

IN FRANCE, MEASURING WAGE INEQUALITY BETWEEN WOMEN AND MEN IS LEGALLY REQUIRED

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French Labor, Employment, and Workplace Safety Alert

By: Christine Artus, Essya Zaraa

Though pay equity between men and women is legally required and politically encouraged, wage inequality in France remains the norm: women's wages are on average 25.7% lower than those of men for all working hours combined.

Over the course of several months, a real legal arsenal has emerged to accelerate the effective reduction of this inequality. Indeed, in order to ensure compliance with the equal pay principle, a new law has been enacted: Act N°. 2018-771 of 5 September 2018 on the freedom to choose one's professional future, chapter IV.

Employers with at least 50 employees are required to measure wage gaps in order to address pay inequalities between women and men. The legislation has therefore changed the focus from a requirement of means, to an obligation of concrete results.

WHAT ARE THESE NEW RULES?

Since 1 January 2019, companies employing at least 50 employees are required to provide an accurate estimate of men vs. women salary disparities using specific data based on an annual reference period chosen by the employer.

The resulting measurements must be published by March 1st of each year on the company website, if available. Alternatively, employees must be informed by any other available means. Likewise, the Economic and Social Committee, or the Works Council, must be informed of the results, via the database "*base de données économiques*".

A transition period is provided for and the obligation to publish these results is only gradually imposed according to the size of the companies:

- since 1 March 2019 for companies with 1,000 employees or more;
- since 1 September 2019 for companies with more than 250 but less than 1,000 employees;
- from 1 March 2020 for companies with more than 50 but less than 250 employees.

HOW IS THE SCORE IN THE EQUAL PAY INDEX FOR WOMEN AND MEN CALCULATED?

To implement those new demands, companies have to calculate their grade, called "Men vs. Women equality wage index," by taking into consideration a set of legal criteria:

1. The salary disparity, between men and women, quantified by the mean wage of women compared to men's, by age group, at equal position.
2. The individual wage increase disparity, not related to promotion, between men and women.
3. The promotion rate disparity, between men and women.
4. The percentage of employees, who have received a salary increase within the year following their return from maternity leave, if any raise has occurred during the time of the leave.
5. The number of employees of the under-represented sex among the 10 employees receiving the highest remuneration.

For companies employing 50 to 250 employees, the second and third indicators have been merged into one: the disparity related to the rate of individual salary raises between men and women.

The result obtained by the company corresponds in principle to the sum of the points obtained for each of the indicators and may reach a maximum of 100 points.

In order to ease the implementation of the men vs. women equality indicator, the French Labour ministry provided an online simulator on its website, to help companies estimate their index, as well as a FAQ (Frequently Asked Questions) document, providing support. Appointed persons are also appointed to each regional department of Labour Administration ("Direccte") to support companies.

Companies must submit their indicators and overall score to the Directorate's services using an online form available on the Labour ministry's website.

If the grade resulting from the detection and analysis of pay discrepancies is below 75 points, the employer must implement a plan to reduce these discrepancies, which will be introduced to the agenda of the next mandatory collective negotiation meeting regarding men vs. women professional equity. This meeting is planned every four years. In the absence of a collective agreement, the measures are determined unilaterally by the employer after consultation with the Economic and Social Committee or the Works Council.

Employers have three years to implement these measures. If, after the expiration of this period, the results obtained still do not exceed the minimum grade of 75 points, the company may be subject to a financial penalty, the amount of which is fixed by the administrative authority at a maximum 1 % of remuneration and earnings which are subject to social contributions.

Nevertheless, before this penalty is imposed, a grace period is allowed to facilitate a discussion between the employer and the Direccte. This dialogue can result in the Direccte giving the company an additional time of one

year to comply, if steps taken and the resulting failures of the company are considered justified.

As of today, 92 percent of companies with more than 1000 employees have complied and published their equality index. The French Labour ministry has already provided formal notice letters to the remaining, non-compliant companies.

KEY CONTACTS



CHRISTINE ARTUS

PARTNER

PARIS

+33.1.58.44.15.38

CHRISTINE.ARTUS@KLGATES.COM

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