

# EU'S PAY EQUITY DIRECTIVE: 5 KEY POINTS EMPLOYERS NEED TO KNOW

Insights

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Employers with operations in the European Union should ensure they are familiar with a pay equity directive aiming to close the gender pay gap that will soon come fully online. The directive was signed into law in 2023, and EU Member States have until June 2026 to incorporate its rules into national laws. Notably, the directive establishes certain minimum pay equity and pay transparency requirements, which means Member States may set additional obligations that you'll also need to review. This major development comes as many U.S. states and cities join the pay transparency trend – and likely signals that more activity in this area is coming worldwide. Here's what you need to know about the EU pay equity directive and what you can do to prepare.

## A Brief Overview

- **What Happened?** The EU Pay Equity Directive was signed into law in Spring 2023 with the goal of resolving the gender wage gap by ensuring workers receive equal pay for equal work (or work of equal value). The requirements must be incorporated into national laws by June 7, 2026.
- **What Does This Mean for Employers?** The directive specifically addresses pay transparency and pay equity and establishes protections for workers who have employment contracts or employment relationships in the EU. Covered employers will have to comply with job posting, information sharing, and recordkeeping requirements. It is important to keep in mind that the directive sets the minimum requirements to be applied by

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all Member States, but it allows Member States to set additional obligations.

- **What's Next?** Member States must take all necessary legislative measures to ensure employers' salary structures provide equal pay for equal work. Although it is up to the Member States to establish such measures, the directive does require salaries to be made in agreement with the employees' representatives and based on gender neutral criteria. Such criteria include skills, effort, responsibility, working conditions, and any other factors relevant to the job. Read on to learn more about five key rules and requirements.

## 1. Salary Transparency

- **Disclosures:** Under the directive, job applicants are entitled to certain information, including:
  - the salary or salary range for the position (based on gender-neutral criteria); and
  - the details of the collective bargaining agreement, if applicable.

Employers must provide this information in a manner that ensures informed and transparent salary negotiations, such as in the job vacancy notice or prior to the interview.

- **No Salary History Inquiries:** You are not permitted to ask job applicants about their salaries with current or former employers.
- **Non-Discrimination:** Employers must provide gender neutral job titles and job vacancy notices and conduct the recruitment process in a non-discriminatory manner.

## 2. Employee Access to Information

- **Decision-Making Criteria:** The directive requires employers to provide workers easy access to the criteria used to determine pay, pay levels, and pay progression – though it allows Member States to exempt employers with fewer than 50 employees from this requirement.
- **Right to Request Information:** Employees have the right to request information regarding their individual salary compared to the average salary, broken down by gender, for the categories of employees who perform the same

work or work of the same value. They may request this information through their representatives or an equality body, in accordance with national laws or practice.

- **Employer Responsibilities:** If an employee requests this information, it must be provided in writing within two months of the request. Employers must also inform employees once each calendar year about their right to request such information and the steps that the employee can take to obtain this information. If any of the information received is inaccurate, employees have a right to request additional and reasonable information.

Employers cannot prevent employees from speaking about their salaries or include contractual terms that prohibit employees from disclosing their salaries. However, you can require employees not to use data about other workers' pay for any purpose besides exercising their right to equal pay.

### 3. Employer Reporting Requirements

- **Public Reporting:** Some employers – based on their size – will need to provide certain information about their gender pay gap for the previous calendar year to the applicable public authority. Employers may choose to publish this information on their website or make it publicly available in another manner.
- **Triggering Headcounts:** The directive only requires some employers to report gender pay gap information to public authorities:
  - Employers with 250 or more employees must provide the first report by June 7, 2027, and again every year.
  - Employers with 150 to 249 employees must provide the first report by June 7, 2027, and again every three years.
  - Employers with 100 to 149 employees must provide the first report by June 7, 2031, and again every three years.
  - Employers with fewer than 100 employees can provide the information on a voluntary basis. The directive, however, also permits Member States to individually require employers with fewer than 100 employees to provide this information.
- **Verification of Information:** Employers will be required to confirm the accuracy of the information after consulting

the employees' representatives, if applicable.

- **Information for Employees:** You will also need to make certain information available to employees and their representatives, such as the gender pay gap data by categories of workers, broken down by ordinary basic wage or salary and complementary or variable components. Upon request, employers must also provide this information to the labor inspectorate and the equality body, which may include a request for information from the previous four calendar years.
- **Requests for Additional Information:** Employees, employees' representatives, and the applicable Member States' labor inspectorate and equality body, can request additional information regarding the data. Employer must respond within a reasonable time with a substantial reply. If the gender pay gap is not justified by objective, gender-neutral criteria, employers must resolve the issue within a reasonable time, in cooperation with the employees' representatives, the labor inspectorate, and/or the equality body.
- **Joint Pay Assessment:** Employers subject to the reporting requirements may also be required to perform a joint pay assessment in some circumstances, if pay gaps between male and female employees of at least 5% are not justified based on objective, gender-neutral criteria and they remain unresolved six months after the report date.

#### 4. Employer Sanctions and Penalties

- **Potential Consequences:** Member States will need to incorporate sanctions into their national laws, including compensation or reparation and injunctive relief for employees. The sanctions must be "deterrent but reasonable" and put employees in the position they would have been in if the gender discrimination did not exist, or the violations had not occurred. Member States are also directed to impose effective, proportionate, and dissuasive penalties on employers for violations.
- **Burden Shifts to Employers:** If discrimination is alleged under certain articles of the directive, and an employee substantiates the facts, then the burden shifts to the employer to prove that there has not been any direct or indirect discrimination. This highlights the importance of reviewing your documentation and compliance process.

## 5. No Retaliation

- **Protective Measures:** The directive requires Member States to implement protective measures and legislation ensuring employees cannot be retaliated against or treated less favorably for exercising their rights or for supporting other workers' rights to equal pay.

### What Should You Do Now?

Businesses with employees in the EU should consider taking the following steps to ensure compliance when the directive takes effect:

- **Assess Your Current Programs and Policies:** Now is a good time to take a look at your hiring, promotion, and compensation policies and develop a compliance strategy. Among other steps, you'll want to:
  - review, assess, and address potential gender pay gaps;
  - include the appropriate information in job listings;
  - refrain from asking off-limits questions;
  - ensure gender neutral and non-discriminatory job titles and job listings; and
  - have a plan for providing relevant information to employees and authorities as required.
- **Determine Your Reporting Requirements:** Since reporting requirements will be based on employer size, make sure you are aware of the specific effective dates that will impact your organization and be prepared to comply with applicable deadlines.
- **Review Member State Laws:** Don't forget that the EU directive sets minimum obligations, and Member States can develop additional requirements. Be sure to understand the rules in each location where you operate.
- **Train Your Managers:** The directive sets quite a few new rules from salary disclosures to the ban on salary history inquiries to reporting requirements to non-discrimination and anti-retaliation provisions. Be sure to train your managers on their compliance obligations and let them know who to contact with questions.

- **Consult Legal Counsel:** There's a lot of information for employers to process regarding the new pay equity directive. Your FP attorney is here to help you create an action plan.

## Conclusion

We will continue to monitor developments related to international workplace law, including pay equity and transparency matters. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#) or our [Pay Equity and Transparency Practice Group](#).