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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.

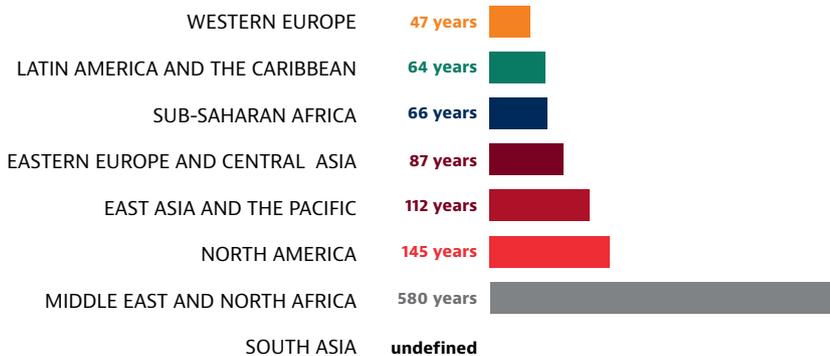
The topic attracts significant investor interest, and regulation is also increasing, meaning this is both a brand and financial issue.

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 2017, 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 2017



\$12k



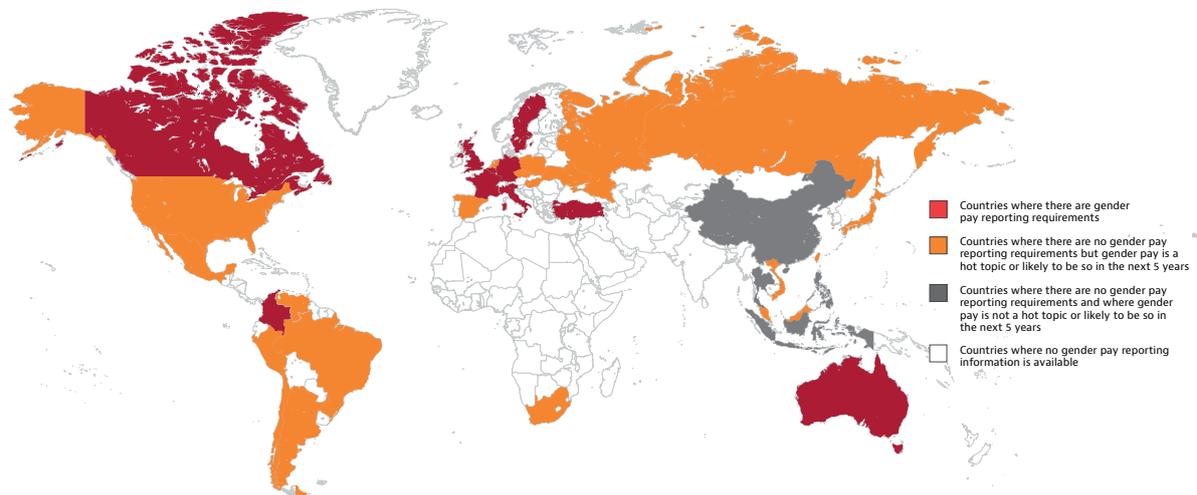
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Source: Global Gender Gap Index 2017,
World Economic Forum

The global picture

In 2017, we asked our expert lawyers across the globe to tell us which countries had some form of pay reporting requirements, where gender pay is like to be a hot topic in the next five years and where is it not likely to be a hot topic in the next five years.

Gender pay reporting regulation heat map



Jurisdiction spotlight



US

- In August 2017, the Trump administration pressed pause on the federal gender pay-data collection provisions
- A growing number of city and state governments are acting to pass their own laws (e.g., Massachusetts, California, Delaware, Oregon, New York City and Philadelphia all recently passed salary history bans)



UK

- Introduced gender pay gap reporting in 2017
- Employers with 250+ employees must publish gap in base pay and bonus pay on their website
- Government is hosting database enabling public to make comparisons between employers



Germany

- Introduced right to information about compensation paid to peers in 2017
- Encourages employers with 500+ employees to carry out pay audits
- Requirement for employers with 500+ employees to publish equal pay/pay equity reports



Australia

- Introduced gender pay gap reporting in 2012
- Employers with 100+ employees must submit data about gap in base pay and total pay to the Workplace Gender Equality Agency (WGEA)
- WGEA publishes reports by sector

Challenges for Global Employers



Challenges for Global Employers

REGULATORY & INVESTOR DEMANDS

Regulation is likely to increase but will not be globally consistent, while scrutiny from investors will likely intensify

GLOBAL STORY

How to get the right message across to multiple stakeholders against the background of different ways of defining the gender pay gap?

CULTURE AND VALUES

How does the need to address the gender pay gap fit in with your culture and values?

EQUAL PAY LAWSUITS

Discrimination is not the only cause of the gap, but it can be one of the causes. What is the extent of that risk in your business?

HOW TO NARROW THE GAP

Are your diversity initiatives narrowing the gap quickly enough?

Action plan for global employers:

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

Support for you

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.

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.

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.

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