



QUESTION AND ANSWER DOCUMENT REPLIES ON "Exercising sex work with rights. A proposal for its inclusion in Labor and Social Security Law".

Sindicato OTRAS
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This document aims to provide clear and concise answers to the most frequently asked questions related to the **proposed law for the decriminalization of sex work in Spain**. With this initiative, we seek to provide a comprehensive understanding of the motivations behind the proposal, the key definitions, the differences between various practices related to sex work, and the specific measures included to protect the labor and social rights of sex workers.

This document is intended to be an **informative and educational tool for all interested parties**, facilitating an informed and constructive dialogue on the subject.

1. How has the bill been drafted?

The drafting of the law proposal required four phases: In the **first phase**, we held meetings with sex workers from different sectors (prostitution, porn, bdsm, escort...) and modalities (third party, self-employed). The objective was to understand the dynamics of sex work in depth and the demands of the workers.

In the **second phase** we made an exhaustive study of the legal system, with the aim of understanding how sex work is currently addressed, and to be able to propose how it could be approached from a pro-rights perspective that takes into account the information and demands that emerged in the meetings of the first phase.

The **third phase** consisted of an open discussion of the pro-rights proposal among sex workers and alliances.

In the **fourth phase**, the modifications decided in the third phase were implemented and the text was finalized with a new collective meeting between sex workers and alliances.

2. What was the motivation for drafting the proposed law?

The **motivation for** drafting the proposed law to decriminalize sex work in Spain arises from the need to guarantee the rights of sex workers from a trade unionist, class, transfeminist, anti-racist and pro-rights perspective. The initiative comes from the sex workers' collectives themselves and not from political parties, as they believe that only we truly understand our needs and desires. In addition, it seeks to offer an approach that guarantees working class rights, training and self-organization, something that only a union can provide.

The **main objective of** the proposal is to guarantee equal treatment and non-discrimination of the group, minimize the damages suffered due to persecution and lack of recognition of rights, establish legal mechanisms to combat stigma and ensure the human rights of all sex workers.

The **pragmatic** approach taken results in an **anti-punitivist pro-rights legislative proposal** that leaves prostitution out of criminal legislation.

3. What does decriminalizing sex work mean?

Decriminalizing prostitution means **removing the practice of buying and selling sexual services from the scope of criminal or sanctioning law**. This implies that prostitution ceases to be a criminalized activity, while at the same time it is incorporated into labor law to ensure that people who engage in sex work enjoy the labor and social rights attached to the condition of working. This includes, on the one hand, the obligation to pay social security contributions, and on the other hand, the consequent rights of that obligation, such as: the right to medical leave, childbirth benefits, retirement pension, as well as many others such as: the right to a

fair dismissal, vacation and paid rest, and the right to freedom of association, among others.

4.If prostitution is recognized as work, will I be forced to be a sex worker?

No, no one is going to force you to be a sex worker. In our proposal, Public Employment Services will not be able to offer jobs in the sex industry.

5.What is the difference between pimping and sex industry patronage?

Pimping refers to profiting by exploiting the prostitution of others, under violence, intimidation or deception. This activity is illegal and criminalized, as it is considered a form of exploitation and abuse.

On the other hand, **sex industry employers** refer to entrepreneurs or owners of establishments such as clubs, apartments, hotels, brothels, agencies and brothels that organize and manage the provision of sexual services. Although the law currently criminalizes certain aspects of their operation (such as profiting from the sex work of others), the decriminalization proposal seeks to allow these entrepreneurs to operate in a legal and regulated manner. This would imply that sex workers have formal contracts and that there are mechanisms to combat labor exploitation and abuses.

6.What will be the employer's power in third-party prostitution?

In the context of third-party sex work, the employer's power is related to the **management and organizational capacity** recognized in Article **20 of the Workers' Statute**. This implies that the employer has a set of recognized powers aimed at organizing his business project. In the case of sex work, the employer can make decisions on aspects such as opening and closing hours, the work calendar and the dress code, among others.

However, this power must be **limited by the worker's specific consent** to perform a particular sexual service. The employer **cannot** interfere in the worker's decision as to which services to provide or whether to accept a specific client.

7. What is the difference between sex work, human trafficking for the purpose of forced prostitution and labor exploitation in the field of prostitution?

Sex work is the exchange of consensual sexual services between consenting adults in exchange for money. The term sex work covers, by its very definition, many different forms of sexual labor activity: striptease, audiovisual services, full services (what is usually understood as prostitution), telephone hotlines, BDSM sex work, brothel work, production of sexual content on online platforms, webcam, erotic massages, among others.

Human trafficking is defined as the recruitment, transportation, transfer, harboring or receipt of persons, using threats, force or other forms of coercion, for the purpose of exploitation. Human trafficking takes place in different areas such as agriculture, construction, the textile industry, the care sector and sex, among others. Trafficking for the **purpose of forced prostitution** takes place without freedom or voluntariness on the part of the trafficked person.

Labor exploitation in prostitution refers to situations in which persons who freely and voluntarily engage in sex work are subjected to abusive conditions by employers or third parties. This may include lack of fair pay, imposition of excessive working hours, unhealthy working conditions, inability to get adequate rest, etc. Labor exploitation implies that the employer imposes a work situation that does not respect fundamental rights and takes advantage of vulnerability.

8. How does the proposed law plan to address labor exploitation and human trafficking?

1. The proposal advocates for the **right to migrate**, arguing that current anti-immigration laws encourage human trafficking. Removing these legal barriers to allow the free movement of people regardless of their nationality and social class, as well as granting labor rights to sex workers will help prevent trafficking and exploitation. In other words, **in order to eradicate human trafficking, the current Immigration Law must be comprehensively amended.**

2. It proposes the **validation of existing labor contracts** between sex workers and employers that are not legally formalized because sex work is not currently considered work, as long as the worker consents to it. In addition, it recognizes the labor roots for people in an irregular administrative situation, facilitating their regularization.

3. In the area of sex work, the **Labor Inspectorate** has the same competencies as in other types of work. That is: the ITSS has the power to monitor and control compliance with labor and social security regulations in order to prevent labor exploitation and guarantee decent conditions for sex workers. In addition, sex workers, like other workers, have a **"guarantee of indemnity"** which protects workers from reprisals that the employer may take against them for claiming their rights. In the specific case of sex work, we propose that this indemnity guarantee protects workers from retaliation that they may suffer from the withdrawal of consent, or because they refuse to perform certain sexual services.

4. The proposal suggests that collective bargaining agreements establish **hourly limitations**, that the sum of hours of actual work and hours of presence cannot exceed 12 hours per day, of which only 5 hours can be actual work. A weekly rest period of 48 consecutive hours is guaranteed, which must be agreed by collective bargaining agreement or by mutual agreement between the parties.

Likewise, within sex work there is a special temporary contract known as "**plaza system**", which lasts between 10 to 21 days with a 7-day break. In order to prevent fraud and the use of temporary contracts for disguised indefinite-term employment relationships, we propose to establish **limits to the chaining of contracts** by the same worker with the same company within a specific time period.

9. Does decriminalizing prostitution mean buying the consent of the workers?

No, decriminalizing prostitution does not mean buying the consent of the workers.

The legislative proposal clearly states that the consent of sex workers is essential and that they should have the right to refuse to provide sexual services at any time and for any reason. **Payment for services does not equate to payment for ongoing consent.**

In addition, any form of pimping or forced labor is excluded from the scope of sex work.

10. Is this law going to encourage entry into prostitution?

No, the law will not encourage entry into prostitution.

Decriminalization of prostitution **does not incentivize** more people to enter this sector. In no country where sex work has been decriminalized (Belgium, New Zealand...) is there evidence that decriminalization has led to a significant increase in sex workers.

On the other hand, the proposal seeks to protect the rights of people who already practice this activity and improve their working and living conditions. Decriminalization aims to regularize the situation of sex workers, providing them with access to labor and social rights, and not to promote the entry of new people into prostitution.

11. Will this law encourage the regularization of migrants in an irregular administrative situation who are engaged in sex work?

Yes, the law will encourage the regularization of sex workers who are in an irregular administrative situation.

The proposal recognizes sex work as a legitimate labor activity that allows migrant sex workers to access **regularization mechanisms**. Currently, many sex workers in an irregular administrative situation cannot regularize their situation due to the lack of labor recognition of their activity.

Decriminalization and regularization of sex work would facilitate their access to residence and work permits through figures such as labor or social roots or ordinary residence and work permits, improving their access to rights and legal protection.

However, in order to fully guarantee the rights of migrants, **the Aliens Law must be comprehensively reformed**. This reform is necessary because the current legislation presents numerous barriers to effective regularization.

12. If the legislative proposal is approved, will there be an increase in the number of migrants coming to Spain to prostitute themselves?

No, the law will not lead to an increase in the number of migrants coming to Spain to prostitute themselves.

Most migrant sex workers already organize and carry out their migration projects for the purpose of engaging in sex work, regardless of the laws in place. Decriminalization of sex work is designed to protect the rights and improve the working conditions of those already in sex work, rather than to encourage migration for that purpose.

However, we believe that a **comprehensive reform of the Immigration Law** is necessary, allowing migrants to have immediate access to a work permit so that no one has to work as a prostitute because they cannot access the regular labor market. Likewise, the process of homologation of foreign degrees should be accessible and quick, since currently people spend more than two years on average until they can get them homologated, significantly limiting the labor and professional opportunities of migrants.

13. Why do we propose that sex work be regulated as a special labor activity?

We propose that sex work be regulated as a special labor activity in order to address it better and more specifically. **This** (recognizing sex work as an employment relationship of a special nature) **allows limiting the power of business organization and protecting the rights of sex workers.**

This special regulation is necessary because of the particular characteristics of sex work, which include a relationship of relative dependence on the employer. This means that the employer's power of direction and organization must be limited by the consent and freedom of the worker. **Consent in sex work is specific to each service and can be withdrawn at any time without retaliation.**

14. What measures does the law include to ensure the health of sex workers?

The bill proposes that sex workers be subject to the same **occupational risk prevention** regulations as any other worker, specifically Law 31/1995 and its implementing regulations. The **Workers' Statute** recognizes the right of workers to their physical integrity and to an adequate occupational risk prevention policy. It also establishes the workers' duty to observe the prevention measures adopted.

In addition, it is emphasized that employers must ensure the safety and health of workers in all aspects related to work, which includes the adoption of necessary measures for the protection of sex workers' health. This includes the **employer's obligation to carry out comprehensive risk prevention and adopt protective measures** without the cost of these falling on the workers, unlike the current situation where sex workers have to provide these materials on their own.

On the other hand, the legislative proposal **prohibits** employers **from** forcing workers to perform services they do not wish to perform, such as oral sex without a condom, a practice that puts their health at serious risk.

The law promotes and facilitates labor and social settlement, allowing sex workers in an irregular situation to regularize their administrative situation by obtaining an **employment contract**. This will grant them access to social security and, therefore, to health services, such as medical leave in case they need an operation or other treatment, ensuring that they can receive the necessary care without losing their income.

Currently in Spain sex workers who offer their services on public roads are sanctioned under the Citizen Security Law throughout the State and under Municipal Ordinances in some cities. The proposal complies with the **Global AIDS Strategy 2021-2026, whose sub-goal is that less than 10% of countries criminalize sex work**, due to the correlation between criminalization and increased HIV risk.

Likewise, the **World Health Organization (WHO), the United Nations Population Fund (UNFPA) and the Joint United Nations Program on HIV/AIDS (UNAIDS)** recommend the decriminalization of sex work and the elimination of the unfair application of criminal laws and regulations targeting sex workers.

15. Why does the proposed law not advocate administrative sanctioning of clients?

In the Spanish context, the fight against the sex industry has meant a **greater criminalization** towards sex workers and clients, and has given way to one of the greatest instruments of social control in the public space of our territory, the **Organic Law for the Protection of Citizen Security (2015)**. After its implementation, both clients and sex workers are sanctioned through the application of **fines** in the context of street prostitution, since the authorities consider prostitution a threat to public order and safety.

Previous research indicates that the **majority of administrative sanctions fall on sex workers**, while clients are sanctioned to a lesser extent. A 2014 CATS report found that, after 6 months of implementation of a Municipal Ordinance in Murcia, out of a total of 83 sanctioning files, 76% were for offering sexual services (sex workers), while 24% were for demanding such services (clients) [1].

According to data from the local police of Barcelona, in 2011 100% of the sanctions were imposed on sex workers, while in 2013 and 2014, approximately 60% of the sanctions were again directed towards them for offering sexual services on public roads. In contrast, between 26% and 29% of the sanctions fell on clients for soliciting these services [2].

The implementation of the **Municipal Ordinance in Lleida** resulted in an increase in police control (29%), a decrease in clients (17%), a reduction in service revenues (13%), and increased difficulty in negotiating with clients (11%) [3].

[1] Comité de Apoyo a las Trabajadoras del Sexo. (2014). Informe septiembre 2014. Evaluación de la Ordenanza para luchar contra la prostitución en el municipio de Murcia.

[2] Bodelón, E., & Becerra, P. (2018). La reglamentación de la prostitución en los ayuntamientos: una técnica de ficticia seguridad ciudadana. *Revista Crítica Penal y Poder*, 15, 71-89.

[3] Villacampa, C. (2020). *Prohibicionismo suave para abordar el trabajo sexual callejero: ordenanzas cívicas y ley mordaza*. *Revista del Laboratorio Iberoamericano para el Estudio Sociohistórico de las Sexualidades*, 4(06), 113-130.

Increased **police control** was highlighted as the main impact of the ordinance's implementation. Sex workers associated police presence with **surveillance** of their activities, expressing concern about possible fines or their irregular status. A change in the role of the police from being protective to being more controlling was identified, leading women to devise ways to avoid police scrutiny.

Measures to **criminalize the client have not been effective** and, in many cases, have exacerbated problems of clandestinity. Thus, decriminalization of the consumer is presented as a measure to reduce clandestinity and improve the working conditions and safety of sex workers, promoting an environment in which they can exercise their rights with greater protection.

16. Does this law defend the use of prostitution?

The proposed law does not defend the consumption of prostitution, but focuses on **protecting the rights of sex workers**. Decriminalization of consumption is a necessary consequence to guarantee the rights of sex workers.

17. Will this law increase the use of prostitution?

The legislative proposal to decriminalize sex work is not designed to increase the use of prostitution. Instead, it focuses on protecting the rights of sex workers. **Decriminalization of consumption is not intended to encourage demand**, but rather to ensure a safer working environment for sex workers.

18. What rights can the sex worker have vis-à-vis the client?

A crucial aspect of this legislation is the emphasis on the **consent** of sex workers, ensuring that any services provided are performed under their explicit agreement and free of coercion.

In addition, **safe sexual practices** are promoted, including the use of condoms and prepayment for services, aspects that are already incorporated in the uses and customs of sex work but that would be reinforced under this legislation.

Reducing stigma and guaranteeing sex workers' civil rights makes it easier for sex workers to **report abuses** or **crimes** to the police without fear of retaliation or discrimination. It is essential to understand that crimes such as rape, intimidation and robbery are already punishable under Spanish law. What this law promotes is an environment where sex workers feel safe to report these crimes and receive adequate protection.

19. What guarantees does the law provide for those who want to stop practicing prostitution?

We defend the recognition that the sex worker can **terminate the employment contract at any time** without just cause, and that this should be considered as a legal situation of unemployment under the terms of the **General Law of Social Security**. In this way, the workers will have the right to access unemployment benefits in the event that the rest of the requirements of said law are met (among others, the minimum contribution period required). As in the case of common labor relations, they will not be entitled to severance pay, but they will be entitled to a severance payment.

In addition to those provided for in **Article 50 of the Workers' Statute**, we propose two other causes that derive from the specialty of sex work, fundamentally from respect for the autonomy of the worker and his or her non-discrimination:

- The **overreach of corporate power**, which is qualified in this organic law.
- Having suffered a **stigmatizing** conduct, action or omission **on** the part of the employer or another worker.

The proposed law provides a number of **safeguards** and **support mechanisms** for those who wish to stop engaging in prostitution. One of the main objectives is to facilitate the transition to other types of employment, ensuring that those who wish to change occupations can do so effectively and safely.

The law also promotes **labor regularization** and **obtaining work contracts**, which is crucial for accessing rental housing and stabilizing their personal and economic situation. With a work contract, sex workers can rent housing, better organizing their lives and reducing dependence on work spaces that are often closely linked to prostitution.

The law also provides for **limited working hours**, allowing sex workers to have time for other activities, such as training and looking for new jobs.

20. How will sex workers' privacy and identifying information be protected?

One of the requirements and foundations of the **decriminalization system** is **equal treatment** and **non-discrimination** of sex workers in relation to other workers.

In order to avoid a regulatory or regulationist model, it is essential that **special police and/or sanitary registries** be expressly **prohibited**. The existence of sanitary-police registries implies the assumption that sex workers are a group to be monitored and controlled.

These records establish a differentiation with the rest of the workers, thus generating and increasing the **"whore stigma"** that considers the sex work collective as a subject to be corrected and controlled.

The role of the **Public Administration** and the treatment of the **data** of persons engaged in prostitution must be equal to that of other workers.

The existence of registers and any kind of lists must be considered **discriminatory**, since it affects a particular group just because they exercise an economic activity historically judged as immoral.

In the case of self-employed workers, **neither the IAE epigraph nor the registered appears** in their CNAE code under which they are employment history. This will not be the case for self-employed sex workers either. In the case of salaried workers, the position they hold in the company where they have been hired does not appear in their employment history. Nor will it appear in the work life of employed sex workers.

21. How does the law address stigma in prostitution?

Part of the measures to **fight against stigma** that we propose begin with the basic rights of all workers. Specifically in the case of sex workers, taking into account Article 5.2 c) of the Workers' Statute, we would add discrimination on the grounds of the so-called "**whore stigma**":

Persons engaged in sex work have the right "not to be discriminated against directly or indirectly for employment or, once employed, for reasons of marital status, age within the limits set by this law, racial or ethnic origin, social status, religion or convictions, political ideas, sexual orientation, sexual identity, gender expression, sexual characteristics, affiliation or not to a trade union, because of language within the Spanish State, disability, because of sex, including unfavorable treatment given to women or men for the exercise of the rights of reconciliation or co-responsibility of family and work life, as well as the stigma of a person who performs sex work".

22. How will the law affect self-employed sex workers?

Currently, although independent sex work is not prohibited in the Spanish legal system, self-employed sex workers, especially those working on the street, face **persecution** and **obstacles** derived from prohibitionist and abolitionist regulations.

The legislative proposal seeks to **repeal these regulations** scattered throughout the Spanish legal system, eliminating the administrative sanctions of the Organic Law for the Protection of Public Safety and the municipal ordinances that currently punish street sex workers. This repeal will allow autonomous sex workers to exercise their activity without fear of being fined or persecuted.

The law also addresses the problem of the high costs associated with the **Special Regime for Self-Employed Workers** (RETA), which are disproportionate for low-income sex workers or those who perform this activity sporadically. The jurisprudence of the Supreme Court establishes that those who do not have an income equivalent to **75% of the Minimum Interprofessional Wage** are not obliged to register or contribute to the RETA. This means that many self-employed sex workers would not have to assume the costs of the self-employed quota, which represents a significant relief for their economic situation.

In addition, the general provisions of the legislative proposal will apply, including occupational risk prevention standards and social security improvements. Self-employed sex workers will also benefit from labor **protections** and **rights under the** proposal, such as access to **social security** benefits and the **right to work in safe and healthy conditions**. It ensures that **neither the IAE epigraph nor the CNAE code** appears in your work life, thus protecting your privacy.

23. Does this proposed law include sex workers in the audiovisual industry?

Yes, this proposal has taken into account sex workers in the audiovisual industry.

In the proposed law we have called it "**Artistic-sex work**". We have taken into account the existing norms for artists in public shows, but imposing respect for certain specialties required by the sexual nature of the services rendered (such as, for example, the limitation of rehearsal or working hours). The maximum margin has been left to the collective negotiation of the workers of the sector.

24. How will the proposed law affect advertisements and advertising of sexual services?

In the proposal we demand that the **advertising of sex work between adults be legal. That** is why we include the **repeal of Article 3 letter a) of the General Advertising Law**, and of **Article 11.1 of the Organic Law for the Integral Guarantee of Sexual Freedom**, which condemns as illegal the advertising that promotes prostitution.

25. What role will sex workers' organizations play in the implementation of the law?

The **OTRAS Union** acts as a representative of the interests and rights of sex workers. Its involvement will be fundamental to ensure that the policies implemented really protect and improve the working and social conditions of sex workers, therefore it will be present in the elaboration of **collective and regulatory agreements** in negotiations with employers.

This is done in dialogue with sex worker **communities** and **organizations**, thus ensuring that their voices and needs are heard and considered at different stages of the legislative process.

26. What does it mean when we propose that there should be a specific heading dedicated to sex work in the CNAE?

Proposing a specific heading dedicated to sex work in the **National Code of Economic Activities (CNAE)** means officially recognizing sex work as a legitimate economic activity. This would allow for better regulation and supervision of the activity, providing a clear legal framework for sex workers and facilitating their access to labor and social rights.

27. If I work as a sex worker, is that going to show up in my work life?

No. The **Personal Data Protection** rules apply to sex workers in the same way as to other workers.

In the case of **self-employed workers**, neither the **IAE epigraph** nor the **CNAE code** under which they are registered **appears** in their employment history. This will not be the case for self-employed sex workers either.

In the case of **salaried workers**, the position they hold in the company where they have been hired does not appear in their employment history. Nor will it appear in the work life of employed sex workers.



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