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The case for equal pay and pay transparency in Europe

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Time to prepare — Pay transparency in Europe

Workplace culture has become more open, inclusive and fair as employers and governments have embraced diversity, equity and inclusion. In December 2022, the European Parliament and the European Union Council reached a political agreement on measures in the Directive on Equal Pay and Pay Transparency.

Pay transparency is the degree to which employers are open about what, why, how and how much employees are compensated — and to what extent employers allow employees to share that information with others. It's about helping employees and potential employees understand how their pay is set in the context of market and business realities. The goal is to build employee confidence in the fairness of that process and help equalise pay between men and women.

Equal pay for equal work is the concept that individuals in the same workplace are paid the same for performing similar work under the same conditions. The directive requires organisations to transparently disclose information on gender pay gaps for the overall organisation as well as for similar categories of work.

"Category of workers" means workers performing the same work or work of equal value grouped in a non-arbitrary manner and based on gender-neutral criteria — as referenced in Article 4(3) of this directive — by the workers' employer and, where applicable, in cooperation with the workers' representatives in accordance with national law and/or practice in each member state.

The directive provides guidance for EU countries on reporting equal pay and enhancing pay transparency.

- Employers with at least **100 employees** will have to publish information on the pay gap between female and male workers. **Reporting frequency will depend on company size.**
- Pay differences are permitted but must be based on legitimate and objective criteria unrelated to gender, such as an individual's competence and performance.
- If the pay gap exceeds 5% and cannot be explained by legitimate factors, these actions are required:
  - Employers must conduct a joint pay assessment with employees' representatives.
  - The results should be shared with employees and the appropriate authorities.
- To evaluate and compare work of equal value, employers can consider criteria such as education, professional and training requirements, skills, effort, responsibility and the nature of work. Pay differences are allowed as long as they are driven by objective criteria unrelated to gender.
- All employers (irrespective of size) will have to provide transparency of pay prior to and during employment.
- Employers should include pay information in external job postings and before interviews.
- Employers will be prohibited from asking employees for current and prior salary, and confidentiality clauses will be banned.
- Employees will be allowed to ask for, and employers will have to provide, the mean pay levels by gender for categories of workers doing the same work or work of equal value.

Many organisations' pay structures are opaque and lack fairness. People are paid different rates for essentially the same jobs, with women and minorities losing out. Across the EU, the unadjusted gender pay gap persists and stands at around 13%, with significant variations among member states1. New joiners and people who threaten to leave are often paid more than employees who stick with the company. This can lead to a mood of suspicion and unhappiness about pay — and overall lack of engagement among these employees.

Although the EU directive will take up to three years to implement, organisations are already beginning to respond. Mercer data show that 44% of employers are planning to increase pay transparency in 2023. And 25% already viewed transparency as a key priority in 2022.

Organisations need to understand the implications and be ready to respond to the risks and opportunities that pay transparency presents.

The business case for equal pay and pay transparency covers three distinct areas:

Legal compliance: Gender pay reporting of some form is a legal requirement in an increasing number of countries in Europe and across the world, and pay transparency is also an increasing requirement.

Employee experience: A culture of transparency — done correctly — drives better workforce outcomes.

Pay equity: Pay transparency, when coupled with robust analytics, can support fairer pay and career-equity outcomes.

Meeting legal requirements

An increasing number of countries mandate some form of pay transparency. The requirements are quite complex and vary from country to country with regards to submission dates, data inputs and reported statistics. The EU directive provides guidance to member countries that would perhaps create more consistency across the region in relation to equal pay reporting. The table on the following page outlines some of the key requirements of the EU directive and how they compare to current country compliance measures. From 2023 onward, member states have three years to transpose (that is, implement) the EU directive into national law. Countries will need to ensure that reporting on pay gaps meets the standards outlined by the EU.

In the EU directive, there is also greater protection granted to employees, including:

Compensation for workers — Employees who have suffered gender pay discrimination can receive compensation, including full recovery of back pay and related bonuses or payments in kind.

Burden of proof on employer — Where the employer did not fulfil its transparency obligations, the onus will be on the employer to prove there was no discrimination in relation to pay and not on the employee to prove discrimination.

Sanctions will include fines — Member states are encouraged to establish specific penalties for infringements of the equal pay rule, including fines.

Comparison of forthcoming and existing legislation

		Requirement	EU directive	Germany pay transparency law	France gender index	Italian mandatory reporting on gender equality	UK gender pay gap law*
Core instruments to strengthen equal pay for equal work or work of equal value	Equal pay	Gender pay reporting	Yes	Yes (to some extent)	Yes	Yes (to some extent)	Yes
		Employee headcount threshold	Eventually with >100 employees	>500 employees	>50 employees	>50 employees (headcount)	>250 employees
		Effective date	Employers with at least 250 workers: every year as of 2027 Between 150 and 249 workers: every three years as of 2027 Between 100 and 149 workers: every three years as of 2031	2018	2019	2021	2017
		Disclosure frequency	Annually for companies with 250 employees Every three years for companies with 100–249 employees	Every three years/every five years when collective bargaining agreement exists	Annually	Every two years	Annually
		Joint pay assessment	Yes	Yes (non-obligatory)	No	No	No
	Pay transparency	Right to information	Yes	Yes	No	Yes	No
		Pay setting and career progression policy transparency	Yes	No	No	No	No
		Pay transparency prior to employment	Yes	No	No	No	No
	Enforcement	Litigation and penalties	Yes	Yes (to some extent)	Yes	Yes	Yes (to some extent)

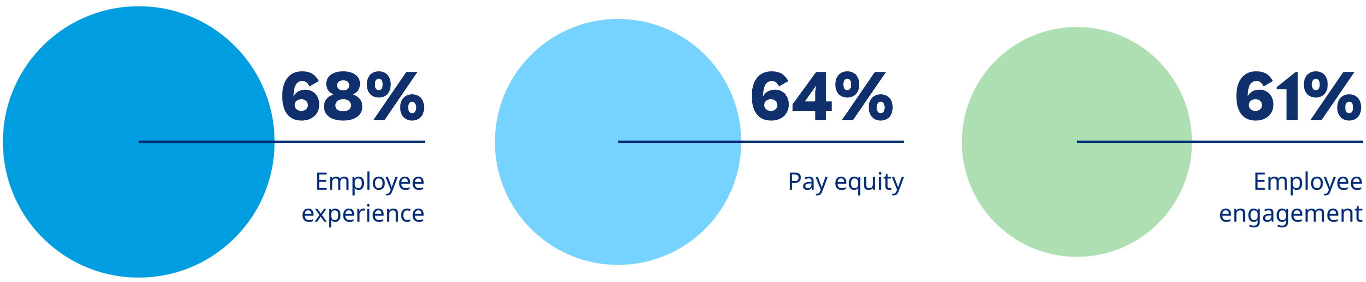
* Not subject to the EU directive.

Providing a better employee experience

The time to get your house in order is now — not only because of the EU directive but also because pay transparency isn't just a regulatory issue. It's also an employee experience issue for your organisation. Among the leading companies planning to increase pay transparency, 71% report their aim is to improve employee experience.

Today's employees have increasingly high expectations about pay transparency as many job- and pay-related websites facilitate democratised, employee-driven conversations about pay. Companies that don't actively engage in a dialogue on pay transparency could risk losing the trust of their employees, candidates and even their customers. And although pay transparency helps organisations seeking to attract new employees, there are opportunities to ensure transparency benefits all aspects of the employee experience.

Among companies that are planning to increase their pay transparency, what are the reasons?



Transparency, especially applied to equal pay, can help you achieve the diverse workplace required in today's economy. Women and other disadvantaged groups will have a clearer idea of their value to the company, and you will be a more attractive employer for talented people from these groups. To thrive, employees demand three things: to feel valued, to do fulfilling work and to feel they belong.

A generational shift is also taking place. Younger employees who grew up in the age of social media and joined the workforce at a precarious time are more likely to discuss their pay with friends and colleagues. Your early-career employees who are the future of your workforce want to know more about pay.

Driving pay equity

One of the most important aims of pay transparency is reaching pay equity. Pay equity is often conflated with equal pay and pay transparency, but they are different concepts.

- Equal pay is often considered in connection with equal work. In that light, equal pay means employees working in similar roles should receive the same pay. An equal pay analysis is often performed on larger groups of employees in similar jobs, comparing the average differences between men's and women's salaries.
- Pay equity is achieved by measuring and remediating pay gaps through robust analytics — and in some cases, it goes a step further by using root-cause analysis to identify legitimate (objective) and illegitimate pay gaps to prevent the creation of pay inequities in the first place.
- Pay transparency, on the other hand, is about engaging with employees on the topic of pay opportunity by clearly communicating pay structures, ranges, practices and opportunities.

The EU directive is quite clear. Organisations with pay gaps exceeding 5% that cannot be explained by gender-neutral, objective factors must carry out a joint pay assessment with their workers' representatives. This study would need to be shared with employees and appropriate authorities.

To assess whether pay differences are unrelated to gender and based on objective criteria, a regression-based pay equity methodology is considered best practice. Learn more by reading Mercer's report, *Pay Equity: A Critical Step Towards Workplace Equality*.[2]

The directive states that to evaluate and compare equal work of equal value, employers should consider criteria such as education; professional and training requirements; skills, effort and responsibility; work undertaken and the nature of the task. A solid work architecture is required. Learn more about Mercer's Job Architecture Tool.

Overcoming barriers to pay transparency

Pay transparency isn't always easy for companies. It presents both cultural and structural challenges. Here are three typical barriers and how to work on overcoming them while meeting employee expectations:

1. **Your organisation can't share your salary ranges because you don't follow your salary ranges.** This is typically a salary-structure design problem. A well-designed pay structure (such as one based on internal position evaluation) will set you up for long-term success by balancing market realities with a need to communicate with employees. In our experience, companies pay too little attention to salary-range design because they don't expect to share pay-range information with employees.
2. **You're afraid to show your pay information because people will suspect pay inequities.** Avoidance is no longer a strategy. As pay equity laws continue to strengthen and consumer demand continues to grow, it won't be a question of whether but when you have to disclose your approach to ensuring pay equity — and, potentially, even the results. Employers increasingly tell us that more candidates are asking about pay equity practices, and many candidates will turn down offers from companies without a cohesive story on pay and career equity.
3. **You're afraid sharing will expose you to risk and are concerned that your managers aren't trained to effectively communicate pay information to their employees.** Enabling managers to explain pay with empathy and logic requires updated communication skills. A pay transparency communication strategy is essential — see our recommended steps below.

Mapping out your pay transparency journey

As with any organisational transformation, the first step is mapping your journey. You have a spectrum of solutions at your fingertips. Here are the guidelines we follow when working with our clients:

1

Assess your situation

Start at your foundations — which include work architecture, pay strategy, pay equity and employee perception — and make an honest assessment of each. Start by looking at how well defined your jobs are and whether a compensation philosophy exists. Do you have a job architecture in place? Can you measure and explain your pay gaps?

2

Define your story

By defining your story, you can help foster a culture of trust and fairness that matches your public perception. Think about who you'll share your story with, how you'll share it and why it's important.

3

Solidify your foundations

Study your ecosystem, and fix the foundations that are lacking or don't make sense. Ensure your jobs are well defined, and revise salary structures to support your pay philosophy. **Close any unexplained pay gaps, and begin to educate HR and managers about equal pay and transparency in your organisation.** Ensure your organisation has a governance structure to address all the elements of the EU's directive.

4

Implement transparency

Work to identify and align stakeholders, mapping out their impact and willingness to support. Engage and create alignment with your leadership team. Use tools such as digital platforms and manager toolkits to implement changes. By highlighting and supporting the value to employees — such as skill development and future earnings potential — you can create a positive, compelling culture shift.

5

Share your story

Define your broad message, and then craft specific messaging to reach your different audiences — from job candidates to new hires, HR, managers and shareholders.

6

Measure impact

By using tools such as candidate surveys and employee engagement surveys, you can assess your impact. Explore why candidates are interested in working for your organisation and why they decide to stay. Continue to measure pay gaps to ensure they stay closed or are objective. Use statistical techniques to determine how your increased pay transparency and pay equity are driving business outcomes.

Conclusion

The EU is entering a new era of pay transparency and pay equity. Our experience working with companies on their pay transparency journeys in places such as the United States has provided us with a breadth and depth of knowledge. We look forward to deploying this expertise for our European clients.

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Or visit our website at:
https://www.mercer.com/european-union-equal-pay-and-pay-transparency.html

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