COUNTRY CASE STUDIES ON PAY TRANSPARENCY

Ministry for Women
Minitatanga mō ngā Wāhine

AUSTRALIA

Legislation:

The Workplace Gender Equality Act 2012

Purpose:

The Act provides a long-term sex-disaggregated data set to better understand pay disparities and ensure that employers are informed about their own practices and those of their industry, pushing them to drive for change. The Workplace Gender Equality Agency (WGEA) was created under the Act as a standalone agency tasked with promoting and improving gender equality in Australian workplaces.

Key features:

Who do the obligations apply to?

The Act requires non-public sector employers with 100 or more staff (relevant employers) to submit a report to WGEA each year for the preceding 12 month period of 1 April to 31 March. This means the law only applies to private companies.

This includes corporate structures that, in total, employ 100 or more employees across all employing entities within that structure. Employers with less than 100 employees within their corporate structure are not required to report, however, if an employer has previously reported to WGEA and its numbers fall below 100, it must continue to report until employee numbers fall below 80 for six months or more of the particular reporting period. The six months do not have to be consecutive.

What does the law report on?

Relevant employers are required to provide a workplace profile and report on six gender equality indicators (GEI) that relate to areas shown to be critical to gender equality outcomes:

- GEI 1 – gender composition of the workforce
- GEI 2 – gender composition of governing bodies i.e. boards of relevant employers
- GEI 3 – equal remuneration between women and men
- GEI 4 – availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
- GEI 5 – consultation with employees on issues concerning gender equality in the workplace
- GEI 6 – any other matters specified by the Minister, including sex-based harassment and discrimination.

The specific information to be provided under each GEI is set by the Minister for Women[1] in consultation with the WGEA and other stakeholders and is outlined in Workplace Gender Equality (Matters in relation to Gender Equality Indicators) Instrument 2013 (No. 1).

The 2016-17 dataset covered more than 4 million employees and in excess of 11,000 organisations (and approximately 5,000 reporting entities); in total about one-third of the Australian labour force.

[1] The Minister for Women must specify matters in relation to each GEI prior to the beginning of the reporting period to which they apply.

Employers with 500 or more employees must meet minimum standards, which are additional compliance requirements to better support gender equality and diversity in bigger workplaces. Employers with 500 or more employees are required to have a policy or strategy in at least one of the GEI areas, excluding GEI 2 (gender composition of boards) and 5 (consulting employees).

An employer has two 'chances' i.e. two further reporting periods to improve against the minimum standards before it may be deemed non-compliant. WGEA offers employers advice and assistance to improve performance and meet a minimum standard.

Who records, reports and collects data?

Organisations have from 1 April until 31 May each year to submit their gender equality report to WGEA through an online portal. WGEA provides significant detail and resources on how the required statistics are to be calculated.

How is gender pay reporting shared?

Under the Act's notification and access requirements, employers must inform employees, members, shareholders, and employee organisations, that they have lodged the report with WGEA and advise them how the report may be accessed.

The information provided by organisations is published on the WGEA website and accessed through the WGEA Data Explorer, which captures aggregated data.

In addition, WGEA provides each relevant employer with a confidential, customised Competitor Analysis Benchmark Report on their gender equality performance relative to other organisations. These reports help employers identify areas for improvement and track progress over time.

What is the role of government and which agencies are engaged?

WGEA is a Government statutory agency responsible for enforcing the Act. It supports employers (including smaller employers not required to report) through education and resources, and individual one-on-one assistance.

Under the Act, organisations that fail to comply may be deemed 'non-compliant'. In such instances WGEA may name the employer as non-compliant in a report to the Minister or by electronic means. Non-compliant organisations may not be eligible to tender for contracts under the Commonwealth and some state procurement frameworks. This has been enforced and it remains an incentive for organisations to be compliant with the Act and receive their letter of compliance to be eligible for government procurement requirements. Further details are available in the Procurement Guidelines.

The Fair Work Commission includes a Pay Equity Unity formed in 2013, which was created to undertake research and provide information on issues relevant to pay equity under the Fair Work Act. The Fair Work Ombudsman provides information and advice on pay equity and entitlements.

Australian Public Service agencies must monitor progress against the Gender Equality Strategy and provide data (including gender pay gaps) to the Australian Public Service Commission.

What are the defining features of the employment relations framework and labour market?

The national gender pay gap is calculated by WGEA using data from the Australian Bureau of Statistics. Australian workplaces continue to contain significant disparities between the remuneration of female and male employees.

At May 2018, Australia's national gender pay gap was 14.6 percent, and has hovered between 14 percent and 19 percent for the past two decades.

What impact has the legislation had?

In the four years of WGEA reporting, employers with a formal remuneration policy or strategy increased from 48.9 percent in 2013-14 to 58.5 percent in 2016-17.

Simultaneously, the proportion of employers doing a pay gap analysis increased from 24 percent to 37.7 percent in the same period.

The report Gender Equity Insights 2018: Inside Australia's Gender Pay Gap strengthens the evidence base around gender pay gaps and how these have changed over time in Australian workplaces.

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DENMARK

Legislation

The Gender Specific Pay Statistics Act 2006 (the Act) came into force on 1 January 2007, to support the enforcement of the Equal Pay Act 1973, which was replaced by a new Equal Pay Act 2008. The reporting requirements under the Act were revised in 2014 and again in 2016.[1]

Purpose

- The objective of the Act is 'to promote visibility and information about wage differentials'.
- The Act aims to address workplace gender pay gaps by increasing transparency and enforcing equal pay as upheld in the Danish Equal Pay Act 2008, which prohibits direct and indirect gender wage discrimination and upholds the principle of equal pay for work of equal value.

Key features

Who do the obligations apply to?

The law requires private firms with more 35 employees to share gender pay gaps where more than 10 men and 10 women are in the same job category according to the Danish occupational standard code (DISCO, Denmark's equivalent to the Australia New Zealand Standard Classification of Occupations). The European Union (EU) estimates that the law applies to more than 2,000 Danish firms.[2]

- Firms must provide annual gender specific pay statistics to Statistics Denmark, the national statistics agency, or order a report from Statistics Denmark, with gender pay gaps between employees categorised to a six-digit 'DISCO' code to protect individuals' privacy.

- Employers must send gendered pay data on employees who are paid according to the amount of time they have worked – those paid according to performance are not covered by the law.

- Alternatively, the law states that the employer, if agreed with the employees, can produce a report which explains and addresses the reasons for the gender pay gap. This report should include everyone in the firm as well as a plan of action on how to address the gender pay gap.

- In 2014 the law was amended to reduce minimum firm size from more than 35 employees to more than 10 and the limit of 10 men and 10 women in the same job category to a minimum of three employees of each gender in comparable jobs. In 2016 a new government rolled back to the limits to the pre-2014 level. There are no sanctions for non-compliance with the Act.

[1] Eurofound, *Pay transparency in Europe: First experiences with gender pay reports and audits in four Member States* (March 2018) [*Pay transparency in Europe*] available at: https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18004en.pdf
[2] Eurofound, 'Addressing the gender pay gap: Government and social partner actions – Denmark' (2010) available at: https://www.eurofound.europa.eu/publications/report/2010/addressing-the-gender-pay-gap-government-and-social-partner-actions-denmark

Denmark already has a law for reporting gender pay data in the public sector, which applies to all public institutions with at least three women or three men carrying out similar job functions.

What does the law report on?

Employers with 35 or more employees must report to Statistics Denmark after compiling gender-disaggregated wage statistics and consulting with employees once the data is gathered.
Firms must also explain the design of the statistics and the 'wage concept' or measure used to calculate gender pay gaps within the organisation.[3]

- The statistics show a percentage difference between the salary of men and women in each job category with at least 10 women and 10 men.

- Alternatively if the employer and employee representatives agree on a qualitative report or statement instead of the default statistical report, this must include:

  1. A description of factors that influence the remuneration of men and women at the company
  2. A plan for how the firm intends to prevent or reduce the gender pay gap and
  3. A follow-up procedure on actions to close the organisational gender pay gap

- Employer must consult employee representatives, and the employer must give employees the opportunity to establish a dialogue with management on the content of the statistical report.

Employees are entitled to receive gender pay statistics and/or the report/statement under the Danish employment law on employee information and consultation. Most employee and management representatives note that the data was shared with employees through the human resources (HR) department, in a meeting in the 'cooperation committee' (regular meeting of management and employee representatives) in connection with local wage negotiations or a management meeting.[4]

How public is the reporting?

Private firms that are obliged to report must only share data with Statistics Denmark and their employees. Data is usually made available to both management and employee representatives, and more than 80 percent of those surveyed reported being informed on gender pay statistics. Employee representatives are more likely to be aware of gender pay reporting when this is done in-house rather than outsourced. Somewhat worryingly, just over one-quarter of management representatives and 43 percent if employee representatives reported that gender pay data was discussed in cooperation committee meetings.[5] The statistics are not made available online or to the general public.[6]

Who records, reports, and collects data?

It is firms' responsibility to record, report and collect the data. If employers lack the capacity to do so they may order a free report from Statistics Denmark. A study published in late 2018 indicating that pay transparency laws reduce gender pay gaps from Columbia, INSEAD and the University of Copenhagen, found that firms either did not have the DISCO job-code data or were confused about

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[3] Morten Bennedsen, Elena Simintzi, Margarita Tsoutsoura and Daniel Wolfenzon, 'Do Firms Respond to Gender Pay Gap Transparency?' ['Do Firms Respond to Gender Pay Gap Transparency?'] December 2018, available at: https://www.economics.ku.dk/fambuss/publications/gender_pay_oct25pm.pdf, p 3.
[4] Holt and Larsen (2011) cited in *Pay transparency in Europe*, p. 6.
[5] Ibid, p. 5.
[6] Do Firms Respond to Gender Pay Gap Transparency?, p. 10.

this requirement. Denmark's main employer confederation, the DA, found that compliant firms met the 35-employee threshold but 35 percent of these did not meet the six-digit DISCO code criterion.[7]

What is the role of government and which agencies are engaged?

Statistics Denmark holds gender pay data and also provides free services to firms. The costs of processing the data are paid by the Danish Ministry of Employment, which means that firms can get gender-specific statistics to share with employees free of charge.[8]

Government is bound by its own reporting requirements, although an EU report notes that not all Danish public sector employers that are bound to report gender pay data are compliant. While local and regional governments were the most compliant at 66 percent, they were followed by the private sector at 35 percent and public sector employers at 27 percent.[9]

What are the features of the employment relations framework and labour market?

Denmark has a strong record of supporting women's paid work.[10] Women in Denmark have one of the highest employment rates among women in Europe and OECD countries at around 71 percent. Denmark has a highly collectivised labour force with a relatively high minimum wage. The entire public sector is covered by collective agreements, while the Danish Confederation of Trade Unions reports that around 74 percent of private sector employees and around 87 percent of those whose employers are members of the DA are covered by them.[11]

Denmark's gender pay gap, according to Eurostat 2016 data, is 15 percent – slightly below the EU average of 16.2 percent (unadjusted difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings). The gender pay gap for the public and private sectors are around 11.6 and 15.6 percent respectively.

Denmark's gender pay gap, as in other EU countries, varies with age although it favours men across all age groups. For workers aged: [12]

- under 25 years, the gender pay gap is 6.5 percent
- 25-34 years, the gender pay gap is 10.9 percent
- 35-44 years, the gender pay gap is close to the EU average at 16.1 percent
- 45-54 years, the gender pay gap is its highest among all age groups at 18.2 percent
- 55-64 years, the gender pay gap is again near the EU average at 16.0 percent and
- 65 plus years, the gender pay gap is 11 percent.

What impact has the legislation had?

The first major study connecting gender pay transparency laws to reducing the gender pay gap is based on the Danish experience and uses administrative data from Statistics Denmark to find that:[13]

- Gender pay transparency reporting duties can reduce the gender pay gap by up to 7 percent, from 18.9 percent to 17.5 percent for firms with mandatory pay transparency duties. For 'control firms' the gender pay gap stayed the same at 18.9 percent.

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[7] Ibid.
[8] Ibid, p. 8.
[9] *Pay transparency in Europe*, p. 4.
[10] Morten Bennedsen, Elena Simintzi, Margarita Tsoutsoura and Daniel Wolfenzon, 'Research: Gender Pay Gaps Shrink When Companies Are Required to Disclose Them' (23 January 2019) *Harvard Business Review*, available at: https://hbr.org/2019/01/research-gender-pay-gaps-shrink-when-companies-are-required-to-disclose-them
[11] Danish Unions, 'Collective bargaining in Denmark', available at: http://danishunions.eu/~/media/Collective%20bargaining%20in%20Denmark.ashx
[12] Eurostat, 'Gender pay gap statistics' (2016, data from March 2018 and planned article update March 2019). Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics
[13] Do Firms Respond to Gender Pay Gap Transparency?, pp. 14, 26.

- Women's participation rates increase in jobs where the male wage premium is reduced
- Male employees experience slower wage growth relative to women employees
- Overall wage bills were lower for compliant firms by around 2.8 percent, offsetting a productivity decline of 2.5 percent relative to the control group.

The study, which gained widespread media attention, found that the law had other equitable benefits, including benefiting the wages of low and intermediate level employees and with no major effect on the pay of managers and senior corporate leaders. Firms with mandatory gender pay reporting hired five percent more women in intermediate and lower job levels than control firms, which indicates that companies can attract more women into jobs where they offer fairer pay. Also, there were slightly more departures of women in higher-level jobs, indicating that women may be more likely to leave jobs where gender pay gaps are not addressed.

There was also an unexpected benefit in greater reductions in the pay gap for firms where managers had more daughters than sons. In those firms, women's wages rose at 5 percent higher than the rest of duty-bound employers, which reduced the gender pay gap by a further 2.4 percent. Also, industries with higher pay gender disparities before the obligation was introduced had a greater reduction in the gender wage gap.

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FRANCE

Legislation

The Law "For the Freedom to Choose One's Future Career" (2018) was passed in September 2018.

Purpose

- The aim of the law is that everyone has the opportunity to achieve their professional aspirations. The gender aspects of the law aim to close gender pay gaps and achieve equal pay in three years.
- The law is part of the 'PACTE-plan', (*plan d'action pour la croissance et la transformation des enterprises*) to grow small and medium enterprises (SMEs) by reducing compliance. To Labour Minister Muriel Pénicaud the law is part of, 'a complete overhaul of [France's] social model'.
- The law aims for a future-focused workforce, providing training, vocational and apprenticeship opportunities, and support for population groups including women, youth and disabled people.

Key features

Who do the obligations apply to?

The law requires companies with more than 50 employees to publish an annual 'score' with indicators on gender pay gaps and to take actions to close its organisational gender pay gap within three years.

- Firms with 1,000 or more employees have until 1 March 2019 to publish their 2018 scores.
- Firms with 250-1,000 employees have until 1 September 2019 to publish their 2018 scores.
- Firms with 50-250 employees have been given an additional year to prepare and should publish their score for 2019 by 1 March 2020.

Companies that have not published their score by the deadlines may face a financial penalty of up to one percent of their total payroll. Firms must budget to close gender pay gaps in three years, and are also liable to pay one percent of total payroll if they have not closed the gap by then, unless granted an additional year to enact their 'catch up plan'. Penalties apply by the following dates:

- 1 March 2020: all companies that have not met a score of 75-100 may be fined one percent of the company payroll. Labour authorities may give companies an additional year to become compliant, especially SMEs with limited budgets and capacity.
- 1 March 2023: companies with more than 250 employees that have not met the 75-100 score may be fined up to one percent of the payroll.

In November 2018, the Government launched a software for companies to track gender pay gaps.

Companies will also take other initiatives related to gender equality including:

- Combatting sexual violence by appointing a staff-elected representative to the Social and Economic Committee of every firm. Employers with 250 or more employees must appoint a Human Resources representative to the Committee as well.
- Working with labour inspectors and occupational therapists who will be trained to prevent situations of violence and create appropriate responses and support victim survivors.

What does the law report on?

Employers with 250 or more employees are required to report against five indicators in the equal pay index, and score 75-100 points to be compliant with the law. The indicators are weighted as follows:

1. Pay gap between women and men, calculated on the basis of the average remuneration of women compared to men by age group and equivalent occupational category. Average remuneration includes performance bonuses and benefits in kind, and excludes bonuses concerning working conditions and severance and precariousness bonuses. (40 points). The pay gap must be zero to get 40 points, with a 'tolerance threshold' of two-five percent.
2. Percentage of women earners with a pay increase in the year following their return from maternity leave, if pay increases occurred while they were on leave (15 points). If only one woman does not get an increase in these circumstances, the score will be zero. Conversely, 15 points will be given if all women are given pay rises on returning from maternity leave.
3. Number of employees of the under-represented gender among the top 10 highest earners in the company (10 points). The company will be awarded 10 points if women hold at least 4 of the top 10 positions in bigger companies.
4. Gap in the percentage of individual pay increases (not related to promotions) between women and men (20 points). The full 20 points are given when a firm has increased pay for as many women as men, with a tolerance of two percent or two employees.
5. Gap in the percentage of promotions between women and men (15 points). The maximum number of points are awarded when the company has promoted as many women as men, with a tolerance of two percent or two employees.

   For firms with 50-250 employees, indicators 4 and 5 (the gaps between individual pay rises not related to promotions and the percentage of promotions) are replaced by a single indicator:
6. The gap in the percentage of individual pay rises between women and men (35 points).

Companies scoring below 75 points must engage in mandatory negotiations on gender equality and define with unions any corrective measures including possible pay rises. If there is no agreement between a firm and a union, the firm may unilaterally decide the corrective measures after consulting the Social and Economic Committee. The corrective measures should pursue five goals:

- Reducing the pay gap between women and men by allocating a three year salary 'catch up plan', the amount of which is negotiated within the company
- Applying maternity leave laws
- Giving individual pay rises on an equitable basis between women and men
- Ensuring fair promotions between women and men
- Ensuring fair representation of both women and men at the head of the organisation

How public is the reporting?

The gender pay gap score and indicator results should be published on the company's website (firms without websites must bring scores to employees' attention by other means). Employers must publish in annual reports, specific information on gender equality, including actions to achieve gender equality and of the tools to remedying gender inequality including sexual harassment. In addition to public reporting, staff representatives would also have access to more detailed data by job category.

Who records, reports and collects data?

It is the responsibility of each organisation to record and report the data, using the royalty-free payroll software by July 2019, for the second half of 2019. The software is directly integrated within company payroll software. The Labour Ministry will also appoint contact persons to help SMEs (companies with 50-250 employees) to calculate the equal pay indicators and publish their scores, as well as take actions to close gender pay gaps.

What is the role of government and which agencies are engaged?

Minister Pénicaud and Marlène Schiappa, Minister of Gender Equality, introduced the Law as part of a 10-point action plan to end the gender pay gap. The Labour Ministry and Labour Inspectorate are actively engaged in applying, monitoring and enforcing the Law and the action plan. The actions are:

1. Applying the principle of equal pay for equal work
2. Enacting pay transparency
3. Giving equal training rights to part-time workers (80 percent being women) as full-time workers;
4. Including equality actions in departmental annual reviews. Each company department will need to report on actions taken to promote gender equality during its annual review, including classification of job types, promoting gender diversity and professional qualifications to support women's career paths. A methodology on good bargaining practices will also be promoted to social partners (unions/employee representatives and employers' representatives).
5. Increasing inspection and monitoring. The Labour Inspectorate is expected to quadruple its audits on gender equality (1,730 each year as of 2018) to 7,000 inspections annually. Gender and pay equality is one of four priorities of the French Labour Inspectorate.
6. Holding publicly listed companies and their governing bodies accountable for enacting the "apply (equality) or explain" principle during compensation committee and board of directors' meetings, for results concerning equal pay.
7. Requiring mandatory disclosure of gender balance for the highest-level of management of publicly listed companies (i.e. if women are at least four of the top ten highest paid employees).
8. Combatting stereotypes, especially around hiring, will be challenged by distributing guides made available to companies, departments and regional inter-professional joint committees.
9. Improving work life balance by promoting time management, remote working, and re-examining arrangements for maternity, paternity and parental leave.
10. Supporting the EU draft directive on the work-life balance of parents and caretakers, to support a strong and active social Europe that works towards gender equality.

What are the features of the employment relations framework and labour market?

France's gender pay gap is 15.2 percent (Eurostat unadjusted for 2016, difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings). The European Union (EU) average is 16.2 percent. According to EuroStat, in France and throughout the EU, the gender pay gap is generally lower for young employees, with data for France as follows:

- -3.8 percent gender pay gap in favour of women for employees younger than 25 years. For all other age groups the gender pay gap is in favour of men.
- 8.4 percent gender pay gap for employees aged 25-34
- 12.8 percent gender pay gap for employees aged 35-44
- 18.9 percent gender pay gap for employees aged 45-54
- 21.1 percent gender pay gap for employees aged 55-64
- 29.9 percent gender pay gap for employees aged 65 and older

The gender pay gap also varies by industry in France, as in other EU and similar jurisdictions. The gender pay gap for the financial and insurance industries is 30.6 percent, and for professional, scientific and technical activities it is 22.4 percent, which raises the overall gender pay gap.

Collective bargaining is a widespread practice in France, with mandatory gender equality bargaining for larger companies to whom the Law applies.

What impact has the legislation had?

- No impact yet of legislation but worldwide interest in software and use of tech
- Public private partnerships for software to be developed and rolled out to monitor firm compliance.

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GERMANY

Legislation

The Remuneration Transparency Act (*Entgelttransparenzgesetz*, or 'the Act') was enacted in June 2017 and entered into force on 6 January 2018.

Purpose

- The Act aims to promote the transparency of pay structures and fair wages for women and men performing the same or equivalent work in order to close the 'unadjusted' gender pay gap, by addresses pay differences for women and men despite comparable qualifications and work.
- The Act expressly aims to promote and enforce the principle of equal pay, requiring equal pay for equal or comparable work and prohibiting direct or indirect wage discrimination based on gender.

Key features

Who do the obligations apply to?

The Act applies to large private sector employers. It does not apply to the public sector. The Act requires companies with 'regularly more than 200 employees' to make the following available to workers so they can verify the gender equality of their remuneration:

- Anonymised disclosure of median monthly remuneration to colleagues of the other gender for the same or comparable work, as long as there are six employees of the opposite gender in the same job category
- Breakdown of pay data for up to two other wage components e.g. base salary, bonus payments. Employees may choose these components as relevant e.g. company cars or cash bonuses
- Information on the relevant criteria to determine their own remuneration as well as the remuneration for jobs involving the same or comparable work. While comparable work is not defined, employees may argue that work that is not identical is comparable according to a collective agreement or according to factors including the type of work, educational/training requirements, and working conditions.
- Once a request is made, firms have a three month deadline to provide the requested data. If companies fail to do so, there is a presumption of discrimination and they are liable to compensate employees.
- If claimants prove that comparable employees are paid differently based on gender, they are entitled to a pay rise. This entitlement derives from Germany's Equal Treatment Act and was recognised by the courts before the Act was passed. Germany, as with other EU Member States, follows the principle of 'a reverse burden of proof', where claimants prove facts from which discrimination may be presumed.
- Employers must prove that there is either no pay difference or that any differences in pay are not based on gender and are objectively justified by valid reasons. The burden of proof shifts if employers do not meet their obligations to provide the requested information to employees within three months.

Employees must make their request in compliance with the following obligations:

- The request must be in writing, can be done electronically and may be lodged with the firm or the works council (employee representatives) if there is one (firms with collective agreements have works councils).

- In principle, employees will be able to exercise their right to information every two years (beginning from the day the previous request was made or earlier, if e.g. their job changed within the company). A transition period applies with the law entering into force, with employees able to request information from six months after the Act comes into force. If employees make their first request within three years of the Act coming into force e.g. by 6 January 2021, they must wait another three years before making another request. After the initial two requests, they make a request every two years, as normal.

How public is the reporting?

The employees' request for information not need to be disclosed to anyone other than the requestor. One law firms observed that works council members have been exercising their right to information to assess if companies are capable to handling their duties under the Act. [1]

Firms with more than 500 employees must already publish management reports within their annual accounts under the German Commercial Code, and must now report on measures to promote gender equality and any results, as well as measures taken to achieve equal pay, and publish these in the German Federal Gazette. Any absence of stipulated efforts must be justified in the report. Firms that are bound by or that apply collective agreements must prepare these reports every five years. All other firms must prepare these reports every three years. The reports must cover the preceding five or three years respectively, depending on firm size, except for transitional provisions for the first report, which need only cover the preceding year.

The law also encourages companies with regularly more than 500 employees to do voluntary gender pay audits. These recommendations were originally drafted as mandatory duties, but are now included as suggested 'good practice'. If a company decides to do a voluntary audit, they must also inform employees of results. The company audit has to be reported on during works council meetings according to the Works Constitution Act, for companies that have collective agreements.

Who records, reports and collects data?

Employers record and report on pay data, and employees may collect this data where the pay information they are requesting involves a job class of at least six employees of a different gender.

What is the role of government and which agencies are engaged?

The Government publishes the German Federal Gazette, where companies with more than 500 employees must publish reports on measures to promote gender equality and to achieve equal pay in the previous year. The Government has set a target to reduce the gender pay gap to 10 percent by 2030, which according to official statistics has stagnated since 2002.

What are the features of the employment relations framework and labour market?

Figures for Germany's gender pay gap vary, from 6 to nearly 22 percent. According to the German Federal Statistical Office (*Statistisches Bundesamt*) the 'adjusted' gender pay gap is 6-7 percent. The Office defines the gender pay gap as the difference between average gross hourly earnings of men and women stated as a percentage of the average gross hourly earnings of men (without special payments) and does not include persons employed in agriculture and the public service or in enterprises with fewer than ten workers. Men earn more than women in all sectors, with the biggest gaps in 'professional, science and technical' jobs (31 percent) arts, entertainment and recreation (29 percent) and financial and insurance activities (28 percent). The gender pay gap differs greatly in

[1] Baker McKenzie, 'Spotlight on the gender pay gap in Germany' (Gender Pay Gap Series, No 6, 2018) available at: https://www.bakermckenzie.com/-/media/files/insight/publications/2018/06/ar_spotlight-on-the-gender-pay-gap-in-germany.pdf?la=en

west and east Germany – 23 percent in the former (which includes Berlin) and seven percent in the latter former Communist part of the country.[2]

The Eurostat unadjusted gender pay gap for 2016 (difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings) is 21.5 percent. According to Eurostat the gender pay gap in the private sector, where the Act applies, is 24 percent, the highest private sector gender pay gap in the EU where data is available. Germany's gender pay gap in in the public sector is 13 percent.

The OECD measures Germany's rate of unionisation as 17 percent throughout the economy and collective bargaining coverage ie percentage of employees with the right to bargain is around 56 percent (2016). Unionisation rates in east Germany are much higher than in west Germany, with According to one study, the gender wage gap is lower in German firms with collective agreements than in firms with individual contracts.[3] Another study sees Germany's persistently high gender pay gap as linked to its conservative welfare state where the male breadwinner household income model persists. That study uses qualitative data to argue that classifying some jobs as 'female' combined with sectoral income levels and different wage-setting mechanisms crucially impact wage inequalities between women and men.[4]

What impact has the legislation had?

The Act has had little impact so far, partly because few employees seem to be aware of it. A March 2018 survey by EY revealed that less than half of the 1000 German professionals questioned were aware of the new law. Although the Act could possibly affect 14 million employees, one law firm has estimated that only one percent will use their power to request information on gendered pay data. With requests possible every two years, the firm advises employers that around 70,000 requests per year are expected.[5]

A survey of 20 large German companies by the *Süddeutsche Zeitung* newspaper for the first quarter of the law being in force showed that it is not yet widely used.[6] Big companies such as Audi, Bosch, Continental, Deutsche Post, Henkel and Deutsche Bahn had fewer than 20 salary inquiries from employees in early 2018. During that time, major firm Siemens had 100 inquiries, German Telecom received 120, Deutsche Bank received 164, and Allianz received 293. Policy website *Apolitical* asked in July 2018, six months after the law entered into force, 'German women can now find out what men earn – why don't they?' Interviewing Nora Markard, co-founder of a legal association for civil and human rights in Germany, *Apolitical* found that the law was in its early stages and had symbolic value. Markard acknowledged that, 'It doesn't do so much work on the ground, but the fact that it's being addressed sends strong signals: You have a right to equal pay, and we take it seriously". [7]

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[2] See: Germany Federal Statistics Office, 'Gender Pay Gap Data', available at: https://www.destatis.de/EN/FactsFigures/Indicators/QualityEmployment/Dimension1/1_5_GenderPayGap.html

[3] Stephan, Gesine, and Knut Gerlach. 2005. "Wage Settlements and Wage Setting – Results from a Multi-Level Model." Applied Economics 37 (20): 2297-2306.

[4] Nadia Bergmann, Alexandra Scheele, Claudia Sorger, 'Variations of the same? A sectoral analysis of the gender pay gap in Germany and Austria', *Gender, Work and Organization* (Special Issue, 14 October 2018) https://onlinelibrary.wiley.com/doi/abs/10.1111/gwao.12299

[5] CMS Germany, 'Pay Transparency Act: information claims' (21 February 2018) available at: https://www.lexology.com/library/detail.aspx?g=843cb606-024e-41f9-a83f-49a44bb9c387

[6] See: https://www.faz.net/aktuell/wirtschaft/frauen-nutzen-das-entgelttransparenzgesetz-kaum-15608626.html

[7] Apolitical, see: https://apolitical.co/solution_article/german-women-can-now-find-out-what-men-earn-why-dont-they/

Academic research since the Act entered into force is yet to directly consider the impact of the law on closing the gender pay gap and addressing wider gender pay discrimination issues. One article considers factors affecting women's ability to make claims as employees regarding pay and other working terms and conditions. Sociologists Laura Luekemann and Anja-Kristin Abendroth assert that employment outcomes for women and men from claims-making processes differ because women fail to ask for higher wages, or because their employer may not consider their claims to be legitimate. Studying German women's likelihood to make claims with employers regarding career progression (which may be related to pay as well as promotions, training opportunities etc) the authors found that mothers in paid work were less likely to make claims due to their working hours due to unpaid work duties. Factors which supported women to make claims around their employment included: having a female supervisor; gender balance in management jobs in a workplace; and written performance evaluations which support women to legitimise claims for career advancement.[8]

[8] Laura Luekemann and Anja-Kristin Abendroth, 'Women in the German Workplace: What Facilitates or Constraints their Claims-Making for Career Advancement?' *Social Sciences*, 2018:7, 214.

COUNTRY CASE STUDIES ON PAY TRANSPARENCY

Ministry for Women
Minitatanga mō ngā Wāhine

ICELAND

Legislation

The Gender Equality Act 10/2008

Purpose

The Gender Equality Act ('the Act') requires that state institutions and private employers with 25 or more employees must obtain equal pay certification annually, which must meet the requirements of the Equal Pay Standard (created by Icelandic Standards, the national standards body). The purpose of this mandatory certification is to enforce the current equal pay law in Iceland that prohibits men and women from receiving different wages in similar or comparable roles.

Key features: comparable work

Who do the obligations apply to?

The Act requires all public and private sector employers with 25 or more employees to be certified annually to ensure that they comply with equal pay legislation.

What does the law report on?

The Act, which enacts the Equal Pay Standard (the Standard) prohibits organisations from paying employees differently for the same or comparable work undertaken by their employees.

The Standard outlines process that companies and public institutions can follow in order to ensure equal pay within their organization. The Standard is applicable to all organisations regardless of their size, field or gender breakdown of staff. It aims to enforce effective and professional methods for pay decisions, effective review and improvement of gender pay disparities that may exist in larger organisations. The Standard applies to around 1,180 employers and 147,000 employees, which represents around 80 percent of those who are actively participating in the labour market.

How public is the reporting?

The Standard requires that all organisations with 25 employees or more to have accessible and sufficiently detailed equal pay policies. Organisations apply for certification and an accredited body – an entity which handles certification, then directs an audit of the equal pay systems in place within the organisation.

Once the certification body has completed this audit, a certificate is issued to the organisation stating that the Standard has been complied with. A copy of this certification is then sent to Iceland's Directorate of Equality (the Directorate, formerly the Centre for Gender Equality) along with a report. This report confirms that the organisation in question has complied with the Standard and outlines any recommendations that were made in order to improve the equal pay system.

However, the Standard does not require information on individuals' wages or on all wage figures. The Standard only requires that data needs to be sufficient for the equal pay policy of an organisation to be meaningfully understood and assessed. This does not mean individual employees' wages or that all figures surrounding wages paid will be available.

Who records, reports, and collects data?

Organisations are responsible for ensuring they obtain their equal pay certification annually and The Directorate enforces the Act and holds a register of all certified employers and is able to impose fines for noncompliant employers. The Directorate is run by the Icelandic Ministry of Welfare (the Ministry).

Accredited auditors can grant organisations with 25 or more employees a certification after they examine their equal pay management systems and how these are enforced in their organisations.

What is the role of government and which agencies are engaged?

Iceland's Government wants to close its gender pay gap (GPG) by 2022, and enforcing the Standard is one way to achieve this.

The Ministry is heavily involved with the Standard and enforcing the Act as it funded the Standard's creation with the private sector providing human resources. The Ministry has authorised some firms and unions, as International Labour Organisation (ILO) social partners, to audit employers according to the Standard. The government however, is not involved in the monitoring the compliance of the affected businesses as unions and employer representatives are tasked with this responsibility.

What are the features of the employment relations framework and labour market?

Although Iceland has been ranked in first place in international comparisons regarding gender equality[1] the gender pay gap has been measured as high as 16 percent (difference between average gross hourly earnings of male employees as a percentage of male gross earnings, as of 2016).[2] According to this calculation by the European Union (EU) of the unadjusted gender pay gap in different European countries, Iceland's figure represents the EU average gender pay gap. Statistics Iceland, the Icelandic Government's official statistics agency, measures Iceland's gender pay gap as 4.5 percent for 2016 compared to 6.6 percent in 2008 (an adjusted figure using an ordinary least squares method for each year). According to Statistics Iceland, the unexplained part of the gender pay gap, which is 'difficult to measure' and includes bias, behaviours and discrimination, has decreased to 3.6 percent in the years 2014-16 compared to 4.8 percent in 2008-10.[3]

Union density in Iceland is 80 percent, with most of the labour market regulated by collective bargaining. The Icelandic Confederation of Labour (ASI) is made up of 48 trade unions of various professions and its members make up almost half of the total workforce.[4] Collective bargaining between the Confederation of Icelandic Employers and ASI empowers trade unions to negotiate agreements regarding wages and other terms of employment. These collective agreements cover almost 90 percent of the workforce in Iceland.

Labour participation is very high for men and women, with the rate of participation of women in the workforce at over 80 percent.

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[1] The Global Gender Gap Report 2018 benchmarked 149 countries on their progress towards gender parity across four thematic dimensions: Economic Participation and Opportunity; Health and Survival; and Political Empowerment. This year's edition also includes gender gaps around Artificial Intelligence.
[2] Eurostat, https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics
[3] Statistics Iceland, 'The gender pay gap narrows' (7 March 2018) https://www.statice.is/publications/news-archive/wages-and-income/analysis-on-gender-pay-gap-2008-2016/
[4] Statistics Iceland, https://www.asi.is/engpol/

What impact has the legislation had?

Following the Icelandic Equal Pay Certification law coming into force on January 1 2018, it is unknown how many employers are currently in compliance with the Standard. Large organisations, with 250 or more employees are required to gain their certification by the end of this year and those with 25-89 employees (fewer than 90 but more than 25) have until the end of 2021.

COUNTRY CASE STUDIES ON PAY TRANSPARENCY

ministry for Women
Minitatanga mō ngā Wāhine

UNITED KINGDOM

Legislation

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017
The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

Purpose

These Regulations require public reporting of gender disaggregated data to:

- raise awareness of gender pay gaps in individual organisations
- encourage proactive culture change and the prioritisation of gender equality, and
- help good employers to attract talent, maintain productivity and improve employee trust.

Key features

Who do the obligations apply to?

These Regulations require private, public and voluntary sector organisations with 250 or more employees, to publish on an annual basis, information relating to the gender pay gap in their organisations. Public authorities include government departments, the armed forces, local authorities, NHS bodies, publically funded schools and others.[1]

For the purposes of the Regulations, 'employment' includes employment under a contract of employment, a contract of apprenticeship or a contract personally to do work. Agency workers are included, but counted by the agency providing them.

These reporting organisations together employ around 16.45 million people, representing 56% of all employee jobs in the UK.

Reporting must occur annually (as of 2018), and the measures are calculated from a 'snapshot date' each year; 30 March for public sector organisations and 4 April for the private sector organisations.

Organisations with fewer than 250 employees may report voluntarily but are not obliged to do so.

What does the law report on?

Employers are required to publish:

- the mean (average) and median (midpoint) gender pay gap in base salaries
- the mean and median bonus gender pay gaps
- the proportion of men and women in the organisation receiving a bonus payment
- the proportion of men and women in each quartile pay band (e.g. those in the top 25%).

For the purposes of the Regulations, the gender pay gap refers to the difference in the average hourly wage of all men and women across the organisation.

The definition of 'pay' includes basic pay, paid leave, bonuses and allowances but excludes overtime and expenses.

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[1] This includes specified English, cross-border non-devolved authorities operating across England, Scotland and Wales. Scottish and Welsh public authorities listed in Schedule 19 Equality Act 2010 are subject to their own devolved regulations. Any English, Scottish or Welsh public sector employer not listed in Schedule 19 Equality Act 2010 still needs to follow the private and voluntary sector regulations.

While the Regulations for the public, private and voluntary sectors are near identical, and the calculations are directly comparable, the public sector Regulations also take into account the public sector equality duty.

Government departments are responsible for providing an aggregated gender pay report of all their employees, including those working for their executive agencies (as these are the same legal entity). They can, in addition, show a break-down of figures too.

Employers have the option to provide a narrative with their calculations. This should generally explain the reasons for the results and give details about actions that are being taken to reduce or eliminate the gender pay gap.

Who records, reports, and collects data?

It is the responsibility of each organisation to record and report their data, using the Government gender pay gap reporting service . The Regulations themselves include significant detail on how the required statistics for mean, median and bonus pay gaps are to be calculated.

How is gender pay reporting shared?

The results must be published on the employer's website for at least three years from the date of publication, and must also be published on a dedicated and searchable Government website. This means that the gender pay gap will be publicly available, including to customers, employees and potential future recruits.

What is the role of government and which agencies are engaged?

The Regulations were introduced by the Government Equalities Office (GEO) and are enforced by the Equalities and Human Rights Commission (EHRC), an independent non-departmental public body. Both took active steps to publicise the reporting requirements in advance of the reporting deadline including social media campaigns and television advertising.

The focus of the EHRC is on securing compliance by education and engagement. However, the EHRC can issue an ‘unlawful act’ notice to organisations that fail to comply with the scheme, and may require them to develop an action plan to prevent the legal breach being repeated in future years.

The Advisory, Conciliation and Arbitration Service (Acas) provides free information and advice, including workshops and training sessions, to employers and employees on all aspects of workplace relations and employment law, including gender pay gap reporting.

What are the defining features of the employment relations framework and labour market?

The UK has one of the highest gender pay gaps in Europe. According to the Office of National Statistics (ONS) the median for all employees was 17.9% at April 2018 in favour of men. This continues a very gradual downward trend since 1997, when the gap was around 27%. ONS statistics show that the gender pay gap is slightly higher amongst business with 10 to 250 employees than those with over 250, although significantly lower in very small businesses.

There is no common structure for employee representation in the UK. At present just over a quarter (26%) of UK employees are union members, although union density is much higher in the public sector (56%) than the private sector (14%). Less than a third (29%) of all UK employees are covered by collective bargaining. In the private sector coverage is lower at around a sixth and the key bargaining level is the company or the workplace. In the public sector, where almost two-thirds of employees are covered, industry level bargaining is more important.

The Labour Market Outlook for the last quarter of 2018 shows sustained high employment and demand for skills and labour. However, the impact of reducing labour supply on productivity growth, along with uncertainty over Brexit, is having a ‘braking effect’ on wage growth.

What impact has the legislation had?

Despite some initial reporting delays, in July 2018, the EHRC reported that all employers believed to be in scope of the regulations had published their gender pay gap figures and most engaged with the process constructively.

While compliance was very good, the House of Commons Business, Energy and Industrial Strategy Committee's report of July 2018 on 'Gender pay gap reporting' offers a number of recommendations for improvement and calls on Government to be more ambitious.

What progress has been made?

Whilst gender pay gap reporting has its critics, GEO research suggests that the new reporting obligation has seen an increased awareness and understanding of issues which can impact on the gender pay gap, has facilitated discussions including significantly at board level and has increased the number of employers who view closing the gap as a priority.

Analysis of all gender pay gap figures published up to 8 January 2019 shows that, while there are some isolated instances where the gap has grown, the broad trend is very slightly downwards. The average difference between all employers' 2017 and 2018 reported median hourly pay gap was around 0.6 percentage points in favour of women.

The Government Equalities Office has published new guidance

As the deadline draws close for 2019 reporting on the gender pay gap, for those employing over 250 staff, the Government Equalities Office ("GEO") has published two new pieces of guidance.

Eight Ways to Understand Your Gender Pay Gap suggests questions to help identify different potential causes of the gender pay gap; looking at recruitment, promotion and advancement and the rate and percentage of men and women leaving, at different levels of seniority.

This remains a generic approach. It does however enable employers to delve deeper into their particular sector and identify wider societal issues that underlie any imbalance.

Understanding the reasons for an organisations particular gender pay gap is key in identifying what can be reasonably done to tackle that gap.

This is the first of Four Steps to Developing a Gender Pay Gap Action Plan, which draws together the experiences of employers who have already successfully developed and implemented effective action plans. The guidance highlights the importance of engaging with staff, with clear buy-in from senior people, which will help embed any actions so that they become part of the organisational culture.

All action plans are expected to evolve; they will develop through monitoring, review and regular re-evaluation with the support of an identified champion within an organisation to drive this process.