Brazil's Latest Guidance on Landmark Gender Pay Parity Law: What Employers Should Know + Your 5-Step Action Plan

Insights
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Brazil's Ministry of Labor and Employment (MTE) recently released important guidelines for complying with the country's gender pay parity law. As Brazil ramps up its equal pay initiatives, employers should take note of these new rules, which explain the MTE's decision-making process and provide key tools employers can use when interacting with the agency. We'll explain what's in the new rules and give you a five-step action plan to stay compliant.

Quick Background

Brazil's labor code has long required equal pay for equal work and prohibited sex-based pay discrimination. But last year, the country enacted the Gender Pay Parity Law (Law No. 14,611/2023), which establishes sweeping measures to promote pay equity and requires employers with 100 or more employees to publish pay transparency reports twice per year. These reports must:

- contain anonymized data and information to allow for an objective comparison of salaries, compensation, and the proportion of men and women occupying management and leadership positions;
- provide statistical data on other possible inequalities resulting from race, ethnicity, nationality, and age; and
- observe the data privacy rules under the General Data Protection Law (LGPD).

Brazilian authorities have since issued several rules to carry out these new requirements, including a Normative Instruction (IN GM/MTE No. 06/2024) published in September.

What's in the Latest Guidelines?

Pay Transparency Reports

The new rules confirm that the MTE is responsible for preparing the pay transparency reports, based on information employers must submit electronically every February and August. The Instruction provides electronic submission guidelines, including how to access the online platform and what documents are required.

Once the MTE issues the pay transparency reports, employers must publish the reports on their websites, social media, or similar places, in March and in September each year. The reports must be readily and easily accessible to the employees and to the general public. Note that even though employers are not allowed to edit the pay transparency reports, they can release explanatory notes with additional information and clarification of the report findings (for example, to justify a certain salary discrepancy).

Labor Audits

In assessing whether there is an unjustified pay discrepancy, an MTE labor auditor will consider elements such as whether an employer adopts a career plan or organizes its employees according to their positions and salaries, whether there are incentives for hiring women, and the criteria for promoting employees. If the labor auditor identifies an unjustified pay discrepancy, the employer must present to the auditor, within 90 days, an action plan to reconcile the discrepancy or mitigate the inequality. There is no pre-defined format for the plan, so each employer can choose how to present the information.

In any event, the employer must allow union representatives and employees' representatives to participate in this process, ensuring effective transparency and inclusion. The employer must outline the specific items in its action plan, such as measures the employer will prioritize and adopt, goals and deadlines it will implement, programs it will create to promote diversity and inclusion within the workplace, among others. If the labor auditor determines that a plan is not adequate, it can request that the employer make changes to its plan or require the employer to present a new plan altogether.

Self-Audits

Note that if an employer identifies inequalities in pay or in compensation criteria, it must proactively implement an action plan to mitigate the inequality, irrespective of inspections and requests by the Labor Auditor.

Risks of Non-Compliance

Employers who breach their transparency report requirements may face fines of up to 3% of their payroll, capped at 100 times the minimum wage, which is currently BRL 1,412.00 per month (approx. $245) and set to increase in 2025. In addition, the Gender Pay Parity Law increased the fine for proven cases of salary discrimination (whether based on sex, race, ethnicity, origin, or age), forcing employers to pay fines up to 10 times the aggrieved employee's salary (or double that for recurring violations). Other penalties may also apply.

What Should You Do?

In view of these new pay equity rules, U.S. companies with employees in Brazil should review and revise their pay, hiring, and promotion policies. To stay compliant, you should consider taking these five steps:

1. Conduct an internal analysis of your company's pay practices to determine any actual or apparent discrepancies between different categories of employees (men and women, different races, or other protected categories). If you identify any actual or apparent discrepancies, develop a plan to bring the company's practices into compliance with current law.

2. As part of your audit, **determine whether your company is compliant with its reporting and publication obligations**, including submission of pay transparency information to the MTE and publication of pay transparency reports.

3. In the event of a negative pay transparency report, **be prepared to explain the discrepancies and demonstrate what changes your company has made** to reconcile them.

4. Develop your own internal grievance procedure so employees can report any actual or perceived pay parity discrepancies or other issues, which your company can address early on. Ensure there are mechanisms in place to prevent retaliation against any employee who submits a grievance or reports an issue.

5. Develop training for your company leadership, managers, and employees on gender pay parity law, how to comply with it, and how to spot and report any discrepancies or issues.

Conclusion

While Brazil has prohibited sex-based pay discrimination for decades, employers must be aware of the country's more recent gender pay parity initiatives that impose stricter obligations and penalties for non-compliance. If you have any questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our International Practice Group. We will continue to monitor the situation and provide updates as warranted, so make sure you are signed up for the Fisher Phillips Insight System to receive the most up-to-date information.

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