

**Pay Transparency – US update,
international perspective and the EU
Pay Transparency Directive**

*A webinar for ACC Chicago from the Employment, Labor &
Pensions Group of Eversheds Sutherland*

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Your presenters today



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Agenda for today's webinar

- Pay transparency in the US
 - How far have we come?
 - Recent developments
- The International perspective
 - Other developments in Pay Transparency around the world
- The EU Pay Transparency Directive
 - Key requirements
 - What do international employers need to do to get ready for the Directive



Pay Transparency in the US

Deepa Menon, Eversheds Sutherland

Pay transparency in the US

How far have we come?

Federal position

- Fuelled by pay equity legislation, going back to the Equal Pay Act of 1963
- Currently no federal requirements for pay transparency
 - The **National Labor Relations Act (NLRA)** prohibits most companies from requiring employees to keep their salaries a secret.
 - Under the NLRA employees have the right to discuss their pay with co-workers in person, in writing, or over social media (as long as they do not use company equipment to do so).

States and cities

- More than 8 US States and several cities have introduced pay transparency requirements
 - Requirement to disclose wage ranges although timing varies and sometimes it only needs to be disclosed on request
 - Divergent requirements between States regarding what pay needs to be disclosed (some require salary only, others require variable compensation like bonus, commission etc)
 - Prohibitions on asking about pay history

US Pay Transparency – recent developments

- Pay Equity and Transparency in **Federal Contracting** is a proposed rule that could place additional obligations on federal contractors and subcontractors:
 - Salary **history ban**: cannot seek applicant compensation history, whether directly or indirectly, when making employment decisions
 - Salary **range disclosure**: all job advertisements placed by contractors/subcontractors must include salary or wages (or ranges), benefits, and all forms of compensation
 - Notification of rights should be provided in the job announcement or as part of the application, and notice must include a description of the rule and how to submit a compliance re non-compliance
 - **Comment deadline: April 1, 2024**
 - **A more aggressive strategy because proposed rule doesn't include a Dollar threshold for coverage**, and not only extends to work performed on the specific contract but also work necessary to the performance of the contract but not specifically called for by the contract
 - Some debate as to whether this would include human resources, IT personnel, admin staff etc.

US Pay Transparency – recent developments District of Columbia

- On January 12, 2024 Mayor Muriel Bowser signed an amendment which will apply to employers with at least 1 employee in Washington D.C from **June 30, 2024**
- Requirements include:
 - disclosure of minimum and maximum projected salary or hourly pay in all job listings and position descriptions advertised based on a good faith belief of what the employer at the of posting would offer (applies to internal and external positions)
 - disclosure of the existence of health benefits before the first interview
 - prohibition on employers screening prospective employees based on wage history
 - prohibition on employers asking current or prior employers of candidate for wage history
 - expands existing laws to prevent employers from prohibiting employees from discussing not just “wages” but “compensation” with other employees (definition of compensation is *“all forms of monetary and nonmonetary benefits an employer provides or promises to provide an employee in exchange for the employee’s services to the employer”*).
 - requirement for employer to notify D.C. employees of their rights by posting a notice in a conspicuous place in at least one location where employees congregate
- Enforcement via D.C. general attorney investigation and civil action against employer (no direct right of employees to sue for non-compliance)
- Additional risk of fine \$1,000 for first violation, \$5,000 for second and \$20,000 for subsequent violations.

US Pay Reporting

- Pay data collection is seen as a tool to advance pay equity,
- At the federal level, EEOC introduced pay data collection through the EEO-1 form in 2016
 - Discontinued in 2019
 - It remains to be seen whether there could be further rulemaking with the upcoming elections
- California and Illinois have implemented pay collection efforts:
 - California requires all private employers with 100 or more employees, with at least one employee in California, to submit wage data on employees within each EEO-1 category by sex, race and ethnicity, including median and mean hourly rate, hours worked, and on individuals hired through “labor contractors”
 - Illinois requires that private employers with more than 100 employees in Illinois must obtain an “equal pay registration certificate”; one of the conditions for the certificate is that the employers submit a copy of the most recent EEO-1 report with a list of all employees during the past calendar year, separated by gender and race and ethnicity, and total wages paid to each employee
 - Due by March 24, 2024

US Pay Transparency Requirements – themes and observations

- Employers who recruit in multiple states or have a largely remote workforce often take a national approach to compliance
- Pay transparency is often viewed as being aligned with pay equity, although the two are different
- Salary Transparency Act introduced in Congress in 2023 – still with the House
 - The lack of a federal pay transparency law is likely to spur, as we have seen, movement at the state and local level
- Employers should be careful about paying employees outside the range posted; this could lead to potential discrimination claims and set up precedence to argue that the range was incorrect
- Pay transparency could also lead to significant reputational impacts for employers who are seen as paying below the ranges offered by employers in comparable industries
- Remember that salary range disclosure obligations generally also apply for internal postings
- Pay transparency is also accompanied by a trend that focuses on pay data reporting



**Pay Transparency – an
international perspective**

Elizabeth Graves

Pay transparency

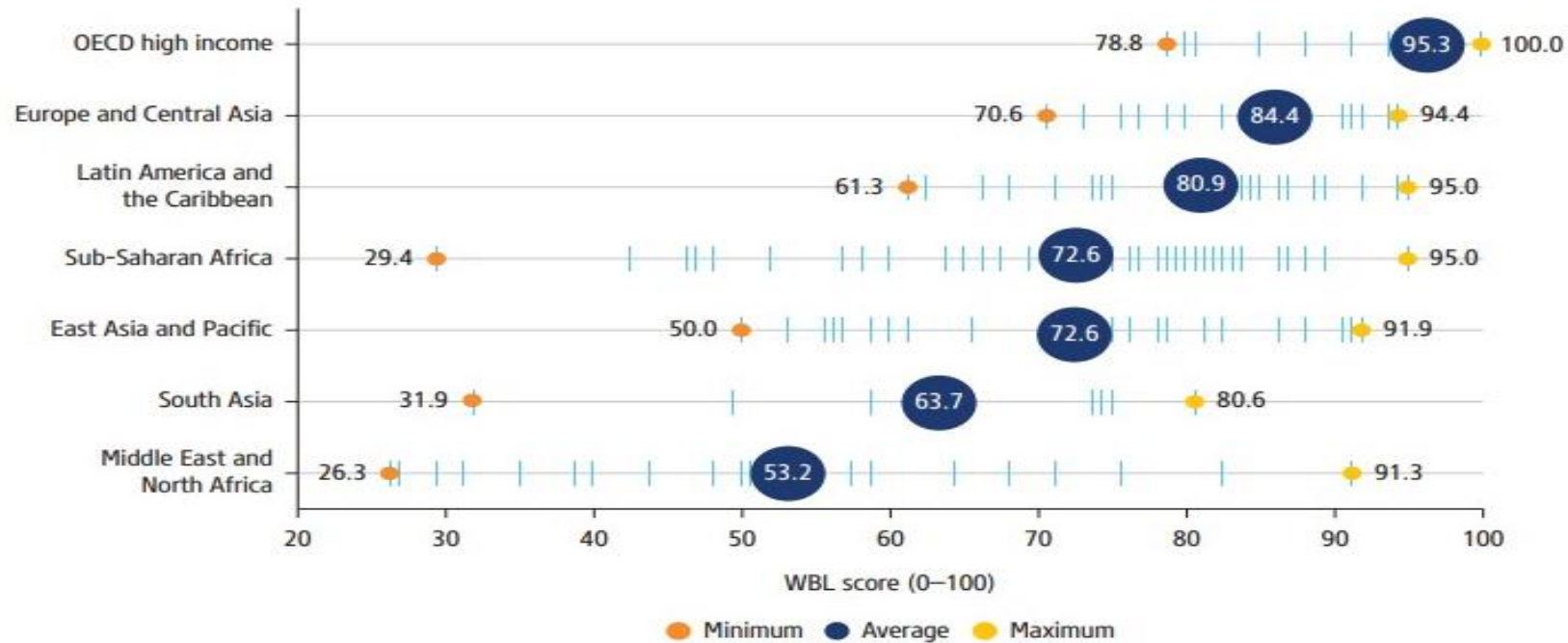
A developing global picture

- Gender pay gap reporting has been prevalent and growing globally.
- Many countries now require reporting of some form of gender-disaggregated pay information.
- In some countries, pay reporting requirements are embedded within more comprehensive auditing processes that typically require follow-up action to address inequalities.
- Case law developments are also shaping the landscape.

Gender pay gap – World Bank report 2023

FIGURE ES.2 | THE LARGEST GAPS ARE IN THE MIDDLE EAST AND NORTH AFRICA AND IN SUB-SAHARAN AFRICA

Dispersion of Women, Business and the Law 2023 average scores, by region



Source: Women, Business and the Law database.

Note: Each vertical line represents the score of an economy in its respective region. Each blue circle indicates the average score for a region. The minimum and maximum scores within each region are specified. OECD = Organisation for Economic Co-operation and Development.

Pay transparency

A developing global picture

Canada – some provinces e.g. Ontario have introduced pay transparency requirements



France – employers of ≥ 50 employees must publish a gender pay index



Japan – private companies with > 300 employees required to publish women's pay as % of men's



Israel – employers with > 518 employees must prepare a gender pay gap report



Spain - all employers keep an annual remuneration register and employers of > 50 employees must conduct a remuneration audit



UK- employers of ≥ 250 employees must publish a gender pay report annually





The EU Pay Transparency Directive

Sophie White

Five key areas

1

Information obligations at the recruitment stage

2

Information obligations during employment

3

Reporting requirements

4

Joint pay assessments

5

Enforcement

Pay transparency

EU Pay Transparency Directive – Member States must implement by **7 June 2026**

Employers (regardless of number of workers) will be:

- prohibited from asking candidates about their **pay history** with current or former employers.
- required to provide candidates with information about the **pay** or pay range for the role before interview. For example job adverts will need to include the pay range.
- required to provide existing employees with information about the **average** pay for their category of workers doing equal work or work of equal value, broken down by sex.
- required to make available to workers information about the **criteria** used to determine pay and pay progression (small employer exemption may be available).
- required to ensure methods used to assess and compare the value of work do so in accordance with objective (non-gendered) criteria.

Pay transparency

EU Pay Transparency Directive – timing requirements & actions

Number of workers	Deadline for complying with the reporting obligation	Frequency of reporting
>250	7 June 2027	Annually
150-249	7 June 2027	Every 3 years
100 - 149	7 June 2031	Every 3 years
<100	N/A (unless mandated by national law)	N/A, unless mandated by national law

If the report identifies a gap of 5% of more which cannot be objectively justified, the employer must conduct a joint pay assessment in conjunction with worker representatives

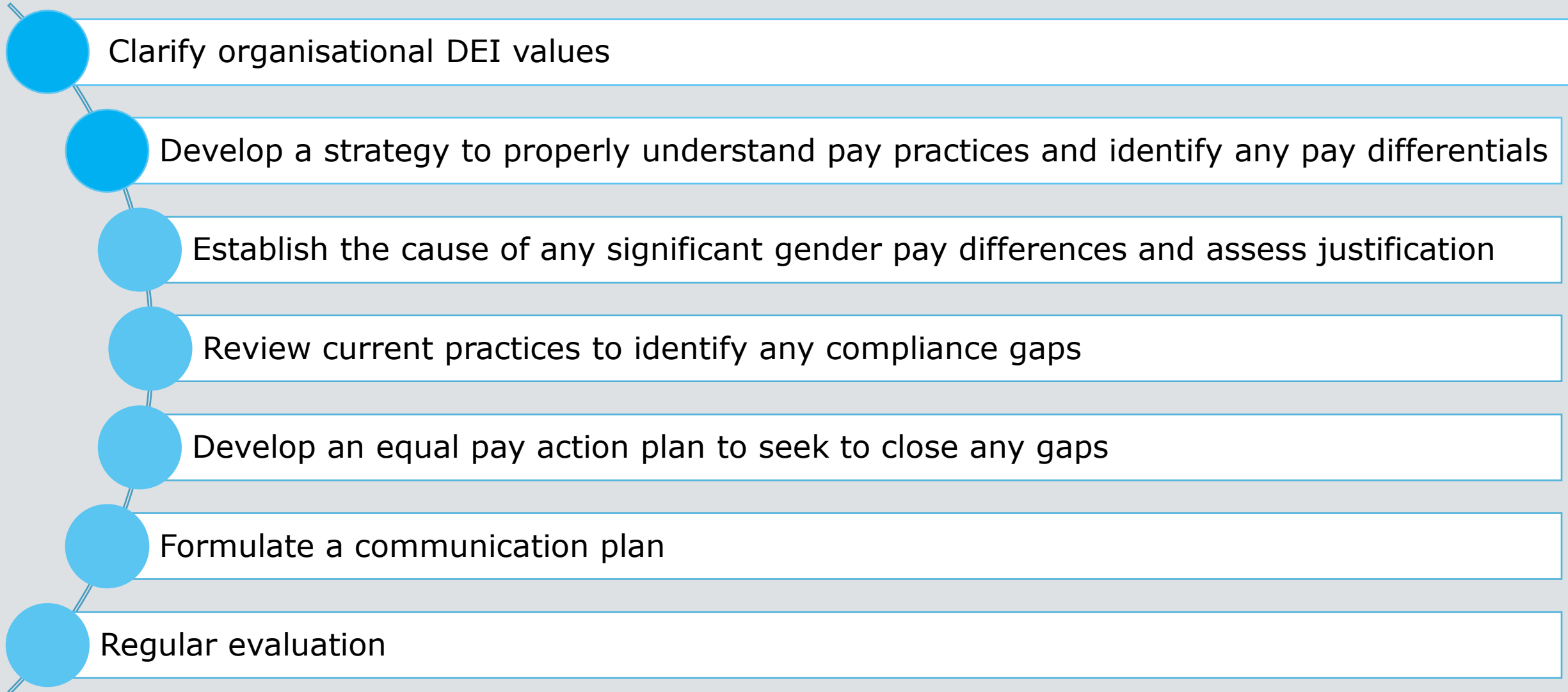


Pay Transparency Directive

Reporting requirements

- Reports to cover information **relating** to the previous calendar year
- Reports must include:
 - a) the gender pay gap
 - b) the gender pay gap in complementary or variable components
 - c) the median gender pay gap
 - d) the median gender pay gap in complementary or variable components
 - e) the proportion of female and male workers receiving complementary or variable components
 - f) the proportion of female and male workers in each quartile pay band
 - g) the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components
- Accuracy confirmed by the employer's management, after consulting with workers' representatives
- Reports sent to the authority in charge of compiling and publishing the data
- Employers **may** publish a) to f) information on its website/another manner
- Information at g) **must** be provided to all workers and workers' representatives

What should employers of employees in the EU do?

- 
- Clarify organisational DEI values
 - Develop a strategy to properly understand pay practices and identify any pay differentials
 - Establish the cause of any significant gender pay differences and assess justification
 - Review current practices to identify any compliance gaps
 - Develop an equal pay action plan to seek to close any gaps
 - Formulate a communication plan
 - Regular evaluation

Examples of employers taking action to close the gap

LONDON, Sept 18 2023 (Reuters) - Societe Generale said it will try to close its gender pay gap by spending 100 million euros (\$107 million) to boost remuneration of the French bank's female employees over the next two years. Employers globally have been criticised for moving slowly to close the gap and data in countries such as Britain, which has a large financial services sector, shows the difference at banks between pay for male and female staff is often far bigger.

Many banks have pledged to move faster but SocGen (SOGN.PA), which employs 117,000 people in 66 countries, is unusual in publicly allocating a budget and pledging to spend it.

A spokesperson for SocGen told Reuters on Monday that France's third-largest listed bank had reached the 100 million euro sum by calculating the cash needed to close the gender pay gap for women in the same or similar roles as men, where there was no reasonable explanation for a discrepancy.

The money amounts to less than 1% of SocGen's roughly 10 billion euro total wage bill. The spokesperson declined to provide a group gender pay gap percentage figure.

"We believe that allocating 100 million euros will close the pay gap," the spokesperson said in an email to Reuters, after the bank earlier gave its strategy update.

Many banks have said they are acting to end discrepancies, but say it will take time to eliminate pay gaps completely due to more men typically holding senior roles in the industry.

Areas for international employers to focus on in preparing for implementation of the EU Pay Transparency Directive

- Employers are focussed on preparing for pay gap reporting, but the other transparency measures are significant and will apply from Day 1
- Equal pay gaps are not easy to fix even with a two year lead-in period. Don't delay starting to prepare to 2026
- How will your organisation track different legislative requirements in each EU Member State (and developments in other jurisdictions)?
- Do you know who will be a 'worker' for the purpose of local law?
- What will be covered by 'pay' in each country?
- What changes need to be made to current pay practices, job evaluation schemes, recruitment processes, annual compensation processes?
- Communication strategy
- Training for line managers about how recruitment processes will change and individual employee rights to information
- How will you manage pay gap reporting centrally or locally?
- What is the equal pay litigation climate in each of the jurisdictions in which you operate?

Eversheds Sutherland: By the numbers

70+
offices

30+
jurisdictions

6000+
people

750+
partners

19
countries
in our ES Latin
America Alliance

30+
countries
in our ES
Africa Alliance

40+
countries
in our ES Asia
Pacific Alliance

Ranked
10th
in Law360's Global
20 firms of 2019

17th
in the 2022 Thomson
Reuters Global Law
Firm Brand Index

**In 2023,
we acted for:**

68
of the FTSE 100

75
of the US Fortune 100

129
of the US Fortune 200

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Pay transparency: where to begin?

A deeper dive and practical pointers

As the significance of the obligations established under the Pay Transparency Directive (“Directive”) start to be appreciated by companies with operations in the EU, many are putting into place measures to identify the steps they will need to take, including how to address any pay disparities or information gaps, and how to establish effective processes to ensure future compliance and minimise legal and reputational risk.

In our previous briefing on this topic – [EU Pay Transparency Directive now adopted: What does this mean for employers?](#) – we considered the implications of the Directive for employers. In this briefing, we look at some of the practical issues beginning to emerge, as well as addressing some frequently asked questions.

Contents

Understanding pay practices	1
Categorising workers and analysis	2
Preparing data and the requirement to report	3
Developing a strategy – looking forward	4
Frequently asked questions.....	5
How we can help.....	7





Understanding pay practices

Although some questions remain as to the precise effect of the requirements of the Directive once it is transposed into national laws, knowing what information already exists within a company around its headcount by legal entity and country, its practices on pay and benefits, where that information is held and who has access to it, as well as any steps already being taken to analyse or report the data, will be key to establishing a strategy to close any areas where data is lacking and ensuring legal compliance.

Bear in mind that “pay” under the Directive not only includes basic salary, but also includes any other consideration, whether in cash or in kind. The definition is therefore wide enough to include pensions and other benefits, which may be difficult to value, and where the gender gap may be much wider – and much harder to close quickly – than with basic salary alone.

It is anticipated that the trigger points for obligations under the Directive will apply based on headcount for each individual employing legal entity, rather than cumulatively across borders and entities, meaning that companies with operations across the EU are likely to be required to produce reports in each country of operation. Adding to the obligation is the wide definition of worker in the Directive, applying to all workers who have an employment contract or an employment relationship. Differences in local laws and practices around the definition of an employment relationship, including in collective agreements, are likely to result in some variations in approach across EU borders.

But headcount will not dictate all obligations. Although those companies with less than 100 workers will avoid the Directive’s net for gender pay gap reporting, they will still have to comply with other information requirements once local legislation comes into effect. As a result, all companies, no matter what their size, will need to have pay information readily accessible by June 2026 at the latest (i.e. the deadline for Member States to transpose the Directive and the start of the period covered by the first reporting requirement), meaning that early due diligence and planning will need to take place to ensure compliance.

In addition to noting the headcount triggers under the Directive, employers should also look out for the possibility of alternative headcount triggers applying across jurisdictions once the Directive is transposed. This could arise due to lower trigger points in existing laws, or due to Member States choosing to insert lower worker thresholds into national laws. For example, in Ireland, where gender pay gap reporting already exists, but the trigger point for reporting will reduce in 2025 for those companies with 50 or more employees. Despite this being lower than the minimum threshold of 100 workers required by the Directive, it is unlikely that the threshold will increase once the Directive is transposed, resulting in a different trigger point in Ireland to those Member States adopting the trigger points in the Directive.

The information that will be required on pay and pay practices is a further area where requirements may differ across jurisdictions. It is anticipated that further clarity will be provided in local laws and guidance on what elements of pay to include. Particularly for non-cash benefits, local guidance is also likely to be needed on calculating the appropriate values.



Don’t be caught out by:

- the scope workers caught by the requirements of the Directive
- lower headcount trigger points than those contained in the Directive that may apply in new/existing national laws



Categorising workers and analysis

Gender pay gap figures are used as an indicative measure of disparity between male and female median wages across organisations/roles, thereby indicating potential inequalities. In reality, the gender pay gap is influenced by a number of factors, including the representation of genders across different levels of seniority within a business or industry, or unequal sharing of care responsibilities that can often result in more part-time female workers within a business. In addition, the gender pay gap can be caused by direct and indirect gender-based pay discrimination, which is what the Pay Transparency Directive is seeking to help identify and eliminate.

Analysis of pay data is therefore required to see whether and where inequalities exist. Categorising workers not only by those who perform the same work, but also by those performing work of an equal value will be a key part of such analysis exercise. This is reinforced by the requirements of the Directive, under which, alongside the requirement to report pay gaps by “categories of workers”, workers will have an individual right to know what comparable employees are paid, on average, broken down by sex. Again, this requires advance consideration to be given to how workers will be grouped for comparison purposes.

In practice, many companies already use some form of job evaluation or classification systems to compare the value of different jobs within the same organizational structure, or have in place existing methods for grouping employees under prevailing collective bargaining agreements. Such employers will have a head start in the categorisation of workers, although since Member States have been tasked under the Directive with taking the necessary measures to support and guide the assessment and comparison of the value of work, it is likely that different national approaches will develop. This means that variations are likely to appear in analytical tools or methodologies across different jurisdictions.

Ultimately, however, and increasingly often driven by stakeholder expectations to demonstrate effective progress in diversity and inclusion, many companies already choose to go beyond considering the data based on simple job evaluation and classification systems, and take a deeper-dive approach to analysing their pay and diversity data. In this way, they can more readily identify any inequities and enable more targeted action to bring about change. In addition, some have increased their transparency around diversity and inclusion on a voluntary basis, often beyond gender alone, including choosing to publish pay gaps and measures they are taking to seek to close the gap.

Again, this more detailed approach is likely to give such companies a head start when the reporting requirements of the Pay Transparency Directive come into effect. That advantage will not only be seen in the ease of the adoption of adjusted systems to meet the reporting requirements under the Directive, but also in mitigating the risk of having to carry out a pay assessment in cooperation with the company’s employee representatives. With the threshold for such requirement likely to mean that there is a real possibility for many companies of the obligation being triggered, companies will be wanting to take proactive steps to seek to avoid such risk.

Getting ahead of the possibility of a joint pay assessment by planning now, carrying out a more detailed assessment before there is a requirement to do so, and putting in place measures to address any pay gap, is likely to help mitigate the risk in the longer term. Further, given the inevitable increased risk of equal pay claims once the provisions of the Directive start to bite, such steps will also help identify at an early stage where the areas of risk are most apparent and help prioritise time and resources to address such risks.



Don't be caught out by:

- taking a tick-box approach to complying with the Directive’s obligations around pay reporting. A more detailed analysis at an early stage to identify and put in place measures to help drive change will help mitigate the risk of having to carry out a joint pay assessment later and drive longer-term change.



Preparing data and the requirement to report

Employers familiar with existing gender pay gap reporting regimes will be aware that rather than simply reporting the company's average pay gap figure calculated by comparing the average pay for male employees against female employees, the requirements often go further. For example in the UK, where in addition to reporting on the average gender pay gap for hourly pay, information must also be included on the percentage of men and women in each hourly pay quartile, the median gender pay gap for hourly pay, as well as pay gap information for bonus pay.

Similar to the practice in the UK, the Directive requires employers to report on mean and median pay gaps (both on an average and a median basis and based on pay and "complementary and variable" components of pay (e.g. bonuses)), as well as the proportion of men and women receiving complementary or variable components of pay and the proportion of men and women within each quartile pay band. However, the wider definition of pay and the requirement to report pay gaps by "categories of workers", broken down by basic salary and complementary/variable pay, means that the Directive goes further still than many other existing regimes.

The timing of reporting means that companies with 150 or more workers will need to have information available from June 2026 at the latest. This is because such employers will have a requirement to report by 7 June 2027 relating to the previous calendar year. Advance planning will also be needed to finalise the report before it is sent to the local authority with responsibility for compiling and publishing gender pay data, as the accuracy of the information contained in the report must be confirmed by the employer's management, after consulting with workers' representatives.



Don't be caught out by:

- limiting pay information and reporting to basic salary only
- not planning ahead to manage or justify your pensions gender gap – it is likely to be wider than your pay gap based on remuneration alone
- not planning ahead to get the report finalised before the deadline, including failing to involve employee representatives



Developing a strategy – looking forward

Companies looking to develop a global strategy to comply with gender pay transparency requirements should keep in mind the possibility of local variations, including in relation to worker thresholds, the types of workers within the scope of the requirements, the pay that must be reported and the categorisation of staff. Although there will be a minimum level of consistency within the EU once the Directive is transposed by Member States, variations will nonetheless continue as a result of local approaches by Member States.

It will be important for local variations to be understood if a globally compliant policy is to be developed. Some organisations may choose to take a consistent approach across all operating locations, applying the highest level of pay transparency requirements across all jurisdictions to ensure compliance. Others may choose to adopt a standard global set of principles, apply globally some of the less onerous requirements such as the salary history ban and the practice of advertising pay ranges, and maintain local variations on the more onerous reporting requirements.

Having decided on the preferred approach and formulated a plan, working groups should be established to bring that plan to life and ensure that it is rolled out effectively. A communication plan will be an essential part of this, ensuring that the key data and related information is effectively and appropriately communicated, both internally and externally. In particular, ensuring that the right people receive the right information at the right time will help manage the communications and how they are received.





Frequently asked questions

When will the requirements of the Pay Transparency Directive come into force?

Member States have until 7 June 2026 to bring into force laws, regulations and administrative provisions necessary to comply with the Directive. The individual rights set out in the Directive will apply immediately on the local laws coming into effect. The reporting requirements under the Directive will come into force later, with the timing depending on the size of the company.

Does the Directive apply to all employers in all sectors?

Yes, all employers that employ people in the EU, regardless of their size or sector, will need to comply with at least some aspects of the Pay Transparency Directive once implemented locally.

What are the headcount triggers for reporting under the Directive?

The gender pay gap reporting requirements will initially apply in 2027 to all employers with at least 150 workers, dropping to all employers with at least 100 workers in 2031, as follows:

- employers with 250 workers – report by 7 June 2027 and annually thereafter;
- employers with 150 to 249 workers – report by 7 June 2027 and every three years thereafter;
- employers with 100 to 149 workers – report by 7 June 2031 and every three years thereafter.

When counting workers for the purpose of the obligation trigger points under the Directive, do you look at each individual employing company, or the group of companies as a whole?

Our view is that you look at each individual employing company. However, this is not made expressly clear in the Directive and will be subject to clarification in national laws.

What is meant by “workers” under the Directive?

The Directive is stated to apply to all workers who have an employment contract or an employment relationship, as defined by law, collective agreements and/or practice in force in each Member State. There is therefore likely to be some variation by Member State, as local laws define employment relationships differently.

What are the individual employee rights created by the Pay Transparency Directive?

The Pay Transparency Directive creates several new individual rights to pay transparency, namely:

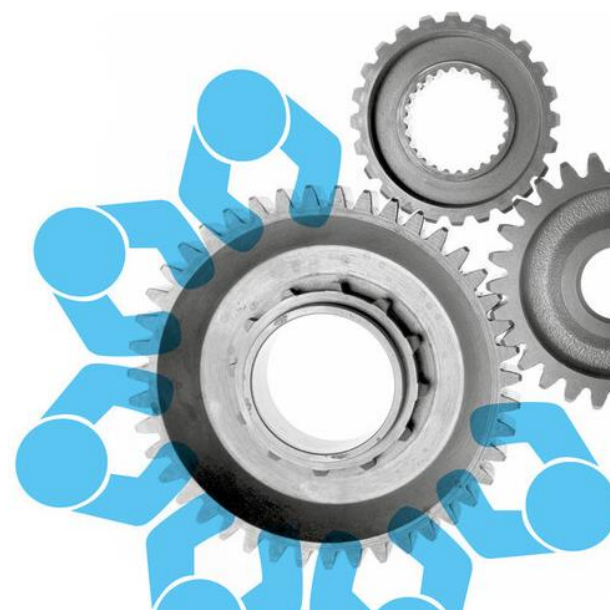
- a right to know the initial pay or pay range for the job before applying;
- a right for applicants not to be asked by a prospective employer about current pay or pay history;
- a right for workers to know what criteria are used to determine pay, pay levels and pay progression, and what comparable workers are paid, on average, broken down by sex;
- a right to disclose pay to colleagues for the purposes of enforcing equal pay rights.

Member States may exempt employers with fewer than 50 workers from the obligation to make easily accessible to workers the criteria used to determine pay progression.

What does “pay” mean in the context of the Directive?

“Pay” means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly (complementary or variable components) in respect of their employment from their employer.

It is anticipated that local equality bodies tasked with providing guidance to employers to assist their compliance will address the elements to include in calculations.



Pay transparency: where to begin?

A deeper dive and practical pointers

What is the calculation for working out the pay gap?

The gender pay gap means the difference in average pay levels between female and male workers of an employer, expressed as a percentage of the average pay level of male workers.

In addition, employers must calculate the median gender pay gap, as well as the gender pay gap and median gender pay gap in complementary or variable components. Further, employers must report on the proportion of female and male workers receiving complementary or variable components; the proportion of female and male workers in each quartile pay band; and the gender pay gap between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components.

Bear in mind that, as mentioned above, pay for these purposes is broadly defined and wide enough to include a wide range of benefits, including pensions where the median gender pensions gap across the EU is currently in excess of 30%. Careful thought will need to be given to how to assess the pay figure for benefits. Since it is unlikely to be possible to quickly close any pensions pay gap, thought will also need to be given to objectively justifying that gap.

Should employers simply take the approach of paying everyone the same?

The EU Commission has been clear that this is not what the Directive is seeking to achieve, stating that employers are not precluded from paying employees differently “on the basis of objective, gender-neutral and bias-free criteria such as performance and competence”. Motivating employees, rewarding performance and attracting new talent will always demand employer discretion in setting pay. However, ensuring that there are clear justifications that are untainted by unlawful bias will minimise the risk and maintain flexibility in pay strategies.

Will all employers have to do a joint pay assessment?

No. Employers only need to do a joint pay assessment under the Directive if all three of the following conditions are met:

- there is a pay gap of 5% or more in any category of workers;
- such a difference cannot be objectively justified – by reference to gender neutral reasons; and
- the employer has not put right the unjustified difference within 6 months of reporting it.

The pay assessment is a detailed equal pay audit which is done in co-operation with the worker representatives, using additional data to that used to prepare the pay gap report, and with a requirement to implement measures to address the unjustified differences in pay. The joint pay assessment has to be published to workers and made available to equality bodies and labour inspectorates.

What are the penalties for a breach of the obligations under the Directive?

The Directive includes a requirement that Member States ensure that real and effective compensation or reparation can be claimed by workers who have sustained damage as a result of any infringement of any right or obligation relating to the principle of equal pay. Without any fixed amount, the levels of compensation set across the Member States are expected to vary, although the Directive makes clear that there should be no set upper limit. The Pay Transparency Directive also makes clear that a breach of any of the requirements under the Directive will shift the burden of proof to the employer in any equal pay claim.

The Pay Transparency Directive also requires member states to ensure that equality bodies and other representative groups can bring claims on behalf of, or in support of, employees. This means that companies that fail to adhere to the pay transparency requirements could face action by labour inspectorates, employee representatives and/or individual workers, adding an additional layer of risk and complexity to any breaches.

In addition to the direct risk of penalties for breach of the pay transparency requirements, there are indirect risks too. Increasingly, companies are challenged to demonstrate effective diversity and inclusion measures, with reputational risks for those companies that fail to do so, including among customers, job applicants and existing employees.



How we can help

Our extensive global footprint means that we are well placed to support global employers in their current and future HR plans, wherever they have a presence. Our lawyers are not only experts in the complexities of different laws, but also in the management of projects spanning jurisdictions and driving those projects to maximize the strategic aims and benefits.

Our teams have been supporting employers to get ready for the requirements of the Pay Transparency Directive, including gap analysis against existing practices, advice on existing local laws, training and action plans. With the added benefit of our Diversidata product, our teams are ideally placed to help companies transform their diversity and inclusion strategies, both in the EU and beyond.

Please contact any of our global team should you require advice or assistance.

Diversidata®

Diversidata® is our new international diversity data solution. Insight into the diversity characteristics of a workforce can transform a diversity and inclusion strategy, but employers must manage various complex laws and compliance requirements, together with different cultural approaches to diversity, when it comes to the collection of the data. Our Diversidata tool allows users to select up to 16 types of diversity data across up to 30 jurisdictions to receive tailored advice on what is possible. See our [web page](#) for further details or to request a free demonstration.



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EU Pay Transparency Directive now adopted: What does this mean for employers?

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After a process spanning over three years, the EU Directive on strengthening the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (“Pay Transparency Directive”) has been formally adopted by the EU Council on 24 April 2023. The Directive will therefore enter into force shortly. Member States will then have three years to transpose its provisions into national law.

All employers who employ people in Member States of the European Union (EU), regardless of their size or sector, will need to comply with the Pay Transparency Directive once implemented locally.

Following on from the previous global briefings in this series of materials focusing on considerations for HR strategists on topical issues, this briefing considers the implications for employers of the Pay Transparency Directive, as well as the key action points.

Minding the gap: the global picture

Equality of pay is universally recognised as a cornerstone of eliminating sex discrimination and bias in employment. The existence of a gender pay gap is often used as an indicative measure of disparity between male and female median wages across organisations/roles, thereby indicating potential inequalities.

In reality, the gender pay gap is influenced by a number of factors, many of which may not be attributed to discriminatory practices. However, where pay bias exists, a failure to review pay practices and detect such divergence can have a much wider impact beyond immediate inequality of wages, including significant latent liability and gender pension gaps.

According to the latest United Nations data, the gender wage gap is an average of around 23% globally. On average in the EU, the gender pay gap stands at 13%, having decreased only minimally over the last ten years, with significant variations across Member States.

Many countries now have legislation requiring equality of pay between men and women. Some jurisdictions have also legislated for diversity monitoring and/or reporting, including gender pay gap reporting. However, that global landscape on pay and pay gap transparency obligations, including enforcement, varies significantly.

In the EU, the variance on gender pay gap transparency is set to change as a result of the Pay Transparency Directive, which will seek to further strengthen equal pay between men and women by requiring certain minimum standards across the EU. Member States may legislate to go over and above the requirements of the Directive, including increasing the frequency of reporting requirements, but the minimum requirements must be maintained. It is likely that, even where Member States have existing equal pay and pay gap reporting legislation, national laws will still need changing to reflect the additional or different requirements set by the Pay Transparency Directive.

Pay Transparency Directive: New requirements and enhanced enforcement

In summary, the Directive lays down certain minimum requirements, including:

- **Right to information:** With the aim of helping to eliminate information asymmetry:
 - employers will need to inform candidates about the initial pay level or pay range of any role in the job vacancy notice or otherwise before the job interview;
 - employers will be prohibited from asking questions about a candidate's pay history with their current and former employers;
 - workers will have a right to information during employment on their individual pay level and on the average pay levels, broken down by sex, for the category of workers doing the same work or work of equal value. Employers must inform all workers, on an annual basis, of the right to receive this information, as well as the steps to be taken to exercise the right.

The rights to information apply irrespective of the number of employees of the legal entity in question and will therefore apply equally to small employers within the EU.

- **Gender-neutral job evaluation and classification systems:** Employers must make available to workers, in an easily accessible manner and within two months of the request, a description of the criteria used to determine pay levels and career progression (i.e. how a worker moves to a higher pay level).

Employers must also ensure that such tools or methods used to assess and compare the value of work (such as job evaluation and classification systems) do so in line with objective and gender-neutral criteria. Objective criteria used to assess work of equal value should include factors such as skills, effort, responsibilities and working conditions.

These obligations apply irrespective of the number of employees of the legal entity in question and will therefore apply equally to small employers within the EU, with the exception that Member States may exempt employers with fewer than 50 workers from the obligation related to pay progression.

- **Pay reporting obligations:** A framework of obligations is introduced, including requiring employers with 100 or more workers who have an employment contract or employment relationship (as defined by the local law of the Member State) to prepare and publish gender pay gap reports. The accuracy of the report must be confirmed by

management. Companies must provide the pay gap information to the national authorities designated for that purpose and may also publish it themselves on their website or otherwise make it publicly available.

The deadline to comply with the pay reporting requirement and the frequency of reporting will depend on the number of workers. Our interpretation is that the worker threshold will apply by entity in each Member State, although further clarification will be seen at the point of national transposition, including whether Member States will decide to require employers with fewer than 100 workers to provide information on pay.

Number of workers	Deadline for complying with the reporting obligation	Frequency of reporting
>250	Four years after date of entry into force of the Directive	Annually
150-249	Four years after date of entry into force of the Directive	Every three years
100 - 149	Eight years after date of entry into force of the Directive	Every three years
<100	N/A, unless mandated by national law	N/A, unless mandated by national law

The pay gap information must consist of:

- the gender pay gap and the median gender pay gap between all female and male workers in relation to both pay and other consideration which workers receive directly or indirectly (complementary or variable components such as car allowances, bonuses, benefits in kind and pension contributions);
- the proportion of female and male workers receiving complementary or variable components;
- the proportion of female and male workers in each quartile pay band; and
- the gender pay gap between workers by categories of workers broken down by ordinary basic salary and complementary or variable components.

Where:

- the pay information reveals a difference in the average pay level between female and male workers of at least 5% in any category of workers;
- the employer cannot justify that difference by objective and gender-neutral criteria, or the worker representatives do not agree that it can; and
- the employer has not remedied such difference in pay within six months of submitting the pay report

employers must carry out a joint pay assessment with the workers' representatives, which should trigger the review and revision of pay structures and should lead, within a reasonable time, to the elimination of gender pay discrimination through the adoption of remedial measures.

- ***Equality and monitoring bodies:*** Equality bodies must be established with functions including tracking compliance and enabling the aggregation of data to allow comparisons to be made of the data across different employers, sectors and regions.
- ***Access to justice:*** Member States will be required to ensure that any worker who has suffered harm as a result of any infringement of the requirements to have effective access to justice. In particular:
 - That the burden of proof rests with the employer to demonstrate that there has been no infringement;
 - that the limitation period for bringing any claim is at least three years from knowledge of the infringement;
 - that courts are able to assess whether a losing claimant had reasonable grounds to bring a claim and order that they do not bear the costs of the proceedings; and
 - that workers can claim full (uncapped) compensation or reparation for harm.

Global pay transparency: key action points

Equality of pay can be a strategically-challenging issue for multi-national employers to address, not only due to the different legal obligations across jurisdictions. The factors influencing compensation and benefits in different regions, the differences in employee representative body involvement, the varying expectations around pay transparency and the risks that can often arise through historical practices, can all add to that challenge. Where pay gap reporting obligations arise, the challenge is further perpetuated by legal risks of non-compliance and reputational risks through publicly reporting an organization's information and progress.

Although the practical impact for employers of the Pay Transparency Directive may still be some way off, many of the requirements will represent a significant step-change for employers. Further, some companies falling under the scope of the separate Corporate Sustainability Reporting Directive may need to report earlier on their gender pay gap than the EU Pay Transparency Directive will require. This is due to the requirement to report on pay equity being a key element for companies preparing sustainability reports.

Organizations should start to plan and take action now. Key strategic steps and considerations should include:

- Developing a strategy to properly understand pay practices and identify any pay differentials
- Establishing the causes of any significant gender pay differences and assessing their justification.
- Reviewing current practices to identify any gaps in compliance with laws on equality of pay or pay reporting obligations, including future minimum requirements under the Pay Transparency Directive and the Corporate Sustainability Reporting Directive.
- Developing an equal pay action plan to seek to close any gaps which may need to be addressed and consider whether to extend that strategy to other areas beyond gender.
- Formulating a communication plan to ensure that strategy and information is effectively and appropriately communicated, both internally and externally.

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Further reading: [Navigating the global challenges of diversity data](#); [Significant changes in companies' workforce and human rights reporting: new EU legislation](#); [Diversity in the workplace: strategies for success](#)

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