

Spotlight on the gender pay gap in Latin America

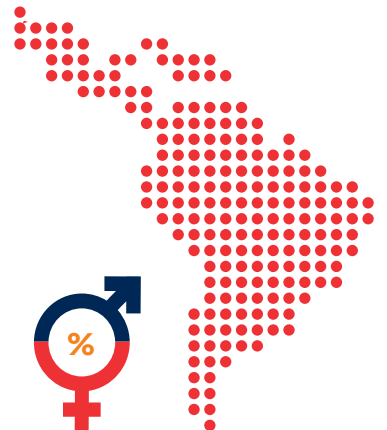
GENDER PAY GAP SERIES - NO. 7

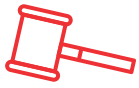
The gender pay gap in Latin America remains wide—29.8% according to the World Economic Forum. However, with public attention growing in recent years, we do not expect it to stay this way forever. Laws regulating gender equality in the workplace are underdeveloped in Latin America. However, foreign investment in Latin American subsidiaries is having a positive impact by making diversity and inclusion initiatives relevant in a way we have not seen previously. In fact, many Latin American companies are adopting HR policies that go beyond current legal standards.

A glance at the gender gap in Latin America

The Forum's 2017 Global Gender Gap Report lists Latin American and Caribbean countries in the middle of the overall global gender gap, behind Western Europe, North America, Eastern Europe and Central Asian countries. Sadly, many countries in Latin America are particularly unbalanced in terms of women's economic participation and opportunities for females. Brazil, Peru, Argentina, Chile and Mexico are all below average. Colombia and Venezuela are faring better by holding places 32 and 67 of 144 countries, respectively.

There is also a great disparity between women and men when it comes to equal pay for similar work. Colombia, Peru, Brazil, Chile, Mexico and Argentina are literally in the lowest rankings. The only exception is Venezuela, which is 48th. The percentage a woman earns compared to a man in Colombia, Peru, Venezuela, Brazil, Chile, Mexico and Argentina is between 68% and 49%. In other words, women in these countries earn from 49 to 68 cents for every dollar a man makes. Finally, very few women hold board or senior management roles in LATAM.





Legislation in Latin America addressing the gender gap



Governments in Latin America have not been indifferent to these statistics and most have made incipient efforts to address the gap in their countries. Argentina, Brazil, Chile, Colombia, Mexico and Venezuela require equal pay among men and women. Peru recently adhered to this initiative by enacting a new law prohibiting gender pay discrimination. Generally, these laws mandate equal pay for equal work and most countries embrace the International Labor Organization's notion of "*work of equal value*." In addition, gender discrimination is forbidden in these countries, providing different legal actions available to employees against employers that tolerate gender discrimination in the workplace.

In Mexico, for example, employers tolerating workplace discrimination may be subject to penalties from the Labor Ministry. Employees can also file a constructive dismissal claim for payment of the mandatory severance, and a complaint before the National Commission to Prevent Discrimination to seek: (a) payment of damages; (b) a public warning; or (c) a public or private apology. Additionally, employees can also bring civil actions requesting payment of "moral damages" and criminal actions for discrimination.



Reporting obligations in Latin America

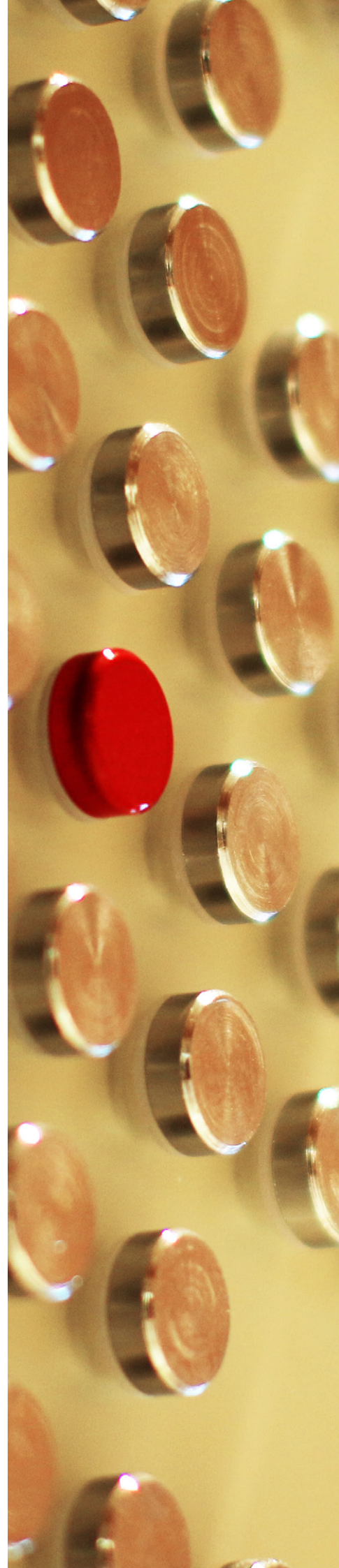
Although these laws are important and undoubtedly advance women's rights, the truth is that the gender pay gap has been slow to close. This is especially the case in Latin America, where it is expected to take 64 years to close¹. The lack of effective regulation requiring companies to demonstrate compliance with gender pay-related legislation to government bodies or other authorities is a significant obstacle to closing the gap.

Reporting requirements are only in place in Colombia and Peru.

- In 2011, Colombia enacted a law requiring companies to maintain a gender pay record for visits or audits by the Ministry of Labor. Although this is not a **reporting** requirement itself, it obliges employers to keep a record that includes the following information from a gender perspective: remuneration, job descriptions, conditions for admission to employment, employment conditions and more.
- In Peru, on December 28, 2017, Law No 30709 ("Law prohibiting pay discrimination between men and women") came into effect. In general terms, the law:
 - a. bans wage discrimination between men and women
 - b. obliges companies to prepare and keep wage scales detailing employee categories and duties (within 180 days following the law enacting date)
 - c. requires companies to inform employees about salary and remuneration policies, performance evaluation criteria and any other factors impacting remuneration

The fulfillment of these new obligations will be subject to inspection by the Superintendency of Labor Inspection (SUNAFIL) and regional labor offices (Labor Authority) as of **January 1, 2019**. The law establishes that continued discrimination may be considered a "hostile act," giving grounds to employees to initiate legal action against employers to claim constructive dismissal and the payment of the mandatory severance. In addition, companies may be subject to significant penalties, which will be determined based on the number of employees affected by the hostile act.

¹ Source: Global Gender Gap Index 2018, World Economic Forum.





Trickle down effect in Latin America

Even though legislation is still slow to come on gender pay-related issues, many multinational companies are picking up the slack and demonstrating a strong proclivity to tackle the gender pay gap through corporate governance. Multinational companies with headquarters in countries with more developed gender gap legislation (for example, in the UK) have created a trickle down of progressive policies. Empirical data confirms these companies outperform peers and have a significant advantage when attracting talent. Candidates and employees see these initiatives as an indicator of an inclusive culture that provides a level playing field in terms of opportunity.

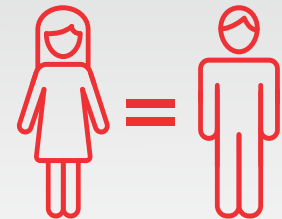
Due to this trickle down effect, many multinationals in Latin America have voluntarily started implementing things like mentorship programs, home office and flextime schemes, and maternity and paternity leaves among other progressive policies in order to attract, retain and promote women. To assist companies in achieving their goals in this area, we collaborate with clients to conduct internal audits to diagnose any unintentional pay gaps and to develop action plans for addressing them in an ongoing and preventative manner.

In Mexico, for example, some multinationals have chosen to adopt the "Mexican Standard for Equality and Discrimination" issued in 2015 by the Labor Ministry and the National Commission to Prevent Discrimination. By adopting the standard, companies are awarded a certificate recognizing workplaces with anti-discrimination practices. To be certified, companies must submit to an audit to verify the policies and practices that they have in place. The audit includes a review of the company's:

- recruitment and hiring process
- training, promotion, equal pay and anti-harassment policies
- designation of a committee in charge of implementing policies on this topic
- gender quotas

Latin America and the gender gap in the years to come

The discouraging data on the gender pay gap in Latin America, as well as evidence of some multinational companies voluntarily addressing issues relating to female retention and equal remuneration, has prompted some governments to add gender pay to their legislative agenda and to start to introduce more stringent requirements on the matter. In our view, the gender pay gap is a hot topic in Latin America for employers and will only become more so in the years to come.



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Our gender pay gap series

The Baker McKenzie Gender Pay Gap series will be spotlighting gender pay gap regulations in key jurisdictions and exploring the central issues, including how to narrow the gap.

For more on the global picture and how our global network of over 700 labor and employment lawyers are helping clients address this issue, see the [Gender Pay Gap series](#).

Next in the series: Spotlight on the gender pay gap in Australia

