



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.

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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:

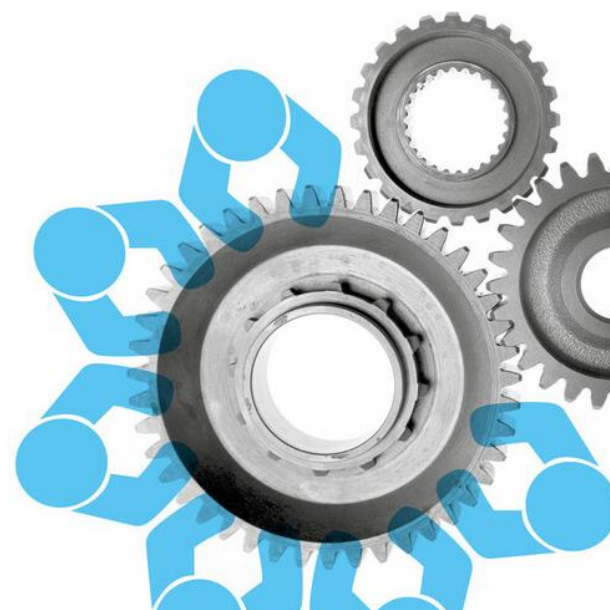
- a right to know the initial pay or pay range for the job before applying;
- a right for applicants not to be asked by a prospective employer about current pay or pay history;
- a right for workers to know what criteria are used to determine pay, pay levels and pay progression, and what comparable workers 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.



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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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