

International Women’s Day 2024

Strides towards achieving gender equality in the EU and UK

As we celebrate International Women’s Day, for the fourth consecutive year we take stock of the significant legal developments that have unfolded within the sphere of gender equality in both the EU and the UK. Reflecting on the strides made and the journey ahead, our overview shows a clear acceleration in both the introduction of new legislation and the strengthening of existing protections across the globe. This momentum underscores a global commitment to fostering an environment where gender parity is not only encouraged but enshrined in the very fabric of our legal frameworks. In this edition, we delve into the key regulatory advancements within the EU and the UK, highlighting how gender equality has undeniably emerged as a central pillar of legislative and regulatory focus.

European Union

Implementation of the Women on Board’s Directive

With an implementation deadline set at 28 December 2024, the clock is ticking for EU Member States to implement the Women on Boards Directive, which imposes a minimum of 40% female representation in non-executive director roles of listed companies by 2026, and (ii) formalises the selection process for board positions. The Directive also requires the appointment of a designated national body to support and monitor its implementation in practice (see section “*Increased supervision and enforcement on gender equality*”).

The Women on Boards Directive establishes baseline requirements, yet Member States have the discretion to exceed these standards to expedite gender diversity on boards. Already, at least two Member States have indicated intentions to do so. In Belgium, the Secretary of State for Gender Equality, Equal Opportunities, and Diversity, Marie-Colline Leroy, announced plans in September 2023 to extend the 40% quota to the executive committees of listed companies. Although the Belgian announcement has not yet led to substantial legislative progress, Spain has taken more concrete steps. On 15 December 2023, a draft law that goes beyond the Directive’s mandates was published. According to the proposal—which remains open to amendment—both listed firms and unlisted ‘public interest’ entities, defined as those with either more than 250 employees, an annual net turnover exceeding €50m, or total assets worth more than €43m, would fall within the scope and be obliged to comply with the following requirements:

- > have at least a quota of 40% of the underrepresented sex on their board, and failing to comply with the quota would require them to adjust the board’s selection process ensuring a non-discriminatory procedure against the underrepresented sex;
- > report annually to the general assembly on gender balance measures, reports which should be included in companies’ sustainability report and, for listed companies, sent to the Spanish Securities Market Commission (CNMV); and
- > achieve a quota of 40% of the underrepresented sex in “senior management positions”.

The draft Spanish law proposes that these obligations are to be achieved gradually from June 2024 to June 2026.

All eyes on the gender pay gap

The EU Pay Transparency Directive, adopted in 2023 and due to be implemented by 2026, represents a transformative approach to remuneration practices, targeting the eradication of the gender pay gap and setting the stage for unprecedented levels of pay disclosure. The central plank of the Directive is to introduce gender pay gap reporting measures, similar to those that already exist in the UK. However, the reporting requirements are backed up by powerful enforcement mechanisms, not present in the UK regime. Other key provisions include an obligation to remedy pay gaps of 5% or more and increased pay transparency for prospective and current employees.

Whilst countries like France have announced an early adoption of the Pay Transparency Directive, there has been limited legislative advancement at the national Member State level so far. Nonetheless, companies across sectors are proactively gearing up to comply with the 2026 deadline. In the course of these preparations, critical considerations for companies include gathering and running their data, and validating their statistical regression analysis and methodologies against the Directive’s legal provisions. Specifically, are the reasons a company provides to justify a gender pay gap legally defensible as “objective reasons”? This scrutiny must also account for the rapidly evolving case law. Additionally, documentation and governance regarding the justifications for gender pay gaps and the strategies to address them are of paramount importance.

For more information, see our [webpage](#).

Women in EU financial services

EU financial services firms are navigating increased complexity in gender pay gap reporting due to the additional requirements of (i) the European Banking Authority (EBA) Guidelines on benchmarking the gender pay gap for all staff and identified staff, and (ii) the EBA Guidelines on benchmarking the gender pay gap at the level of the management body. Firms must prepare their data for national supervisory authorities by June 2024 for the former and by April 2025 for the latter. Whilst this may position the sector ahead in adapting to the EU Pay Transparency Directive’s demands, the regulatory landscape is complicated by the varied methodologies and reporting requirements.

The EBA has also announced a more stringent enforcement period and made clear that it will hold national supervising authorities to account to check whether supervised firms’ remuneration policies are gender neutral, whether firms have adopted diversity policies (including set appropriate gender balance targets) and how the policies are implemented in practice.

The EBA expects stricter enforcement on diversity issues, both at the authorisation stage and during ongoing supervision, and by assessing the fitness of management. In addition to gender, the EBA underlines the need for improvement in the boards’ diversity concerning age, educational and professional backgrounds, and geography.

Increased supervision and enforcement on gender equality

Under the Women on Boards Directive, Member States need to put in place rules on effective, dissuasive and proportionate penalties, such as fines, for listed EU companies that fail to comply with open and transparent appointment procedures. A judicial body could also annul the board of directors selected by the company if it breaches the principles of the Directive. Similarly, the EU Pay Transparency Directive mandates robust enforcement mechanisms, compelling Member States to impose effective and dissuasive penalties—potentially turnover-based fines—upon non-compliant employers. Both Directives stipulate that Member States designate national equality bodies responsible for, among other duties, supporting employees in the enforcement of these provisions.

In this context, the EU is clearly signalling that enforcement will be a priority, as evidenced by the Council’s proposed Directive aimed at reinforcing the role of equality bodies.¹ This Directive is set to boost the effectiveness and independence of these institutions by setting minimum operational standards. It emphasizes the necessity for the independence of equality bodies, mandating Member States to guarantee their autonomous functioning. The Directive also stipulates that equality bodies must be sufficiently staffed and resourced to fulfil their responsibilities effectively. Consequently, this could herald a more assertive stance from equality bodies in upholding gender equality rights.



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Jennifer Granado Aranzana

For more information, see our previous [newsletter](#).

¹ Press release of the European Council.

UK

Balancing work and family life

From next month, a new right to carer’s leave comes into effect. This will be available to employees from day one of their employment and consists of up to one week of unpaid leave a year. With women more likely than men to provide unpaid care to a dependant,² the hope is that the new right will support women to stay in work.

The introduction of this new right is part of a broader suite of enhancements to family-friendly entitlements in 2024. Alongside carer’s leave, redundancy protection is being extended from April to cover pregnancy and parents returning to work whilst the flexible working regime is being reformed to help more employees balance work and home life from day one of employment. With research suggesting over a third of parents eligible for new childcare funding are considering leaving their jobs or cutting their hours because of increased childcare costs,³ many employees will embrace the prospect of greater flexibility.

Paternity leave is also set to change from April. However, the overall amount of statutory leave remains unchanged at two weeks, making it one of the least generous paternity regimes in Europe. Critics argue that this represents a missed opportunity to help close the gender pay gap (which currently stands at 14.3%)⁴ and challenge traditional gender roles.

For more information on new rights coming into effect and how to prepare, see our [blog](#).

Tackling sexual harassment at work

With a recent [poll](#) finding that 58% of women have faced sexual harassment at work, the Worker Protection (Amendment of Equality Act 2010) Act 2023 is a welcome step forwards in tackling toxic cultures.

Set to come into force in October 2024 supported by a new Code of Practice, the Act will introduce a new duty for employers to take “reasonable steps” to prevent staff from sexual harassment at work. Importantly, this creates liability for an employer who simply has not taken reasonable steps to prevent sexual harassment, whether or not any act of sexual harassment even takes place.

However, the Act represents a somewhat less momentous change than its original form aspired to achieve, having been stripped of various more rigorous provisions including employers’ liability for third-party harassment. The UK’s main opposition party, the Labour Party, has suggested this would be revisited should they be elected to government later this year.

Nonetheless, the introduction of this new duty will help to move the dial from a culture of redress to one of prevention, requiring employers to take a more proactive approach to preventing harassment.

For more information, see our [blog](#).

Making the financial services sector safe for women

The number of people reporting non-financial sexual misconduct to the Financial Conduct Authority, one of the UK’s financial services regulators, has increased in the last year.⁵ Whilst this may be reflective of growing empowerment among women in speaking out, it also highlights the ongoing cultural challenges faced by the financial services sector.

The FCA has therefore intensified its efforts to tackle non-financial misconduct. Through a mandatory survey issued to various regulated firms in February 2024, the regulator hopes to shine a light on just how widespread issues like sexual harassment, bullying and discrimination are and what action firms are taking in response.

This follows last year’s consultations issued by the UK’s financial services regulators on diversity and inclusion in the financial sector.⁶ Both propose wide-ranging changes to the way in which firms should tackle incidents of non-financial misconduct, including new rules and guidance on bullying, discrimination and sexual harassment, cementing the issue firmly within the regulators’ remit.

For more information, see our [blog](#).

Menopause: Societal shift but no progress on legal protection

Recognition of the challenges faced by menopausal women in the workplace has grown over the last couple of years. This has brought about a transformation in many employers’ treatment of women suffering the symptoms of menopause. Workplace policies, addressing adjustments to work arrangements (such as cooling systems, relaxation of uniform requirements and flexible working) and promoting open conversations to encourage support for menopausal women, are now recommended by the UK’s equalities regulator, the Equality and Human Rights Commission.

However, despite the shift in societal attitudes, the legal landscape remains unchanged. Women who suffer the most serious symptoms may be able to demonstrate that their condition satisfies the legal definition of a disability, giving them protection against disability discrimination. However, other women who are negatively impacted may have to fall back on claims of sex or age discrimination. Since the menopause lies at the intersection of these two protected characteristics, their claims are frequently unsuccessful.

The current government has ruled out updating the law to provide specific protection for menopausal women. However, the prospect of change is on the horizon, as the main UK government opposition party has put forward proposals to introduce dual discrimination, which provides for claims of discrimination to be brought based on a combination of protected characteristics. If enacted, this would pave the way for women to bring more targeted claims, unlocking access to legal protection against less favourable treatment based on symptoms of the menopause.

For more information, see our [guide](#).

Safeguarding of key protections against sex discrimination and equal pay

2023 was a turbulent year for employment rights in the UK. The Retained EU Law (Revocation and Reform) Act 2023 placed at risk all EU-derived rights not enshrined in domestic legislation. This included key protections for pregnant women, women on maternity leave and equal pay.

In December 2023, less than two weeks before the rights were due to be revoked, the UK government made regulations amending the UK Equality Act 2010 to preserve certain pregnancy and maternity rights and to retain the protection provided by article 157 of the Treaty on the Functioning of the European Union. The codification of article 157 preserves the right for women working in the UK to bring equal pay claims by comparing their contractual terms with another worker in the same establishment or service where terms and conditions are attributable to a single source.

However, transposing complex case law into legislative provisions has the potential to create uncertainty over the scope of previously well understood rights. It remains to be seen whether challenges looking to narrow protections for women will be brought.

For more information, see our [blog](#).

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Louise Mason

² Family Resources Survey 2020/21

³ Pregnant Then Screwed: Survey (22 February 2024)

⁴ TUC: Gender pay gap means women work first two months of the year unpaid (21 February 2024)

⁵ Oral evidence: Sexism in the City, HC 240

⁶ CP23/20: Diversity and inclusion in the financial sector – working together to drive change; CP18/23 – Diversity and inclusion in PRA-regulated firms

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