

Germany's Gender Pay Gap Law: What It Means for Employers

IN SHORT

The Background: The German parliament has identified a gender pay gap and intends to close it.

The Result: A new act with the goal of transparency in gender pay will come into force in Germany on July 1, 2017.

Looking Ahead: Companies will have to strategically review and rethink their compensation models.

Almost parallel to the new Gender Pay Gap Regulations in the United Kingdom, Germany also implemented a new law targeting unequal pay of men and women. The Pay Transparency Act (*Entgelttransparenzgesetz* or "PTA") aims at closing the gender pay gap. The law will come into force in 2017.

Equal Work and Work of Equal Value

The PTA prohibits differences due to gender in pay for equal work or work of equal value. Any such arrangement would be invalid, which means the discriminated person can claim the same salary as the employee of the other gender.

Female and male employees do "equal work" if they conduct identical or homogeneous work. Female and male employees do work "of equal value" if they can be considered to be in a comparable situation on the basis of a totality of work-related factors. Such factors include type of work, qualification requirements for the job, and work conditions. The individual work performance of the employees does not play a role.

In practice, the parameter of a "comparable job" will likely be the decisive issue; disputes about what constitutes "work of equal value" can be expected.

The PTA consists of the following KEY components:

- In operations with more than 200 employees, individual employees will be entitled to request information about the criteria and the procedure of the employer's determination of salaries, with respect to both their own salary as well as the salary of members of the other gender working in a comparable job.
- Companies with more than 500 employees will be obliged to publish regular reports on their efforts to promote equality between men and women.
- Companies with more than 500 employees will be encouraged to implement internal audits of their pay structures to ensure compliance with the equal pay law.

Individual Information Right

The most disputed feature of the new Act will be the information claim.

Employees working in a facility/operation with more than 200 employees have the right to request information about the criteria and the procedure involved in the employer's determination of salaries for both their own salary as well as the salary of coworkers of the other gender working in a comparable job.

Employees may not file the first information request until six months after July 1, 2017, so employers have until the end of 2017 to prepare to receive requests.

Subject to the information right is the disclosure of the full-time equivalent median of the average monthly gross salary and certain remuneration components of the other gender within the comparable group. However, the information right must be fulfilled only if at least six employees of the other gender belong to the comparable group. Thus, if there are less than six employees of the other gender working in comparable positions, the employee has no information claim.

Companies are obligated to provide a written response within three months unless they are bound by collective bargaining agreements. If the employer fails to provide a response, the company bears the burden of proof that no violation of the equal pay law has taken place, should the affected employee file an equal pay lawsuit (*Entgeltgleichheitsklage*).

Within a two-year period, the employee may resubmit the request only if the individual situation has changed significantly (e.g., due to a promotion).

Publication Obligation

Companies with more than 500 employees that must provide a financial report under the German Commercial Code (*Lagebericht*) will be obligated to publish regular reports on their efforts to promote equality between men and women. Companies that have not implemented specific measures to promote equality are obligated to provide a reason in their report ("comply or explain").

The first reporting obligation occurs in 2018, covering the year 2016.

Internal Audit

Companies with more than 500 employees will be encouraged to implement internal audits of their pay structures to ensure compliance with the equal pay law. For now, the legislation has refrained from requiring companies to perform an internal audit and instead has positioned it as a request. Thus, this audit may not play a major role in practice, although large companies may wish to present themselves as good employers and comply with the lawmakers' request.

Outlook

The significant new feature of the law is the information claim regarding the salary paid to the other gender. The main impact of not providing an answer to such request is that the burden of proof works against the employer if the employee files a lawsuit aimed at payment of equal salary. A proper response can avoid this procedural disadvantage for the employer.

Employers should endeavor to provide responses that are detailed and convincing enough to prove that either there is no unequal pay, or there are sufficient objective and justifiable reasons for unequal pay. The response should make clear to the employee and his/her legal counsel that an equal pay lawsuit would be unsuccessful. Thus, employers should prepare their responses in a timely manner and with great care.

THREE KEY TAKEAWAYS

1. For the first time, Germany has introduced a statutory disclosure obligation with regard to pay based on gender. This is especially important because Germany otherwise does not permit discovery or pretrial disclosure. Thus, it fundamentally changes employees' access to information on the employer's compensation model.
2. Companies will have to think strategically about proactive or reactive disclosure. Waiting for individual requests to occur on a random basis may avoid disclosure for some time, but it may create pockets of employee dissatisfaction.
3. Employers will have to carry out a strategic stress test on their compensation models, to determine whether they are systematically biased to a gender. Furthermore, companies will have to assess their performance evaluation methods, to the extent they play a role in the compensation model.

CONTACTS



Friederike Göbbels
Munich



Markus Kappenhagen
Düsseldorf



Georg Mikes
Frankfurt

Kaja S. Herrmann, an associate in the Frankfurt Office, assisted in the preparation of this Commentary.

YOU MIGHT BE INTERESTED IN: [Go To All Recommendations >>](#)

[Are Employers Obligated to Maintain a Daily Register of Working Hours in Spain?](#)

[Company Doctor: Changes to Dutch Workplace Legislation](#)

[European Labour & Employment Update](#)

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a legal institution with more than 2,500 lawyers on five continents. We are One Firm WorldwideSM.

Disclaimer: Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.