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MESA 2 | LITTLER INTERNATIONAL: Understanding the EU Pay Transparency Directive: Key Implications for Employers

Colaboradores:



Agenda:

- Status of implementation
- Main obligations:
 - Pay Transparency before/upon hiring
 - Categorization to work of equal value
 - Pay Reporting Obligations and Joint Pay Assessment
 - Individual rights requests
 - Consultation with Employee representatives
- Headcount thresholds for pay gap reporting
- Takeaways

Implementation Status by Member States (EU Directive 2023/970)

Deadline: 7 June 2026

- Member States who have a draft, no significant delay expected: Italy, Cyprus, Finland, Ireland (staggered), Lithuania, Malta (partial Law in effect), Poland (partial law in effect), Slovakia,
- Delayed effective date: France (end 2026, starting 2027), Czechia (1 Jan, partial law in effect), Denmark (1 Jan), The Netherlands (1 Jan).
- No effective date or draft legislation: half of the EU Member States have no effective date or no draft legislation.
 - ⇒ **Sweden** announced in mid-April that it will not be transposing the Directive in its current form

Enforcement

- New obligations do not come into force until the Directive is transposed
- However if individuals or employee reps claim based on the Directive, will courts interpret existing laws in light of the Directive (horizontal effect)?

Information to give to job applicants upon hiring

Obligation to inform applicants on:

- The **initial pay or its range for the position**, based on objective, gender-neutral criteria
- The relevant provisions of the **collective agreement**, where applicable, applied by the employer in relation to the position

to ensure an informed and transparent negotiation on pay,

Eg *“in a job vacancy notice, prior to the job interview or otherwise”*.

Job vacancy notices and job titles to be **gender-neutral**

Employers prohibited from asking applicants about pay history.

Right to Information

- Workers entitled to request and receive in writing within 2 months, through employee reps/equality body, information on :
 - their **individual pay level** and
 - the **average pay levels**,
broken down by sex, for categories of workers performing the same work as them or work of equal value to theirs
- If information received is inaccurate or incomplete, workers entitled to request (personally or through workers' reps) additional and reasonable clarifications and details and receive a substantiated reply

Transparency of Pay Setting and Pay Progression Policy

- Employers shall make easily accessible to their workers the criteria used to determine workers' :
 - pay
 - pay levels and
 - pay progression. Criteria to be objective and gender neutral

=> **CATEGORIZATION:** Equal work or work of equal value

Reporting on gender pay gap

Employers with >100 employees to report to the authorities, prior consultation with workers' reps, on:

- a. Gender **pay gap** in wage & variable components
- b. **Median** gender pay gap in wage & variable components
- c. **Proportion** female/male workers receiving variable components and proportion in each quartile pay band
- d. **Gender pay gap** between workers by categories of workers broken down by ordinary basic wage or salary and complementary or variable components (also provided to workers and reps)

Transitory period. First deadline of 7 June 2027 for employers with 150 workers or more regarding previous year.

Reporting every 3 years, except employers with >250, every year.

Joint Pay Assessment

Obligation to conduct a joint pay assessment with workers reps for Employers subject to reporting where:

- Pay reporting demonstrates **difference in the average pay level** female/male of **at least 5%** in any category of workers
- **Not justified** on the basis of objective, gender-neutral criteria
- Employer has not remedied it within **6 months** of the date of submission of the pay reporting

- Obligation to implement the measures to remove the salary differences

Categorization : Objective Criteria

Employers should have pay structures ensuring equal pay for equal work or work of equal value => compare workers in comparable situations based on objective, gender-neutral **criteria**, agreed with workers' reps.

What is work of **Equal Value**? Jobs that (even if they are different in nature), require similar Categorizing Factors:

- Skills
- Effort
- Responsibility
- Working conditions

Relevance of Collective agreements

Worker Representatives' Role in the Directive

- Art. 4: Non-discriminatory pay structures
- Art. 7: Individual rights
- Art 9. Pay Reporting
- Art. 10. Joint pay assessments
- Art. 11. Support from Member States
- Art. 12. Receive information where data protection issues
- Art. 15. Right to engage with enforcing rights.

Defining Thresholds: Worker vs Employee

Directive: applies to “all workers...who have an employment contract or employment relationship as defined by law, collective agreement and/or practice...”

- Agency workers: included
- Contractors?
- How to consider temporary employees and replacements?
- Interns?
- Managing directors: may count as workers in Germany
- Members of the board: not included in Spain because they are not employees

Key Risks for Leadership

- First publicized pay gap reporting June 2027
- Compliance is complex – legal documentation, statistical analysis, local nuances, multiple jurisdictions
- Potential expensive “fines” for unexplained pay gaps
- Administrative penalties, reputation damage, talent sourcing damages, stakeholder pressures
- Equal pay claims

Next Step Recommendations

- Fight to allocate budget and create cross functional working groups
- Fact-find and gather data:
 - What is your pay (including benefits)
 - What are your pay policies?
 - Where is your pay data stored – who can access it?
 - Who are your employee reps?
- Review and define the job architecture
- Conduct stress tests – identify risks and gaps
- Educate leadership – prepare for questions
- Data privacy. Assessment to balance what information can and should be disclosed

Coffee Break

Volvemos a las 12:35 h.

