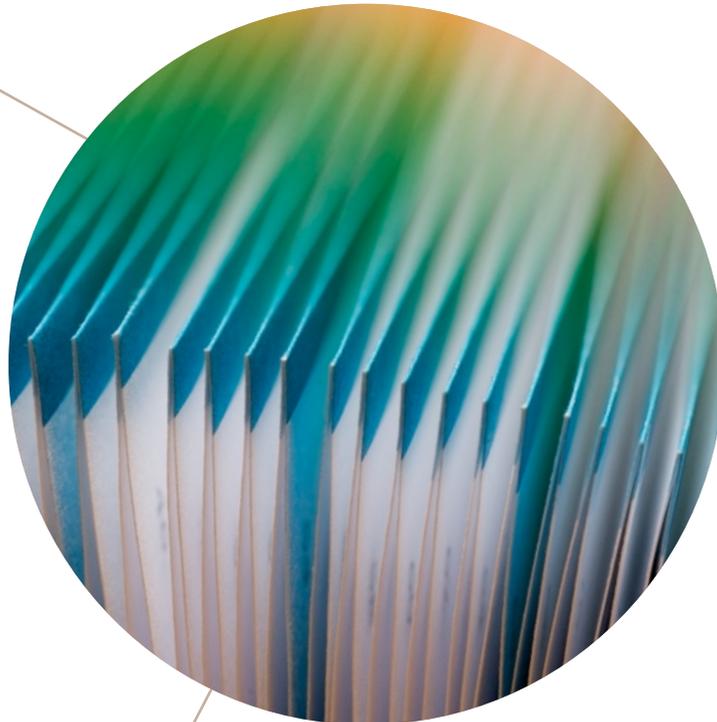


EMPLOYMENT & INCENTIVES

The EU Pay Transparency Directive: What do UK employers need to know?

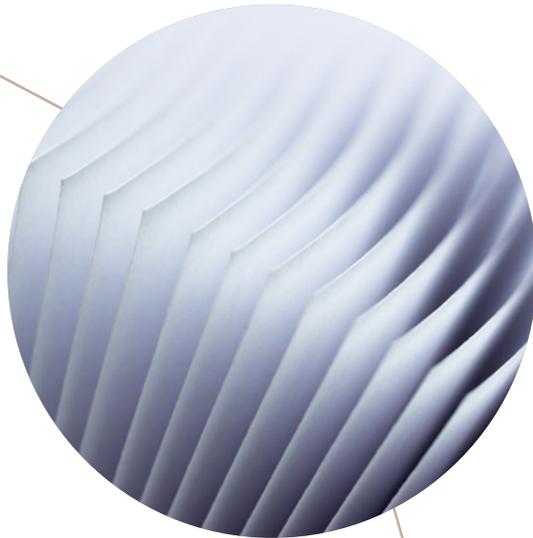
The EU Pay Transparency Directive was formally approved by the European Parliament on 30 March 2023. Its provisions represent a bold step forward in tackling and enforcing equal pay. The central plank of the Directive is to introduce gender pay gap reporting measures, similar to those that exist already in the UK. However, the reporting requirements are backed up by powerful enforcement mechanisms, not present in the UK regime. The Directive's provisions, which include an obligation to remedy pay gaps of 5% or more, will impose a significant burden on businesses which have a gender pay gap. Increased transparency of pay for both prospective and current employees will change how pay packages need to be set and reviewed.





EQUAL PAY

The right to equal pay for equal work is one of the EU's founding principles. Yet inequalities persist with the EU gender pay gap standing at 14% (roughly one percentage point lower than the UK¹). A lack of pay transparency and inadequate enforcement mechanisms have been identified as key obstacles and to tackle these the European Commission proposed the EU Pay Transparency Directive.



RELEVANCE TO UK EMPLOYERS

The Directive applies to all employers (whether EU or non-EU) operating in EU member states. UK companies with branches or operations in the EU may therefore be subject to the Directive. However, the impact of the Directive is likely to be felt even by companies which are not subject to its provisions. By setting new standards, the Directive will influence practice outside EU jurisdictions. Employers in the UK, particularly multi-nationals, should take note.



Levelling up:

Groups of companies operating across the EU and in the UK will have a new template for gender pay gap reports and transparency on pay. Whether groups will choose to adopt a “one size fits all” approach and apply that template across all jurisdictions in which the group operates, remains to be seen. However, at the very least, the Directive’s provisions will serve as a new benchmark which is likely to influence practice in the UK.



Raising expectations:

UK employers which form part of a multi-national group should anticipate being interrogated by staff and prospective candidates on their approach to pay transparency, if it does not conform to EU standards, and being subject to gender pay information requests which employees would have the right to make, were they working in the EU.



Changing goalposts:

One tangible impact of the Directive in the UK is that it will provide UK employees with ready access to the pay data of those working in the EU, allowing them to compare their salaries with those of their EU counterparts. This could lead to an uptick in equal pay claims based on comparators working outside of the UK.



War for talent:

UK employers may need to follow the EU’s standards on pay transparency in recruitment to remain competitive in attracting and retaining talent. This in turn is likely to cause pay levels to rise, putting increased pressure on reward budgets.

¹ According to the most recent ONS statistics.

KEY PROVISIONS OF THE DIRECTIVE

PRE-EMPLOYMENT



Salary transparency at the point of recruitment

Job candidates must be informed about the pay rate or range for the role prior to the job interview. The information must be provided freely (for example in the job advert), without the candidate having to request the data.

Ban on asking about salary history

Employers will be prohibited from asking applicants about their pay history. This is intended to ensure that existing pay discrimination and bias is not perpetuated when workers change jobs.

DURING EMPLOYMENT



Pay transparency

Employers must make available to workers a statement of the criteria used to determine pay levels and pay progression.

Right to request individual information

Workers will have the right to request information on their individual pay level and the average pay levels (broken down by gender) for categories of workers doing the same work or work of equal value to them. Following a request, the employer must provide the information within two months of the request.

Employers will be required to issue an annual reminder to workers that they are entitled to this information.

Gender pay gap reporting

Employers must report and publish a detailed set of statistics breaking down their gender pay gap.

For further information, see the next page, **Gender pay gap reporting: A comparison of UK and EU requirements.**

Right to ask questions about gender pay gap reports

Workers, worker representatives, labour inspectorates and equality bodies have the right to ask employers for clarification and additional information about gender pay reports, including explanations concerning gender pay differences. Employers must respond to information requests, within a reasonable period. Where gender pay differences are not justified by objective and gender-neutral factors, the employer must remedy them within a reasonable period of time, co-operating with worker representatives, labour inspectorates and equality bodies in order to achieve this.

Compulsory pay audits

The gender pay gap report submitted by an employer is capable of triggering a compulsory pay audit. An audit will be required where:

- > the report shows an average pay gap of at least 5% in any category of workers doing the same work or work of equal value,
- > the employer has not justified the differential by objective and gender-neutral criteria, and

- > the employer has not remedied the differential within six months of the date of submission of the gender pay gap report.

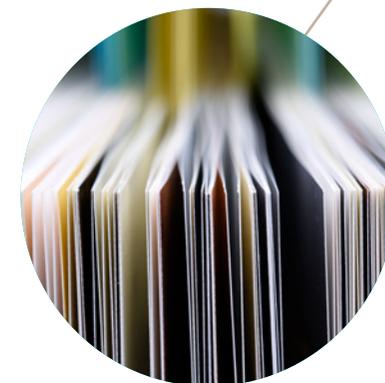
The audit must encompass the workforce as a whole (not just the category with the 5% discrepancy) and must include measures to address gender pay gaps. If the audit reveals unjustified discrepancies, the employer must take steps to remedy them. Failure to do so could result in a court ordering an injunction or imposing recurring penalty payments (**see New enforcement powers below**).

New enforcement powers

Member states must grant courts enhanced enforcement powers. Workers bringing equal pay claims must be entitled to uncapped damages to compensate them including full recovery of back pay, bonuses, compensation for lost opportunities and interest on arrears of pay. Courts must also be given the power to grant an injunction ordering an employer to stop breaching the equal pay principle and may impose recurring penalty payments for non-compliance.

GENDER PAY GAP REPORTING: A COMPARISON OF UK AND EU REQUIREMENTS

		UK	EU
Data to be reported	a.	The pay gap between male and female employees ² using mean average hourly pay.	The mean pay gap between male and female workers.
	b.	The bonus gap between male and female employees using mean bonus pay over a 12-month period.	The mean bonus and other variable pay ³ gap between male and female workers.
	c.	The pay gap between male and female employees using median average hourly pay.	The median pay gap between male and female workers.
	d.	The bonus gap between male and female employees using median bonus pay over a 12-month period.	The median bonus and other variable pay gap between male and female workers.
	e.	The proportion of male and female employees who received a bonus in a 12-month period.	The proportion of male and female workers receiving a bonus or other variable pay.
	f.	The proportion of male and female employees in each quartile pay band.	The proportion of male and female workers in each quartile pay band.
	g.		The pay gap between male and female workers by category of worker, broken down by ordinary basic salary and bonus and other variable pay.
Application		Employers with 250 or more employees.	Employers with 100 or more workers. The timing of the first report and the frequency of reporting varies according to the number of workers. ⁴
Statement of accuracy		A written statement confirming the accuracy of the report must be signed by a company director (or equivalent).	The accuracy of the data must be confirmed by management.
Submission of reports		Employers must upload their report to the government portal which is accessible to the public.	Employers must submit all data to the designated national body which will make the information public. Employers must provide category (g) information to workers and their representatives. Employers must also if requested provide the information to the equality body and labour inspectorate.
Publication by the employer		Employers must publish their reports on their website and make them publicly available for three years.	Employers may publish their reports annually on their website or otherwise make them publicly available.



² The UK's Gender Pay Gap Reporting Regulations refer to employees. A wide definition of employees is applied which includes workers, apprentices and some contractors.

³ This includes overtime, allowances, dismissal payments, statutory sick pay and all other remuneration due.

⁴ Employers with 250 or more workers must report annually from 2027; Employers with 150-249 workers must report every three years from 2027; Employers with 100-149 employees must report every three years from 2031. Member states may impose reporting requirement on employers with less than 100 employees.

NEXT STEPS

Member States must transpose the Directive within three years following its entry into force. The first gender pay gap reports are due one year later, in 2027. Employers caught by the Directive will need to begin tackling the compliance challenge early to avoid the risk of a compulsory pay audit, and to ensure hiring occurs in a compliant way that doesn't drive greater pay imbalance. UK employers, whose practice is likely to be challenged or influenced by the Directive, should begin considering what the Directive means for them.

Please get in touch with a member of our team if you wish to discuss what the EU Pay Transparency Directive means for your organisation.

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