WORKPLACE JUSTICE

PROMOTING PAY TRANSPARENCY TO FIGHT THE GENDER WAGE GAP: CREATIVE INTERNATIONAL MODELS

Secrecy about pay and pay practices not only masks gender and racial pay gaps, it perpetuates them. Because pay often is cloaked in secrecy, when a discriminatory salary decision is made, it is seldom as obvious to an affected employee as a termination or a denial of a promotion.[1] Cultural norms around pay secrecy remain strong and many workers are fearful of questioning the validity of their pay due to workplace power dynamics or threat of retaliation, given that many employers explicitly prohibit or discourage discussion of pay. As a result, employees often have no idea they are being discriminated against and, even if they suspect discrimination, face significant obstacles in gathering the information that would indicate they have experienced pay discrimination, undermining their ability to challenge such discrimination. Secrecy around pay also reduces employer incentives to proactively review and evaluate their compensation practices and address any unjustified disparities between employees.

In short, pay secrecy allows unjustified pay gaps to grow in the shadows, undetected.

In 2016, the Equal Employment Opportunity Commission (EEOC) announced changes to the EEO-1, a form it has used for decades to annually collect workforce demographic information from employers with 100 or more employees. The changes would have required employers to confidentially report to the EEOC employee compensation data and hours within 12 pay bands, broken down by gender, race, ethnicity, and job category. This pay data would have given the EEOC an invaluable tool to fight pay discrimination by helping the agency identify firms with racial or gender pay gaps within each job category that significantly diverge from their industry and regional peers, for potential further assessment. It also would have prompted employers to proactively and regularly review and evaluate their own payrolls and correct unjustified pay gaps. Companies were scheduled to submit the data beginning in March 2018, but in 2017 the Trump Administration halted the pay data collection, subjecting it to a largely unexplained "review and stay."

While federal efforts to promote pay transparency in the United States have stalled, leading to a legal challenge,[2] international efforts to require employers to report about their pay data suggest creative approaches that can inspire U.S. policy makers.

Iceland

In January 2018, Iceland passed a new law requiring public and private employers to obtain an Equal Pay Certification once every three years, proving that they are paying women and men equally.[3] In order to obtain the certification, employers will need to show compliance with an equal pay management system called the "Equal Pay Standard."[4] The standard is comprised of rules and guidelines to analyze pay structures within companies[5] and determine whether pay inequities exist between male and female employees. The Icelandic government will fine companies that fail to receive the certification.[6] The standard was developed jointly by Iceland's unions, the employers' confederation, and government officials.

The certification requirement will take effect in phases. The first group of employers – employers with 250 or more employees – needs to have implemented the standard by December 31, 2018. The final group – employers with at least 25 employees – must comply by December 31, 2021. State employers are on a different and faster timeline, however. All state ministries need to have undergone certification by December 31, 2018, and state institutions and companies owned by the state with 25 or more employees, need to have undergone certification by December 31, 2019.[7]

United Kingdom

As of 2018, England, Wales and Scotland require public and private employers with at least 250 employees to annually publish information designed to show whether there is a difference in the average pay of their male and female employees.[8] Each covered employer must submit to the U.K.'s Equality and Human Rights Commission 1) the difference between the mean and median hourly rate of pay for male and female employees; 2) the difference between the mean and median bonus pay paid to male and female employees; 3) the proportions of male and female employees who were paid bonus pay; and 4) the proportions of male and female employees in pre-set pay bands by quartiles including the following pay classifications: lower, lower middle, upper middle and upper.[9] Employers must publish their gender pay gap data and a written statement on their public facing website, and report their data to the government through an online portal.[10] The regulation defines "employee" for reporting purposes as people with a contract of employment with the organization. However, it leaves out employees being paid at less than their usual rate, for instance, employees who are being paid at a portion of their usual salary while on maternity leave.

As of April 4, 2018, more than 10,000 companies had complied with the new regulation. Initial data from the first wave of reporting revealed that some large multinational companies, including U.S.-based companies with U.K. operations, such as Apple and JP Morgan, have significant gender gaps in earnings and pay.[11] The data is also publicly available and searchable on both a U.K. government website[12] and Bloomberg news service, making it widely accessible and useful for individual employees to assess where they may fall on the scale compared to the reported numbers for their employer or industry.[13] As an early indicator of impact, some companies filed action plans along with their data, demonstrating that the federal reporting requirement spurred companies to develop a plan to address disparities.[14] Companies are also creating public-facing webpages with their data, and publicly acknowledging the importance of gender equality for the overall good of the workforce.[15]

Australia

In Australia, all private sector employers with 100 or more employees must annually report pay data to the Workplace Gender Equality Agency, a special agency created in 2012.[16] Employers must report on: the gender composition of the workforce and governing bodies by occupational categories, compensation data including base salary and total compensation which includes base salary plus other payments, the availability and utility of workplace practices related to flexible working arrangements for employees with family or caregiving responsibilities, whether or not the employer has consulted with employees on gender equality issues at work, and any other matters specified by the agency, such as sex harassment and discrimination issues within the workplace.[17] Reports detailing information other than pay are then made publicly available for each company. For pay data, the Agency maintains a website with aggregate pay data information showing pay gap percentage trends by industry.[18] Individuals may also use the site to drill down into industry specific information, and compare wage gap numbers and other data across multiple industries.[19] As of 2016, three years after Australia's reporting requirement went into effect, 70 percent of Australian employers had policies in place to support workplace gender equality.[20]

Austria

Pursuant to Austria's Equal Treatment Act, every two years, companies with 150 or more employees are required to produce reports including, among other measures, the number of women and men by occupational group and the average or median income of women and men by occupational group. The income reported includes benefits and bonuses.[21] These reports are shared with organizational "works councils" (bodies of elected workers who represent the interests of fellow workers to management). Those councils may then use the information to better negotiate over working conditions and target opportunities for increasing gender equity.[22]

Belgium

Belgium has a number of laws and policies in place to narrow the gender wage gap. In 2012, Belgium passed a law requiring organizations to include differences in salaries between men and women in annual audits and reports, which are then made publicly available through the national bank of Belgium.[23] In addition, every two years, organizations with 50 or more employees must conduct a gender pay gap analysis. The analysis includes gender-segregated mean basic pay and allowances per employee category, job level, job evaluation class, seniority, and education level.[24] If this analysis shows that women's pay is lower than men's, the organization must produce an action plan to narrow the gap.[25]

Germany

As part of Germany's 2017 Transparency in Pay Act, employers with more than 500 employees who are required to publish a status report under the German Commercial Code will be required to combine their status report with a public report detailing measures the company has taken to promote gender equality and achieve equal pay, along with the impact of any measures.[26] These reports have to be made every three to five years, depending on whether or not the employer is bound by a collective wage agreement.[27] Under the Transparency in Pay Act requirements, however, employers are not required to disclose company-wide pay data. The lack of an affirmative pay data reporting obligation weakens the overall usefulness of the reporting obligation in incentivizing employer self-evaluation and correction and improving the efficiency of government outreach and enforcement efforts.

In an effort to allow employees to more easily assess their pay in relation to their co-workers, employees in Germany working for employers with more than 200 employees may request information about the salaries of co-workers in similar positions. Specifically, the information is to include the average monthly gross salary of at least six co-workers of the opposite gender who perform similar work, as well as information about bonuses or other perks.[28]

Sweden, Finland, and Norway

Sweden, Finland and Norway take a different approach to transparency; the government makes income tax information public for everyone who files taxes, enabling individuals to easily find out what their boss and coworkers, but also neighbors and friends are being paid.[29] This approach normalizes pay transparency across the population.

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In the United States, the wage gap has barely budged in over a decade and continues to shortchange women and people of color. International pay transparency models provide creative ideas for increasing pay transparency in the United States. We must continue to take action to increase pay transparency to help employees and government agencies uncover pernicious pay discrimination and encourage employers to engage in self-evaluation of their pay practices. These measures will help close the gender wage gap once and for all.

1. As Justice Ginsburg has noted:
   "Pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee's view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for those differentials. Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves. Pay disparities are thus significantly different from adverse actions "such as termination, failure to promote, ...or refusal to hire," all involving fully communicated discrete acts, "easy to identify" as discriminatory." Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 645 (2007) (Ginsburg, J., dissenting).
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