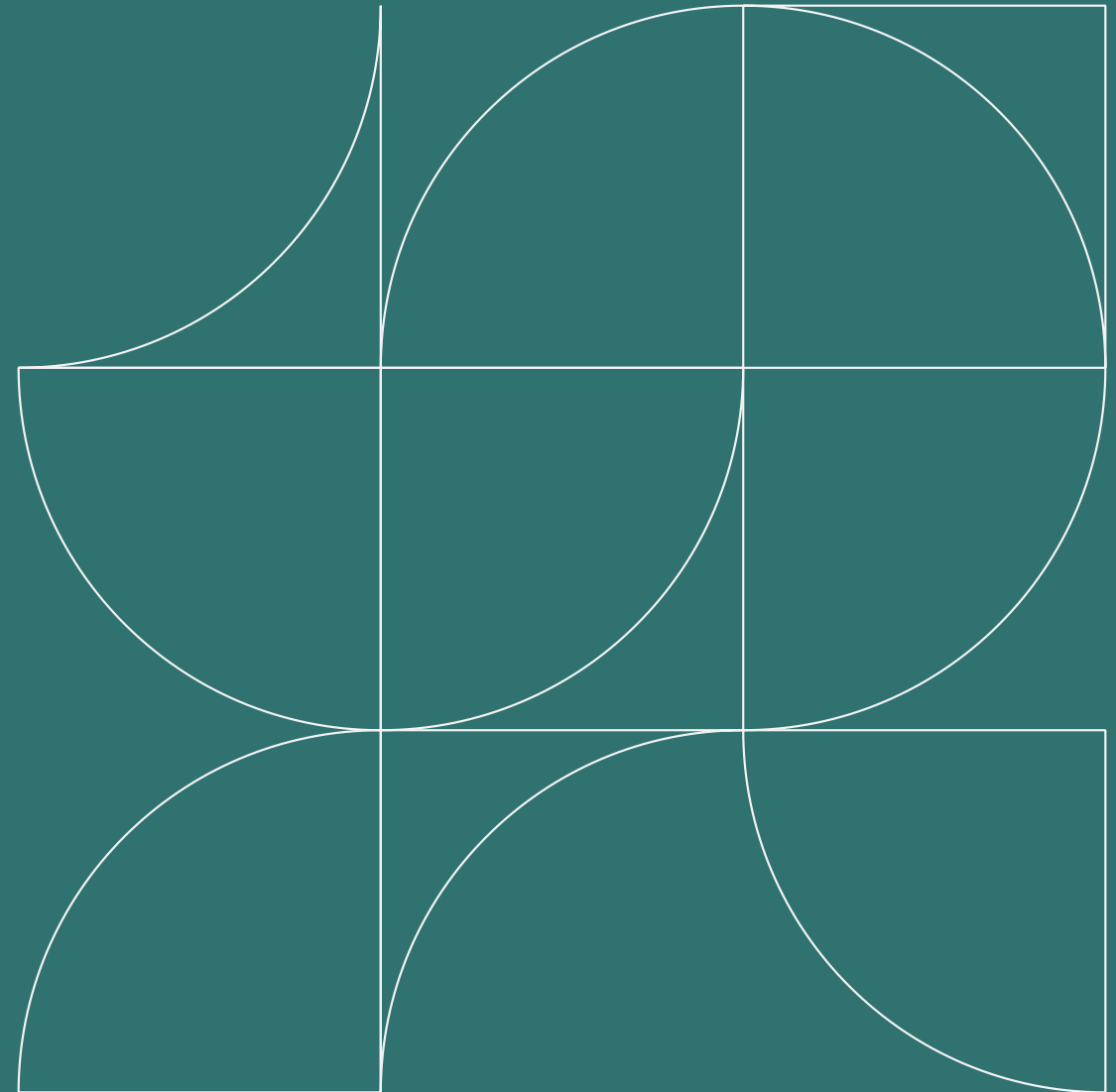
Pay equity developments



Pay equity: Developments in Spain and France

- Obligations to measure and report on gender pay gap exist in many European countries
- Often there is no binding requirement to take action to reduce the gap
- Spain:
 - New changes in the Equity law have entered into force recently involving:
 - Obligation to negotiate an equity plan in companies with more than 100 employees (which will be more than 50 employees in March 2022)
 - Equity plan includes various obligations to gather diversity information in terms of gender (professional groups/jobs with higher or lower representation for one gender, gender pay audit, etc.)
 - Equal pay register (as of 14 April 2021) covering average salary (with complements and extras) per professional group for each gender, regardless of the size of the company. The Ministry of Labor has just created a tool to be used to register salaries
- France:
 - Companies with at least 50 employees must calculate an “index” every year and publish it (since March 2020)
 - Financial penalty if score below 75 for three years (up to 1% of total pay)
 - March 2021 decree: companies that receive State aid must publish detailed objectives and corrective measures if below 75

Latest in lockdown rules



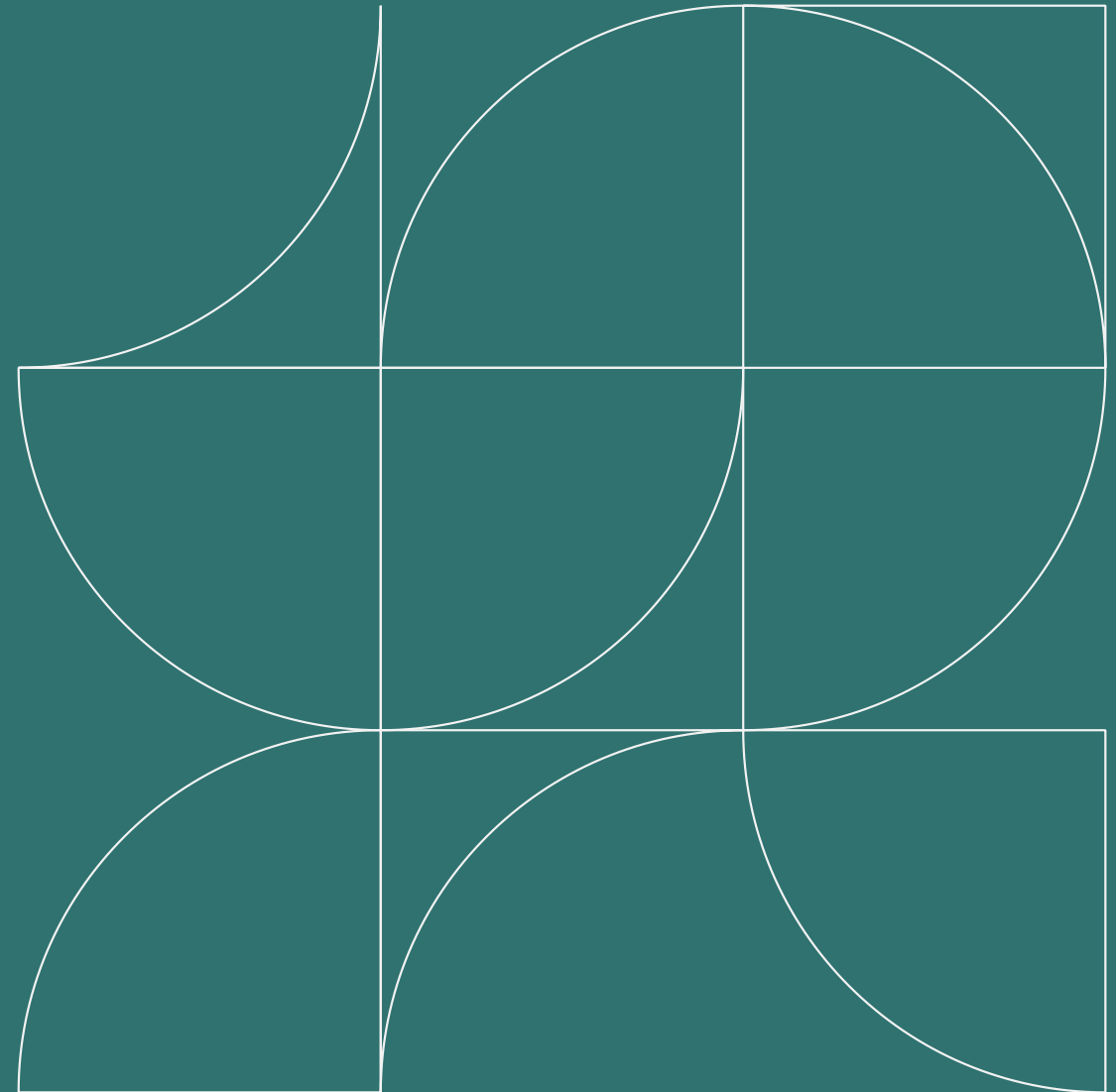
Lockdown developments in France

- Strict measures in force until 3 May at least:
 - No travel during the day more than 10km from home, and only for specified reasons
 - Travel more than 10km from home is only allowed for “overriding” or professional reasons
 - Curfew between 7pm and 6am
 - Requirement to carry an attestation stating the reason for the trip
- Partial easing announced by Prime Minister on 22 April 2021:
 - No more daytime travel restrictions in most of France

Lockdown developments in Spain

- State of alarm ends on May 9th . State of alarm provided for:
 - the limitation of movements between regions and;
 - curfew between 23.00 and 6.00 (with certain rights from the Autonomous Communities to apply this)
- Mandatory use of face masks and strict health and safety Covid 19 protocols, but rules vary from region (Autonomous Community) to region
- In general, professional reasons are one of the valid justifications to skip limitations of movement (out of the Autonomous Community and within territories) as well as curfews, etc.
- Employees will need to carry an attestation stating the reason for the trip

Any questions?



Thank you

Ana Cid

acid@seyfarth.com

Laurence Harvey Wood

LHarveyWood@seyfarth.com

