

**Baker  
McKenzie.**

# Gender Pay Gap and Pay Equity





# Gender pay and pay equity

## What is the gender pay gap; what is pay equity?

The gender pay gap relates to the average difference in pay between men and women. Pay equity or equal pay relates to the question of whether men and women are paid equally for equal work.

Many organizations have a gender pay gap; this is typically influenced by a variety of issues, but particularly the lack of women at senior levels of the organization. That in itself may be driven by a range of reasons, including lack of career progression, and occupational and career choices. It does not necessarily indicate that there is discrimination either in relation to pay or progression, but in some organizations, that may be a factor.

## Why does it matter?

Narrowing the gender pay gap is not just about addressing inequality. Evidence shows that diverse organizations outperform their peers (see box). It is also important from a talent perspective, as candidates may view it as an indicator of whether the employer has an inclusive culture that will provide a level playing field in terms of opportunity.

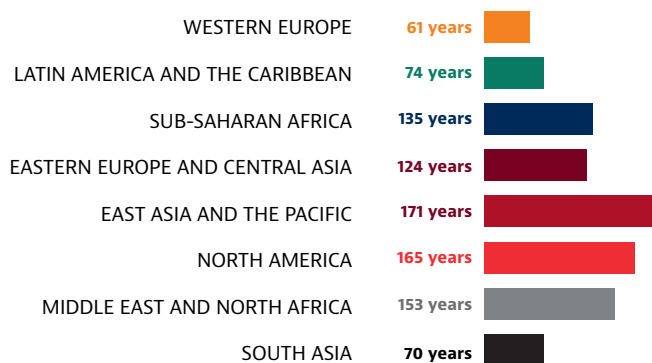
The topic attracts significant investor interest, and regulation is also increasing, meaning this is both a brand and financial issue.

## What is being done about it?

Most countries have legislation prohibiting discrimination in respect of employment decisions and requiring equal pay for equal work. But the gender pay gap has been slow to close, prompting a number of governments to introduce more stringent requirements. These range from requiring employers to report publicly on their gender pay gap, to more aggressive regulation such as requiring disclosure of compensation paid to peers and bans on asking job applicants about their previous salary.

Investor groups, particularly in the US and UK, are also becoming more active in using voting powers to demand transparency and action.

## When will regions close the economic gender gap?



Source: Global Gender Gap Index 2018, World Economic Forum

Companies in the top quartile for gender diversity on their executive teams were 21% more likely to have above-average profitability than companies in the fourth quartile. For ethnic/cultural diversity, top-quartile companies were 33% more likely to outperform on profitability.

Delivering through diversity,  
McKinsey & Co.

Companies with at least one female board member outperform by 26% those with no women on the board in terms of share price performance.

Credit Suisse Research Institute

## GLOBAL AVERAGE, ANNUAL EARNINGS 2018



\$12k



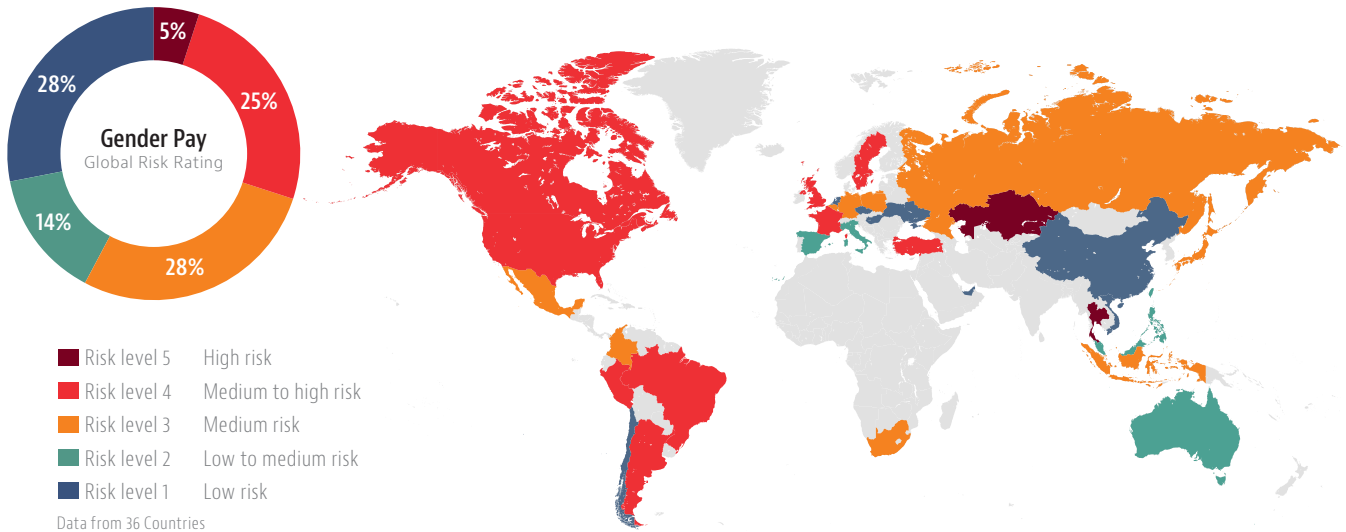
\$23k

Source: Global Gender Gap Index 2018,  
World Economic Forum

# The global picture

We asked our expert lawyers across the globe to rate the overall risk gender pay reporting obligations pose to organizations in their jurisdictions, on a scale of low, medium and high.

## Gender pay reporting regulation heat map



## Jurisdiction spotlight



US

- The US continues to take steps to combat the gender pay gap
- Legislation making it unlawful to inquire about a prospective employees' salary history, has been enacted in a number of states including California and New York
- New legislation in California means all companies in the state must have at least one female on their board of directors, by the end of 2019



UK

- Companies in the UK faced their second year of gender pay reporting by April 5, 2019
- 2019 is likely to see a continued focus on pay transparency with the government is consulting on extending pay reporting obligations to encompass the ethnicity pay gap



France

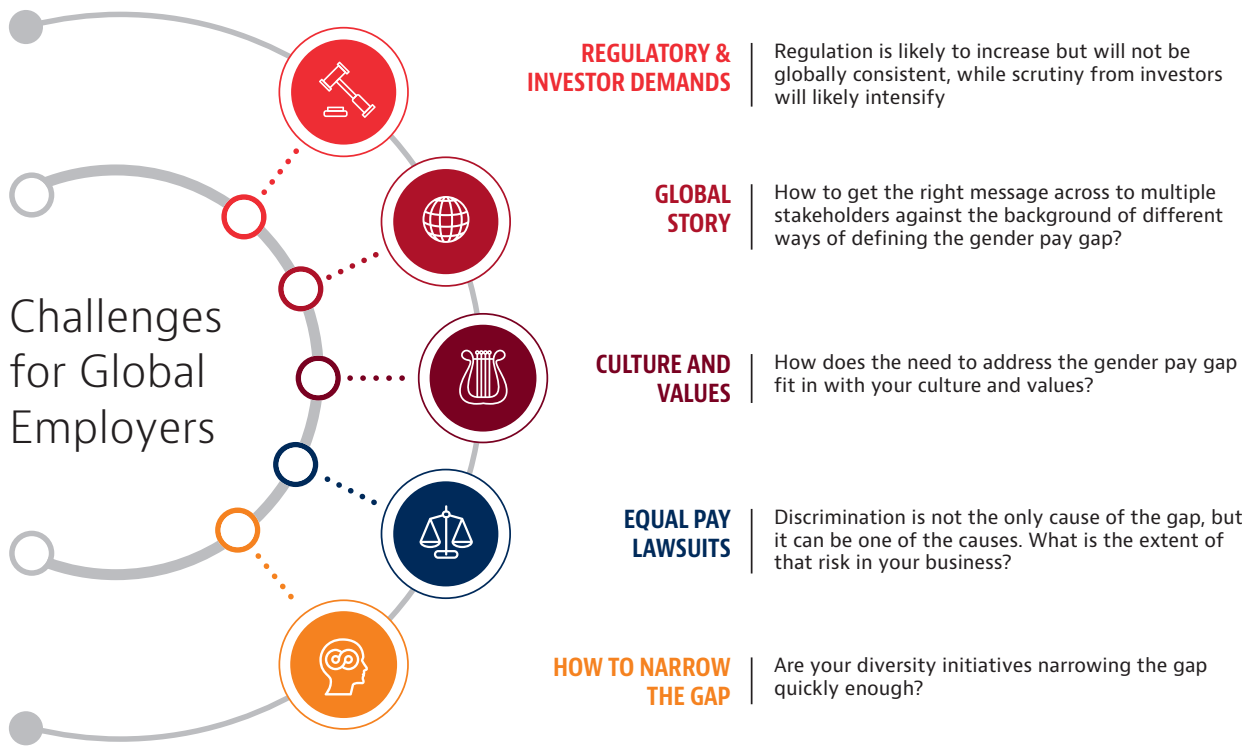
- Gender pay gap reporting is now mandatory for employers in France
- Companies with more than 1001 employees were required to publish their results on March 1, 2019
- Gender pay reporting requirements will extend to companies with 251 - 1000 employees from September 1, 2019, and from March 1, 2020 with companies with 50 - 250 employees
- Companies will also be required to implement correct measures to address any gaps, and failure to do so could result in financial penalties



Spain

- Companies are now obliged to keep a wage register by professional category and gender, that should be available for employee representatives to review
- For employers with more than 50 employees, companies will be obliged to provide justification when the average pay for employees of one gender is at least 25% or above that of the other

# Challenges for Global Employers



## Action plan for global employers:

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Identify regulatory and investor requirements and key potential risks
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Identify who is responsible for gender pay compliance in each country and who are the key stakeholders
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Assess extent of compliance with existing gender pay gap requirements and impact of existing and likely future requirements
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Assess areas of key risk and exposure, including by carrying out a pay audit where appropriate
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Design gender pay action plan and global communication policy

# Support for you

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Drawing on our team of 700 labor and employment lawyers globally, we can provide you with support on gender pay and pay equity compliance, audit your existing gap, advise on key risk areas and strategies to address them. We also help companies in times of crisis to minimize brand risk.

Our services include:

## COMPLIANCE



**How we can help you.** We can advise you on gender pay and equal pay obligations by jurisdiction and on the likely developments globally. We can help you identify hotspot countries those with the highest reputational, regulatory, financial and employee relations risks of non-compliance. We can advise you on the nuances in each jurisdiction where the company has employees, from the types and forms of “compensation” to include in audits, to how to properly aggregate and share data in light of applicable data privacy regulations.

**How we have helped others.** We have advised numerous multinationals on gender pay gap reporting requirements in the UK and Australia, including how to calculate the gap and on the content of their accompanying statements and communications with employees.

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## EQUAL PAY AUDITS AND RISK MANAGEMENT



**How we can help you.** We can undertake pay audits (including our own in-house analysis of data) to identify potential exposure, and advise on strategies to reduce legal risk. We can also advise on pay policies and training materials. We know confidentiality is paramount and take great care to ensure and protect legal privilege whenever possible.

**How we have helped others.** Advised a global banking and financial services company on the level of their exposure to equal pay claims in the UK. This involved working closely with the client’s reward teams to research their methodology for setting pay, analyzing their compensation data to determine areas of exposure and recommending mitigation actions.

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## LITIGATION



**How we can help you.** Our experienced employment litigators regularly defend individual and class actions and challenges to pay practices. We partner with our clients to develop a strategic, cost-effective approach to proactively minimize risk in the pay equity arena as well as assisting clients in managing communications.

**How we have helped others.** In the UK, we have defended a number of financial services clients against allegations relating to pay and bonus, often combined with complaints about career progression, and often involving numerous comparators.

Represented a US subsidiary of an international retail business in a pay and promotion pattern or practice discrimination action originally brought by the EEOC in the Western District of New York sounding in gender discrimination. After settling with the EEOC on favorable terms, a companion private class action remained pending in the American Arbitration Association, which certified a class of approximately 70,000 current and former female employees. In July 2017, the Second Circuit Court of Appeals effectively nullified the class based upon an argument made before the AAA. This case was the largest pattern or practice case brought by the EEOC, and the largest private gender pay and promotion case ever brought in arbitration.

# Key contacts

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## ASIA PACIFIC



**Ben Burke**  
Partner, Melbourne  
+61 3 39 617 4596  
ben.burke@  
bakermckenzie.com

## EMEA



**Monica Kurnatowska**  
Partner | London  
+44 20 7919 1870  
monica.kurnatowska@  
bakermckenzie.com

## LATIN AMERICA



**Tatiana Garces**  
Partner | Bogota  
+57 1 634 1543  
tatiana.garces@  
bakermckenzie.com

## NORTH AMERICA



**Susan Eandi**  
Partner | Palo Alto  
+650 856 5554  
susan.eandi@  
bakermckenzie.com

## **Baker McKenzie helps clients overcome the challenges of competing in the global economy.**

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

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