

Pay Transparency Update: Increased Risk of Pay Discrimination Claims

Employees Soon to be Entitled to Access More Pay Information

The EU Pay Transparency Directive (the Directive) must be transposed into Irish law by 7th of June. While smaller Organisations may anticipate that they will fall outside the scope of the Directive, all Employees will soon acquire rights to access a more extensive level of pay information under the legislation no matter the headcount of the Organisation. This raises a number of questions that Organisations need to address ahead of the Directive coming into effect.

What pay data can be shared with Employees who make a request?

Employees will be entitled to request information on their individual pay level and the average pay levels, broken down by sex, for ‘categories of workers’ performing the *same work as them or work of equal value* to theirs. This right ties in with the enhanced gender pay gap reporting requirements which will require in scope Organisations to record gender pay gaps within ‘categories of workers’ broken down by ordinary basic wage or salary and variable components.

What is work of equal value?

The Directive provides that work of equal value will be determined by assessing the work against objective criteria, including educational, professional and training requirements, skills, effort, responsibility and working conditions but not working patterns. In practice, this means that two roles which appear quite different may be considered work of equal value when analysed against objective criteria like qualifications, skills, effort and decision making.

What pay data will be used?

As mentioned above, Organisations will need to identify categories of Employees carrying out work of equal value and break down their pay data by sex. As existing payroll systems may not have the capability to extract pay data for categories of workers, Organisations should consult with payroll providers to assess their readiness for accessing, compiling and providing the required pay data in response to Employee requests.

Who will manage these Employee requests?

While larger Organisations may have dedicated HR and reward specialists, the majority of Employers will need to ensure that management teams are equipped to handle these requests. Managers who currently hold interviews, make pay-related decisions and manage Employee queries are likely to be best-placed to deal with the new pay transparency requirements.

How will explanations be provided clearly and consistently?

For Organisations without formal job architecture, pay frameworks or documented pay decision processes, providing explanations in writing is likely to pose a significant challenge. Those responding to pay information requests will need guidance, training and clear internal processes to ensure the pay information is communicated clearly and consistently.

Is the Organisation confident it can justify pay differences?

Organisations must also be prepared to defend any pay differentials that come to light based on objective, gender-neutral criteria. If historic pay practices have not been consistent, there is a risk that

any gender-based differences in pay will not stand up to the scrutiny of an Employee pay information request.

Greater likelihood of equal pay claims

Another likely consequence of greater pay transparency is an increase in equal pay claims. Equal pay claims are relatively uncommon under the existing legal framework as Employees find it difficult to access the information required to prove there is a difference in pay that is not justified by objective criteria. The Directive aims to address this lack of bargaining power by providing Employees with this right to receive more detailed pay information from their Employer. With greater access to more pay information, it seems likely that more Employees will have the opportunity to pursue equal pay claims as they will be better able to demonstrate that they are paid less than an Employee of the opposite gender performing the same work or work of equal value.

What does this all mean for Organisations

These measures remove a lot of the resistance that Employees encounter when trying to prove an equal pay claim. It seems almost certain that there will be a consequent increase in pay discrimination claims once the Directive comes into effect. Organisations that are unprepared and unable to resolve pay disputes internally risk having to defend equal pay claims in the Workplace Relations Commission. Being able to establish objective reasons for any differences in pay between male and female Employees doing work of equal value is therefore a key priority in preparation for this new era of pay transparency. Being prepared in advance of the Directive coming into force is important as a reactive approach invites avoidable legal, reputational and Employee relations risks. Preparation should therefore begin as soon as possible if it is not already underway.

How Adare can help

Preparing for pay information requests under the EU Pay Transparency Directive requires more than a policy update, it requires confidence in your pay structures, your pay data and your decision-making processes.

We support Irish Organisations by:

- Assessing readiness for Employee pay information requests
- Supporting the development of clear job architecture and role categorisation aligned with 'work of equal value' principles
- Reviewing pay structures, pay ranges and progression frameworks to ensure they are objective and defensible
- Conducting pay risk and equal pay assessments ahead of Employee requests
- Advising on practical processes for responding to pay information requests clearly, consistently and compliantly
- Supporting HR and leadership teams with guidance, training and communications as pay transparency obligations evolve

Adare is a team of expert-led Employment Law, Industrial Relations and best practice Human Resource Management consultants. If your Organisation needs advice, support, or guidance about pay transparency compliance requirements or any HR issues, please contact Adare by calling 021 486 1420 or emailing info@adarehrm.ie to learn what services are available to support your business.