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By Gretchen C. Corliss, reprinted with permission from Alliant Insurance Services, Global Practice

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Recent government policy trends committing to diversity, equity, and inclusion (DEI) in general, and to pay equity in particular, have been fueled by stakeholder activism and labor advocacy groups. As a result, several countries and/or jurisdictions have passed or are in the process of developing pay equity legislation.

In this context, on 15 December 2022, the European Parliament and Council reached an agreement on pay transparency measures initially proposed on 4 March 2021. The binding pay transparency measures provided for by the proposed EU Directive are part of the European Commission's (EC) Gender Equality Strategy 2020-2025. The agreement came shortly after the EU passed its "Women on Boards" Directive that requires that by 2026 EU listed companies have 40% of the underrepresented gender among their non-executive directors or 33% among all their directors.

Once this agreement is approved by co-legislators, the Directive will enter into force 20 days after its publication in the EC Official Journal. EU Member States will then have 3 years to transpose the provisions of the Directive into their national legislation.

According to the EU press release, the new rules would enhance transparency and provide for effective enforcement of the equal pay principle, while improving access to justice for individuals experiencing pay discrimination. These key components of the proposed directive are detailed below.

Pay transparency measures

Pay transparency measures agreed to by European Parliament and the Council include:

- Employers' obligation to provide information about the initial pay or the pay range in job postings or prior to a first interview process. Furthermore, employers would be prohibited from asking prospective employees about their pay.
- Employees' entitlement to request information about their pay and the

average employees doing the same work or work of equal value.

- Gender pay gap (GPG) reporting obligations for employers with 100 employees or more. This measure would be phased in over a 5-year period, starting with larger employees (those with 250 employees or more) publishing their GPG annually. Furthermore, the frequency of GPG publication requirement would vary according to employers' workforce size, with smaller employers being required to publish their GPG data once every 3 years.
- In cases where GPG is at 5% or more and the gap cannot be explained by objective gender-neutral determinants, the employer would have carryout a pay assessment in collaboration with employee representatives.

It is worth recalling that a number of EU Member States already have robust GPG reporting requirements in place, especially for larger employers while gradually requiring smaller employers to report their GPG data. These include the United Kingdom, France, Germany, Belgium, Austria, and most recently, Ireland and Italy.

Enhanced access to justice in discrimination cases

Under the measures agreed to by the European Parliament and the Council, employees having experienced gender pay discrimination could receive full compensation retroactively, including bonuses and in-kind benefits.

The employer would not only bear the burden of proof in cases of non-compliance with non-discrimination provisions of the law, but would also be subject to penalties, including fines that would be introduced by Member State's legislation.

Finally, national public institutions set up across the EU to promote equality for all and address discrimination (i.e., "equality bodies") and employee representatives would be empowered to represent employees in legal or administrative proceedings.

Similar US pay transparency laws

Recently, in the United States, some states have already begun to pass their own pay transparency laws. Some recent examples are detailed below.

California

In California, effective 1 January 2023, An act to amend Section 12999 of the Government Code, and to amend Section 432.3 of the Labor Code, relating to employment, requires any private employer with 100 or more employees to annually submit a pay data report to the government staring by the second Wednesday of the month of May, starting in 2023. Data reports are to include the average and the median hourly wages for every combination of race, ethnicity, and gender within every job classification. The law also requires any employer to provide employees with the pay scale of their current position upon request, and any employer with more than 15 employees to include a pay scale in any new job posting.

New York State

The state of New York (NY) also passed a similar pay transparency law in December of 2022, to take effect 17 September 2023. As of 13 February 2023, the scope of application of the NY law has been expanded to also include out-of-state employees who report to a supervisor or an office within the state of NY. This effectively expands pay transparency measures to remote jobs as well.

Rhode Island

Rhode Island's Pay Equity Act was amended to require that employers provide pay range information to a prospective employee, either upon their request,or when discussing their pay expectations, or when making an offer of employment conditions, whichever occurs first.

Washington State

An Administrative Policy on the state's Equal Pay and Opportunities Act was issued by the Department of Labor and Industries on 30 November 2022, The Administrative Policy stipulates that "All employers, with 15 or more employees, engaging in any business, industry, profession, or activity in Washington must disclose a wage scale or salary range and a general description of benefits and other compensation on job postings that recruit Washington based employees."

Illinois

In Illinois, 2022 regulations governing the Illinois Equal Pay Amendments clarified that employers 100 employees have to, once every 2 years, apply to the State's Department of Labor for an Equal Pay Registration Certificate between 24 March 2022 and 23 March 2024.

Concluding remarks

As new pay equity legislation comes into effect across an increasing number of jurisdictions, they serve as a catalyst for change across other countries around the world. Once the Directive is in force, each of the 27 EU Member States would need to transpose its provisions into their national legislation. EU Member States typically have a period of 2 years (occasionally 3 years) to implement the provisions of an EU Directive. To provide Member States the necessary time to implement the provisions of this particular Directive, the EU Parliament and Council have agreed to a 3-year timeline for its implementation. If any Member State fails to comply within the stipulated timeframe, EU citizens would be entitled to directly derive rights from the EU Directive.

Gretchen Corliss
International Benefits Analyst

Gretchen joined the Alliant team this past year as an analyst on the Global Team. Her work consists of updating client benefit information, assisting with benchmarking and other reports, as well as assisting the consulting team with providing client service. She recently joined the Global Knowledge Center where she will be researching and publishing country resources for Alliant.

She attended the University of Puget Sound and King's College London where she received both her bachelor's and master's in International Political Economy, respectively.