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The IBA Global Employment Institute

Gender pay gap in employment: a Global Employment Institute perspective



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Background

Discussions about the gender pay gap demonstrate the rising awareness about the unequal distribution of power and wealth between men and women. However, despite all the worldwide measures taken by legislators and individual employers in recent years, gender pay gaps still exist in nearly all countries.

A recent study of the World Bank Group shows on the one hand that countries have made progress over the decades in enacting equal opportunity laws for women. Nevertheless, considering the indicators of safety and childcare, today women enjoy only two thirds of the legal rights available to men.¹

Description of the status quo

Even though the world has been discussing the issue of gender discrimination for quite a long time, it still exists.

Over 70 years ago the United Nations enshrined the principle of gender equality in the Universal Declaration of Human Rights. In 1979 the UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women in which all parties commit to take the appropriate measures to ensure the right to equal remuneration.

Gender pay gap reporting obligations have recently been implemented in a number of countries. Many countries have introduced laws requiring employers to pay equal wages, including Canada, Germany, Iceland, Israel and the UK. However, there are often no effective sanctions in case of infringement. There are multiple reasons for this, including: the lack of transparency around salary issues; the lack of legal clarity of key concepts of pay and work of equal value; and obstacles in access to justice regarding procedural obstacles for redress. The recent World Bank Group study found that, on average, less than 40 per cent of the necessary systems to implement equal opportunities laws for women are established in each country.

Despite all these efforts, the goal of gender equality has not been reached yet. Women work two-thirds of the world's working hours and produce half of the world's food, but they earn only ten per cent of the world's income and own less than one per cent of the world's property. Women have invested more in their education and participated more continuously in employment, but they still do not earn as much as men do.

Globally, the gender pay gap is an average of 20 per cent while in the EU it is only an average of 16 per cent. According to World Economic Forum's 2021 Annual Report, it will take 136 years to close the global gender pay gap if efforts stay the same.

This significant gender pay gap seems even more surprising given that according to PricewaterhouseCoopers estimates, the gains of closing it could exceed US\$6 trillion of the gross domestic product of the economies of the Organization for Economic Co-operation and Development.

¹ World Bank, *Women, Business and the Law* (2024) at <http://hdl.handle.net/10986/41040>

Distinction between the terms gender pay gap and equal pay

A substantial part of the gender pay gap can be traced back to women working part-time more often, interrupting their careers due to childcare and being less likely employed in well paid leadership positions or in high payment sectors. But even with comparable qualification and occupation, on average women still earn less than men in the same position. Another aspect of gender discrimination in the workplace is the impact of unconscious bias on women's career advancement based on stereotypical assumptions about women.

As gender discrimination is still a topic of discussion, further measures need to be taken.

The aim of this report is to examine the equality of payment and opportunities for men and women and how to fight gender discrimination. In this context, we will distinguish between the gender pay gap² and equal pay³. The gender pay gap typically relates to how many men and women are appointed in each level of the organisation; if more men than women are fulfilling higher positions, this leads to a gender pay gap. It encompasses, for example, the different rates of participation in the labour market between women and men, segregation in different occupational fields, unequal career opportunities, and the challenges of balancing work and family life. This employment gap is not accidental, but rather the result of complex interactions between social norms, cultural expectations and institutional conditions, such as a lack of childcare or stereotypical role models.

Equal pay is about rewarding men and women equally, if they perform equal work or work of equal value. This concept is relevant to determine whether men and women are paid in the same way and have the same opportunities on an equal base pay, bonuses and so on. In this regard, anti-discrimination legislation is important. Both terms are closely related – after all, if you don't work, you can't be paid – but they require different approaches. Measures aimed solely at wage inequality do not automatically solve the structural problems of labour force participation. At the same time, greater female participation in the workforce will only bring about true equality if pay and promotion opportunities are also fair.

All persons endowed with the requisite institutional authority and human capital to implement equality measures are required to treat this task as a top priority. Within their respective areas of responsibility, there is an opportunity to initiate transformative processes that will drive the implementation of equality goals in a sustainable manner. In particular, company management and human resources departments have a special responsibility to actively take on this obligation and act as a driving force for change within the organisation.

Both concepts are relevant, because if companies are paying men and women equally for equal work, there can still be a gender pay gap if more men than women fulfill the higher positions within a company.

² 'Gender pay gap' refers to the average salary of men versus the average salary of women, typically expressed in a percentage.

³ 'Equal pay' refers to the fact that equal work (or work of equal value) should be rewarded equally.

Causes of the gender pay gap

There are multiple reasons for the existence of the gender pay gap. Women are underrepresented in leadership positions and if they are represented, they tend to be more concentrated in management support functions bringing down the average salary of a female manager.

Women are also more likely to work on a part-time basis than men because women often take on unpaid family responsibilities. Part-time work does not always provide the same benefits as full-time work does, hence part-time work can have a negative effect on the remuneration package.

Another factor for the gender pay gap constitutes the time out of workforce in order to raise children or take care of older or ill family members. Upon returning to work, women may have fallen behind in their career advancement.

Even when women enter well-paid male-dominated occupations, there is a sometimes a change within the occupation itself. Those changes often lead to an overall loss of pay and status or to a new division within the employment category that confines women to lower ranks. This phenomenon is called ‘feminisation’ of the status of occupants and professions.

A final factor of the still existing gender pay gap can be found in ineffective legislation. It is pointed out that despite numerous legislations regarding equal pay, many companies struggle in applying the concept of ‘equal remuneration for work of equal value’.

For example, even though women make up more than half of the associates in the legal profession in the UK, they only make up a quarter of partners.

A recent case ruled by the Court of Justice of the European Union⁴ shows that anti-discrimination legislation has a limited effect on the gender pay gap. The court ruled that the difference in allowances, depending on whether they are granted to a group of workers consisting mainly of men – pilots in this case – or to a group of workers consisting mainly of women – the cabin crew members – does not constitute an indirect discrimination on grounds of sex. The EU Directive in question only prohibits the difference in treatment of workers performing the same work. Once more, this shows that equal pay alone is not suitable in reducing the overall gender pay gap.

In the following will be considered the equal pay legislation by analysing the new EU Directive.

Limited effect of equal pay legislation on the gender pay gap using the example of the new EU Directive

The new EU Pay Transparency Directive (2023/970) (the ‘Directive’) imposes substantial obligations on employers, most of which relate to transparency. The Directive aspires to tackle the lack of transparency in pay settings and on pay progression, the lack of legal clarity of key concepts, such as work of equal value, and to address the obstacles in access to justice, foremost the procedural obstacles for redress.

⁴ Case C-314/23 *Ministerio Fiscal v Air Nostrum, Líneas Aéreas del Mediterráneo SA and Others* [2024].

Transparency obligations as workers' rights

Even prior to employment, job applicants have the right to receive information from the future employer about the starting salary for the position in question or its range. In addition, job applicants may have to be informed of the relevant provisions of the collective agreement that the employer applies in relation to the job.

Regarding existing employment, the employee has the right to information about the average pay level of other groups of employees, broken down by gender and by individual groups of employees who perform the same or equivalent work (Article 7 of the Directive). In contrast to this, current employees, for example in Germany, can only request information on the criteria and procedures for determining pay in accordance with Section 11 of the Transparency in Wage Structures Act regarding the determination of their own pay and the pay for the comparative activity.

When the worker considers themselves wronged because of the principle of equal pay has not been applied to her or him, it is for the respondent (the employer) to prove that there has been no direct or indirect discrimination (Article 18).

With this new Directive, workers are granted a victims' representation, which may engage in a litigation act on behalf or in support of workers.

The Directive also clarifies that the notion of pay includes the basic or minimum wage, and any other element including variable components (Article 3 subparagraph 1 (a)). In a similar manner, according to Article 19, the comparability of jobs is not limited to workers employed at the same time. Any other evidence may be used to prove the alleged discrimination, including statistics or a comparison of how workers would be treated in a comparable situation.

Transparency obligations on the employer level

The employer is bound by reporting obligations (Article 9 of the Directive), regarding the gender pay gap and the median gender pay gap, including complementary or variable remuneration.

This reporting obligation seems promising by ensuring that the employer, the employees and workers' representatives take note of the overall gender pay gap in the organisation and thus not only of the equal pay conditions of workers by category.

The reporting intervals depend on the size of the company: employers with 100 to 149 workers must report every three years as of 7 June 2031, employers with 150 to 249 workers must report every three years as of 7 June 2027 and employers with 250 workers or more must report every year as of 7 June 2027.

If the reports show that the gender pay gap is at least five per cent in any category of workers and the employer cannot justify this gap by objective factors and does not remedy to this situation within six months, the employer, in cooperation with their workers' representatives, must proceed to a joint assessment leading to further analysis or remedial action (Article 10 of the Directive).

Those remedial actions can be the establishment of a gender-neutral job evaluation system or the revision of an existing one.

However, it should be emphasised that while the mere reporting obligation is an important step toward creating transparency, its effectiveness depends heavily on the quality of its implementation. Transparency in itself does not automatically reduce the gender pay gap but requires that the reported data be interpreted correctly and translated into specific, binding measures. Without strict monitoring, sanctions for violations and systematic support from institutional actors, the reporting obligation risks becoming a purely formal exercise that contributes little to actual equality.

Furthermore, the complexity of calculating and interpreting the gender pay gap poses a considerable challenge. Factors such as different forms of employment, part-time rates, professional hierarchies and job profiles must be taken into account in order to avoid distortions and enable valid conclusions to be drawn. Only through a differentiated and methodologically sound analysis can transparency measures achieve their intended effect.

Enforcement of the Directive

Once the Directive is transposed, employers are exposed to claims for compensation for damages because of experienced discrimination, fines from authorities and the exclusion from public procurement procedures.

According to Article 16 of the Directive, any worker who has sustained damage as a result of an infringement of any obligation has the right to obtain full compensation. Subparagraph 2 of the same article specifies that the compensation should have a dissuasive character. Courts may also order to take measures to ensure that the rights or obligations are fulfilled.

It is noteworthy that Article 18 of the Directive provides for a shift of the burden of proof to the employer, if the employee credibly establishes facts demonstrating pay discrimination. According to Article 18 subparagraph 2, it is sufficient for the shift of proof that the employer has not respected the formerly mentioned obligations. The minimum limitation period is fixed to three years. According to Article 24 of the Directive, companies can be excluded from public procurement and concessions if they do not respect the transparency obligations.

Conclusion on the effectiveness of the new EU Directive

The new EU Directive strengthens the worker's individual position in establishing victim's representation, in establishing a shift of the burden of proof when the employer has not respected the pay transparency obligations and in concretising the concept of equal work of equal value.

Likewise, granting the right to full compensation and the minimum standard on limitation periods strengthens the worker's remedies. The fact that employers risk fines and civil liability further strengthens the individual position of a victim of discrimination.

However, regarding the aim of reducing the gender pay gap overall, one has to notice that the Directive mostly aspires to create awareness by the employer of the existence of a gender pay gap. It therefore is rather an equal pay mechanism than a gender pay gap reduction.

Therefore, also with the new EU Directive, the employer's own initiative in reducing the gender pay gap stays crucial.

Employer's own initiatives in reducing their gender pay gap

Even when employers notice the existence of a gender pay gap, they need to know how to change the situation. Different measures seem to be possible:

- a gender-inclusive business culture;
- equitable salary offers;
- undertaking a gender pay review in the organisation to assess whether there is a gender pay gap;
- making jobs more flexible so that more women access higher-level jobs and therefore higher pay;
- adjusting job titles, contents and corresponding pay overtime while evaluating the methodology to assess the skills and responsibilities; and
- sharing results with employers and business membership organisations and other companies in the enterprise's networks.

One good example is the L'Oréal group, where a significant number of women hold senior responsibilities within the group. The group proposes leadership training and programmes to facilitate parenthood. The group guarantees at least 14 weeks of fully paid maternity or primary parental leave and at least six weeks fully paid paternity or secondary leave. There are also internal employee groups and networks to foster diverse women's groups and to provide support and development opportunities as well as valuable insight for the business.

In large law firms, there are independent, inclusion-focused reviews of the firms' partnership and promotion practices. Multiple law firms have the target to raise the figure of global partnership of at least 40 per cent women by 2030. For example, Freshfields Bruckhaus Deringer have published a new diversity and inclusion time recording code and run targeted talent programmes.

Given the expertise this working group possesses through the experience of its members, our research should focus on existing and new strategies of employers to narrow the gender pay gap and thus complementing the above-mentioned list.

Against the background that numerous studies have shown that gender diversity is beneficial for the company and its efficiency, an overall question would be: 'What private initiative did they take? Which policy did they implement regarding gender discrimination?'

Furthermore, our research deals with how cultural stereotypes about men and women give rise to unconscious gender bias and how this bias systematically constrains opportunities for women's career advancement in organisations, particularly in taking up top leadership positions.



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