Increased scrutiny on Equal Pay

The importance of an active and timely approach to ensuring Equal Pay between men and women in the workplace

The difference between the average wage of women and the average wage of men, expressed in a percentage, is called the Gender Pay Gap. In the Netherlands, the pay gap equals 13.7%¹. Equal Pay in a company means that women and men in similar positions are paid the same wage, which is often referred to as Equal Pay for equal work. The terms Gender Pay Gap and Equal Pay are similar, but in this article the focus is specifically on Equal Pay. Not only European, but also Dutch measures have been proposed. The new proposed legislation may have consequences for your company.

Legislation

In principle, an employer must pay equal wage for work of equal value to both men and women working in the same company (Article 7:646 DCC). Equal pay for equal work has been a right in the EU since 1957, but is not always the reality. The Dutch proposed legislation on Equal Pay for women and men is still pending, and is currently still under discussion in the House of Representatives. Combined with the proposed European Equal Pay directive, any existing pay differences for similar work in your company may pose risks.

This article highlights the European and Dutch legislative proposals and the potential consequences they may have for your company. Since it is plausible that the proposed European directive will be implemented in the Netherlands, an overview of both is given below.

**Content of the proposed European directive**

- Employers must provide wage transparency to job applicants. Either in a published job vacancy or before the interview, employers must provide information about the starting salary or the allotted salary bands. Employers are not allowed to inquire about the nature of prospective employees’ previous or current compensation.
- There is a reporting obligation on the pay gap. Employers with at least 250 employees must disclose information on any existing pay gap between their female and male employees performing equal work or work of equal value.
- The employer, in cooperation with employees’ representatives, should carry out a pay evaluation in case the pay reporting shows that there is a gender pay gap of at least 5%, and the employer cannot justify this gap based on objective, gender-neutral factors.
- Measures are being taken at a European level to ensure that victims of pay discrimination have better access to the legal system. For example, the burden of proof is placed on the employer to prove that there is no pay discrimination.

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Content of the proposed Dutch legislation (application of the EU directive)

- The new law includes a certification system, in which companies with more than 250 employees must obtain a certificate which shows that men and women are paid equally in the same position and for the same work performed every three years.
- Companies that have a works council in place will be obliged to provide their works council annually with information on the difference in pay between men and women in comparable positions. Companies with at least 50 employees must also include this information in their management report. In addition, at the request of the employee, the employer must provide access to the anonymized data of wages of other employees who work in the same or similar positions.
- Employees are given the opportunity to file a complaint with the employer in the event of inexplicable differences in pay. The employer is obliged to inform the works council and to deal with the complaint within two months. If the complaint is not handled appropriately, the employee can go to the Netherlands Institute for Human Rights.

The proposed legislation has not been adopted yet, but the EU directive is expected to be converted into Dutch Law in 2022. The aim of the proposed legislation is to make companies aware of Equal Pay in their company and to persuade them to act on it. If employers do not comply with the measures, they may have to deal with fines imposed by the government in the future.

Social point of view
Aside from the legislative aspect, Equal Pay for men and women in business is also of great social importance. It is difficult to gain insight into the pay gap in companies due to the influence of many different factors, such as job level, work experience, education and age. One contributing factor to the skewed distribution of wages is the underrepresentation of women in higher positions and the overrepresentation of women in lower positions. Another reason is the implicit bias in companies that causes women to receive a lower wage than a male colleague in the same position. This is considered very unfair by society, given that women provide the same added value as men, but are still paid less.

Tight labour market
In addition to the fact that closing the pay gap is becoming increasingly important for employers from a legal and social point of view, companies are also faced with a tight labour market, which means that there is more demand than supply of employees. Companies compete with each other for talent, which manifests itself in the so-called War for Talent. As a result, employee wages become all the more important for attracting and retaining a talented workforce. Potential employees are more likely to choose a company with a fair compensation policy than companies that do not reward their employees equally.

What’s in it for the employer?
Equal Pay in companies increases both the attractiveness of the employer and the motivation of employees. As a result, the turnover costs of companies will decrease significantly. In addition, a fair remuneration policy contributes to more gender diversity in the company. In the long run, a diverse workforce leads to better business results. Considering the War for Talent, it would be wise for employers to apply a transparent remuneration policy and to be able to demonstrate this. This requires an active approach.

Employer of the Future
As mentioned earlier, the ideal image painted in 1957 of Equal Pay for equal work is far from the reality. Given the recent measures that are proposed in both Dutch and European legislation, it can be said that this is a cornerstone for Employers of the Future. With the increased participation of women in the labour market, diversity and inclusion within companies and the War for Talent, it is essential that companies take action now to be able to consider themselves an Employer of the Future. In their journey towards becoming an Employer of the Future, Equal Pay for men and women is a necessity.

Companies are often not sufficiently aware that closing the pay gap and providing Equal Pay for equal work is a lengthy process that requires a proactive attitude from the employer, making it important to start now!

Conclusion
In 2022, sustainable employment is of greater importance than ever. Making the workforce future-proof, offering continuity and considering oneself an employer of choice can be achieved, among other things, by offering Equal Pay for equal work to employees. Equal Pay is not only legally required, but also more relevant than ever from a social point of view.

Deloitte is happy to support employers and their employees in their journey towards Equal Pay and offers help with the transition of employers to a gender-neutral pay policy. Deloitte has developed a step-by-step approach and can offer tailor-made advice to your company to start this process on time and to support you with your Equal Pay policy.

This article has been written by Bijou Voskamp and Fleur Janssen, in collaboration with Sylvana Slot.

1 Source: ATRIA, Institute on gender equality and women’s history, Gender pay gap in the Netherlands | News and publications (institute-genderequality.org)

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