



Pay equity across the globe

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The gender pay gap has been a long-standing issue in the United States and abroad. While there was a lot of progress in the 1980s and 1990s, the progress in recent years has slowed down. Today, women in the U.S. make \$0.80 on the dollar compared to their male counterparts, according to the Institute for Women's Policy and Research. Black and Hispanic women earn 62.5% and 54.4%, respectively, of what their male colleagues earn. In the U.K. the gender pay gap is just over 18% (down from 27.5% in 1997), according to the Office for National Statistics.

While this has been an issue for decades, it has recently moved to the forefront for many companies and insurance carriers both in the U.S. and globally. This is likely due in large part to #MeToo, the Time's Up initiative, as well as other initiatives seeking to promote gender equality and calling for a change in corporate culture. The global average annual earnings for men in 2017 compared to women can also shed some light as to why this issue has come to the forefront at this time. In 2017, the global average annual earnings for men was still almost \$10,000 higher than the annual earnings for women, with the average annual income for men being \$21,000 and women \$12,000.¹

To close the gap, many countries have passed legislation requiring companies to report their gender pay gap data. Other countries, including many states in the U.S., are broadening their pay equity laws to promote equal pay for equal work. Finally,

many states in the U.S. are passing legislation that prohibits questions regarding prior salary history during the interview process for a new job. Below, we will take a closer look at what the U.S. and other countries are doing to address this issue.

Equal Pay Act of 1963/Lilly Ledbetter Act

In the U.S., the governing federal law regarding pay equity is the Equal Pay Act of 1963, which prohibits gender-based wage discrimination between men and women in the same establishment "for equal work on jobs, the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions." In 2016, in an effort to achieve more transparency and close the pay gap, the Obama administration proposed changes to the EEO-1 report that would have required employers with 100 or more employees to report the pay data for all employees. However, those changes have been postponed indefinitely.² As such, there is currently no requirement to report pay data at the federal level in the U.S. The Obama administration also passed the Lilly Ledbetter Fair Pay Act of 2009, which overturned the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, and provides that each paycheck that contains compensation discrimination is a separate, new violation – this expands the time period for filing a complaint regarding employment discrimination concerning compensation.

Statewide legislation

In response to the lack of movement at the federal level, many states and cities began taking their own steps to expand pay equity laws by enacting broader equal pay laws, enacting wage disclosure/transparency laws and banning questions regarding salary history. The state equal pay laws generally, among other things, loosen the standard from “equal work” to “comparable” work or “substantially similar” work. The laws broaden the categories of workers protected against wage discrimination and they impose stiffer penalties.

While California, New York and Massachusetts led the charge for broadening equal pay laws, New Jersey now has the broadest equal pay law in the U.S. The New Jersey statute, known as the Diane B. Allen Equal Pay Act, makes it unlawful for an employer to pay any employee who identifies as a member of a protected class “at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite skill, effort and responsibility.”³ The New Jersey Act also authorizes treble damages, extends the statute of limitations to six years, and provides that each payment that is discriminatory constitutes a separate offense. California, which is traditionally known as being one of the most difficult jurisdictions for employers, passed the California Fair Pay Act, which among other things, does not require that the individuals being compared work in the same establishment or that they hold substantially equal jobs.⁴ Rather, the CA Fair Pay Act allows comparison of employees who are in different establishments and are doing “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.” The CA Fair Pay Act also does not require the claimant to demonstrate discriminatory intent or discriminatory impact, thereby shifting the burden to the employer to prove that any difference in pay falls within one of the permitted categories.⁵

In addition to the broadening of the laws, states (including New Jersey and California) have also enacted wage disclosure/transparency laws and banned salary history questioning. Under the National Labor Relations Act, federal law prevents employers from prohibiting or discouraging employees from exchanging wage information. Massachusetts was one of the first states to pass legislation that employers cannot prohibit employees from disclosing or discussing wages,⁶ and new legislation also prohibits employers from inquiring about compensation history from

potential employees prior to making a job offer.⁷ Other states’ bans are variations of the Massachusetts ban. Others assert that an employer may not rely on salary history during the hiring process or search public records for the applicant’s salary. While there are several states and localities that have adopted these laws, there are certain states that have enacted laws prohibiting salary inquiry bans.⁸

A study by the World Economic Forum shows that it will take between 46 to 158 years for countries to close the gap. North America (Canada and the U.S.) are at the far end of that range, where it is estimated that it will take 158 years to close the gap in North America. There has certainly been a lot of progress in the U.S. to minimize (or close) the gender pay gap. However, as compared to other countries there is still much to be done.

Global laws

Outside the U.S., many countries have taken important steps to combat the gender pay gap by enforcing legislation that encourages pay transparency through pay data reporting. Norway, Sweden and Finland have legislation in place that allows employee tax returns to become available upon request. Other countries, such as Spain, Austria, Denmark and Belgium conduct “gender audits,” which essentially requires companies to evaluate the effectiveness of their gender equality programs.⁹ Australia, on the other hand, does not require reporting but federal law requires equal pay for comparable work. And Singapore does not address pay equity at all. An overview of some of the ways different countries outside the U.S are approaching this issue follows.



Australia

Australia, like the U.S., is a federal law jurisdiction with states having residual authority. As such, the law regarding equal pay for equal work has varied across Australia; in New South Wales equal pay for equal work was required as early as 1958; however, this only became federal law after the decision in the equal pay case of 1969.¹⁰ Subsequently, equal pay for equivalent work was incorporated into federal law by the judgment in the equal pay case of 1972.¹¹ In 1984, the principle of equal pay for equivalent work (along with other forms of sex discrimination) became part of federal legislation. In 2009, the Fair Work Act mandated equal pay for equivalent or comparable work.

France

France has enacted several pieces of legislation designed to create pay parity; in 1972 equal pay for equal work became part of French law, enacted by an amendment to the French Labour Code. In 1983, a further law was passed that required companies with more than 50 employees to carry out comparative salary surveys between men and women. A similar law was again passed in 2001, this time with potential criminal sanctions for senior management officials at companies that did not carry out gender surveys nor discussions on how to address their pay gap. Recently, a measure has been discussed in France that would put pressure on employers to close their 'unfair' gender pay gap;¹² software would be installed on company payroll systems and if gaps exist, companies could be fined up to 1% of their total wage bill.

Germany

Article 3 of the West German Constitution makes equal pay for equal work mandatory. During the unification process much of what was the West German Constitution became what is now known as the German Basic Law, Article 3 included. Further legislation to enforce equal pay came into force in January 2018. Both public and private companies must, when asked, inform employees how their salary compares to the salaries of people of the opposite gender in corresponding roles at the company.

Iceland

Iceland has had equal pay legislation since 1961, which forced employers to pay men and women equally for equal work. This was followed up in 1976 with the Equality Act which mandated equal pay for work of the same value. Iceland is often regarded as one of the best places to be a woman as it pertains to gender equality. Iceland went further and on January 1, 2018 it became the first country to force employers, with more than 25 employees, to prove that they are paying those working in the same job role equally regardless of gender, race or sexuality. Companies will be forced to obtain certification from the government that validates they are paying equally in each job role. This forms part of the country's greater plan to close the gender pay gap by 2022.

Singapore

Unlike the other countries discussed, Singapore does not actually have any legislation that mandates equal pay for equal work; the closest piece of legislation in Singapore is the guarantee of equality in the Singaporean Constitution. The industries in Singapore which have the highest gender pay gap are very similar to the industries which have the highest gap in the U.K., as per the recent disclosure. Despite the lack of legislation mandating that employers pay men and women equally, Singapore has a pay gap comparable to countries such as the U.S. and Canada who have both had equal pay legislation for decades. What is most concerning for Singapore is the lack of improvement in their gender pay gap; in 2006 the gap stood at 19%, in 2016 it had shrunk by a mere 1%.

United Kingdom

The Equal Pay Act 1970 was the first legislation in the U.K. to mandate equal pay. Equal pay is now governed by the Equality Act 2010. On April 5, 2017 the Gender Pay Gap reporting regulations came into force. The regulations gave all companies with over 250 employees until April 4, 2018 to report their gender pay gap, both on their own website and to the government. It is estimated that around 1,500 companies have missed that deadline and are now being forced to explain why. Those who cannot give a satisfactory explanation face unlimited fines and will be named publicly. Exactly what will happen is hard to predict as this is the first year of mandatory reporting.

Typically, claims of unequal pay are brought before the Employment Tribunal; however, these claims must be brought within six months of the end of the claimant's employment contract. Often one of the bars to making a claim is being able to produce a comparator, meaning a claimant may not know or be able to show, for more than six months, that they have been unequally paid. By statute, the right to be paid equally is implied into all contracts, meaning discriminating in paying practices equates to a breach of contract. A breach of contract claim can be made by those who feel they are being paid less because of their gender. This is significant, as breach of contract claims can be brought up to six years from the date that the breach of contract occurs.

Best practices

The issue of pay equity is here to stay with many boards making this a top priority. The reasons in support of pay equity are clear, but it goes beyond the law. The societal shift and focus on pay equity make it imperative that each organization is prepared to address the issue. Below are some actions you can take to ensure your organization is prepared and protected.

1. Consult with experts to conduct a pay equity analysis to ensure there is no disparity within your organization.
2. Effectively communicate any findings and changes to employees.
3. Train managers regarding the new laws relating to salary history inquiries.
4. Consult with industry experts regarding risk transfer strategies through the purchase of Employment Practices Liability insurance, which provides coverage for claims alleging employment practice violations, such as discrimination against the organization, its employees and directors and officers.

Source

¹<https://www.laborandemploymentlawcounsel.com/wp-content/uploads/sites/224/2018/03/Pay-Equity-Around-the-Globe-7-March-2018-Webinar.pdf>.

² On August 29, 2017, the EEOC announced that the OMB, per its authority under the Paperwork Reduction Act, had immediately stayed the EEOC's pay data collection components of the EEO-1 Report that was to otherwise become effective on March 31, 2018.

³<https://www.xperthr.com/news/new-jersey-and-washington-enact-tough-pay-equity-laws/32052/>.

⁴ CA Labor Code section 1197.5.

⁵ Other states with noteworthy pay equity laws are: New York, Massachusetts, Oregon, Maryland and Washington.

⁶ Other cities and states with similar laws are: California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Oregon and Vermont.

⁷ Other cities and states with salary history ban laws are: California, Connecticut, Delaware, Chicago, Illinois, Louisville, Kentucky, New Orleans, Louisiana, Oregon, New Jersey, New York, and Vermont - <https://www.hrdiver.com/news/salary-history-ban-states-list/516662/>.

⁸ Michigan (Senate Bill 353) and Wisconsin (A.B. 748).

⁹ Many employers are then required to implement a gender action plan if they find a gender wage gap. Denmark, through the Equal Pay Act 2014, fines certain businesses if they do not comply with gender audits of their workforce. The U.S. requires federal contractors to conduct similar gender audits, but that has not been extended to other business.

¹⁰ *Australasian Meat Industry Employees Union & Others v Meat and Allied Trades Federation of Australia & Others* (1969) 127 CAR 1142.

¹¹ *National Wage and Equal Pay Cases 1972* (1972) 147 CAR 172.

¹² Where a pay gap exists between men and women despite them having similar levels of education and experience.

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