

Employment Law Briefing: Special Edition

EU Pay Transparency Directive

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A. Introduction

1. EU Directive 2023/970 of the European Parliament and the Council (the **Directive**) entered into force on 10 May 2023 and introduces provisions to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and reinforced enforcement mechanisms.
2. Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 7 June 2026.
3. The Directive builds upon and reinforces existing requirements under Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Article 4 of Directive 2006/54/EC, which prohibits discrimination on grounds of gender with regard to all aspects and conditions of remuneration.

B. Scope and Definitions

1. The Directive applies to employers in both the public and private sectors and covers all workers who have an employment contract or any employment relationship across the EU.
2. For the purposes of pre-employment pay transparency obligations, the Directive also applies to applicants for employment.

3. The concept of 'pay' is construed broadly to include wages, salaries or any other consideration in cash or in kind which workers receive directly or indirectly from their employer. This includes complementary or variable components such as bonuses, overtime compensation, travel facilities, housing and food allowances, dismissal payments, statutory sick pay and occupational pensions.

C. Pay Transparency Requirements

1. **Pre-Employment Transparency:** Applicants for employment have the right to receive information from prospective employers about the initial pay or its range for the position concerned based on objective, gender neutral criteria. This information must be provided in a published job vacancy notice prior to the job interview or otherwise before conclusion of the employment contract.
2. **Prohibition on Pay History Enquiries:** Employers are prohibited from asking applicants about their pay history during current or previous employment relationships.
3. **Pay Setting and Progression Criteria:** Employers must make the criteria used to determine workers' pay, pay levels and pay progression easily accessible to their workers. These criteria must be objective and gender neutral. Member States may exempt employers with fewer than 50 workers from the pay progression obligation.
4. **Right to Information for Workers:** Workers have the right to request and receive written information on their individual pay level and average pay levels by gender for categories of workers performing the same work or work of equal value. Employers must:
 - a. inform all workers annually of this right and the steps to exercise it;
 - b. provide the information within two months of the request; and
 - c. permit workers to disclose their pay for the purposes of enforcing the principle of equal pay.Member States must put measures in place to prohibit contractual terms that restrict workers from disclosing information about their pay.

D. Employer Reporting Obligations

1. Employers which meet certain workforce thresholds must provide gender disaggregated reporting on pay gaps within their organization. The obligation extends to reporting various gender pay gap metrics, including:
 - a. overall and median pay gaps for both base salary and variable compensation;
 - b. the proportion of men and women receiving variable pay;
 - c. the distribution of each gender across pay quartiles; and
 - d. pay gaps broken down by worker category.
2. Reporting obligations are phased in by reference to employer size:
 - a. employers with 250 or more workers must report by 7 June 2027 and every year thereafter;
 - b. employers with 150 to 249 workers must report by 7 June 2027 and every three years

thereafter; and

- c. employers with 100 to 149 workers must report by 7 June 2031 and every three years thereafter.
3. Member States may also require employers with fewer than 100 workers to provide such information and employers below this threshold may do so voluntarily.
4. The accuracy of reporting information must be confirmed by employers' management after consulting with workers' representatives who must be given access to the methodologies applied by employers.

E. Joint Pay Assessment

1. Where reporting reveals a gender pay gap of at least 5% in any category of workers that is not justified by objective, gender neutral criteria and the employer has not remedied such difference within six months, employers must conduct a joint pay assessment in cooperation with workers' representatives.
2. The joint pay assessment must include the proportion and average pay of male and female workers by category, identify and justify any pay differences using objective, gender neutral criteria and track pay improvements for employees returning from family-related leave. It must also include measures to address unjustified pay gaps and evaluate the effectiveness of prior corrective actions.
3. Employers must make the joint pay assessment available to workers and workers' representatives and communicate it to the monitoring body designated by Member States. The assessment must also be made available to the Labour Inspectorate and equality body upon request.

F. Enforcement and Remedies

1. **Burden of Proof:** Where workers establish facts from which discrimination may be presumed, the burden shifts to the employer to prove there has been no discrimination.
2. **Compensation:** Workers who have sustained damage from infringement of equal pay rights have the right to full compensation, which shall include full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities, non-material damage and any damage caused by intersectional discrimination. Compensation shall not be restricted by any prior upper limit.
3. **Penalties:** Member States must establish effective, proportionate and dissuasive penalties for infringements, which may include fines based on the employer's gross annual turnover or total payroll. For repeated infringements, penalties may include revocation of public benefits or exclusion from public tender procedures.
4. **Public Procurement Consequences:** Contracting authorities may exclude economic operators from participation in public procurement procedures where they can demonstrate an infringement of

pay transparency obligations or an unjustified pay gap of more than 5% in any category of workers.

5. **Limitation Periods:** Limitation periods for equal pay claims shall be no shorter than three years and shall not begin to run before the claimant is aware, or can reasonably be expected to be aware, of the infringement. Member States may provide that limitation periods do not begin to run while the infringement is ongoing or before the end of the employment relationship.
6. **Protection Against Victimisation:** Workers and their representatives shall not be treated less favourably for exercising their rights relating to equal pay. Member States must protect workers against dismissal or adverse treatment as a reaction to complaints or legal proceedings.



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