

## NOT ONE STEP CLOSER TO IMPLEMENTATION OF PAY TRANSPARENCY

On 23rd June 2025 the Act Amending the Labour Code (the "**Act**") that introduces certain changes resulting from the provisions on pay transparency, as per the requirements of the Pay Transparency Directive (Directive 2023/970 of 10 May 2023, hereinafter referred to as the "**Directive**"), was published. The Act comes into force six months after its publication.

The Act addresses only a marginal aspect of the Directive's requirements. In addition, the wording of the new regulations is such that in practice the Act will not bring any meaningful changes with respect to pay transparency. It does, however, impose additional administrative obligations on the employers, the practical value of which is limited.

At the same time, the Government is working on regulations that are to implement the fundamental, systemic requirements of the Directive and that may bring material changes. However, the Government has not published a draft of the regulations yet, and it is unclear when it plans to do so. This is all the more concerning because the deadline for employers to implement the requirements of the Directive is approaching. Adapting to these systemic requirements will involve considerable organisational effort on the part of employers, and taking these actions at the last minute is certainly not optimal.

### Key issues

- Requirements of the Act concerning pay transparency in the recruitment process
- Deadline for informing a candidate of the proposed salary
- New administrative requirements
- Fundamental Requirements of the Directive
- How to prepare?

## Requirements of the Act concerning pay transparency in the recruitment process

### Deadline for informing a candidate of the proposed salary

The Act only addresses the issue of pay transparency during recruitment. In addition, the wording of the new regulation is such that in practice it changes very little when compared to the law already in force.

Namely, under the Act, a job candidate receives information from the employer about remuneration sufficiently in advance to ensure informed and transparent negotiations:

- in the advertisement of the vacancy;
- before the interview – if the employer did not announce the recruitment or did not provide information in the advertisement of the vacancy;
- before entering into an employment relationship – if the employer did not announce recruitment or did not provide information about remuneration either in the advertisement or before the interview.

The above essentially means that the employer has a legal obligation to inform the employee of the level of remuneration **no later than before the conclusion of the employment relationship**. The option to provide this information at such a late stage results directly from the Act and failure to provide it at an earlier stage (i.e. in the advertisement of the vacancy or before the interview) does not require any justification.

It is not clear why the legislator decided to mention three different moments when information on remuneration may be provided to the candidate, since the legal obligation only materializes in the latest of these moments. The usefulness of the regulation is also questionable – in light of the current legal requirements and market realities, it is rather difficult to imagine a situation where the employer does not provide a candidate with information on pay until the employment relationship is entered into (i.e. until the date work commences).

The requirement to provide information on proposed remuneration at a time enabling the candidate to review the information and conduct informed and transparent negotiations indicates that the employer should provide that information prior to the negotiations of the terms of employment. It seems that this requirement should be read in conjunction with the Act's explicit prohibition on asking job candidates about their remuneration with their current employer. By these two regulations, the legislator probably wanted to eliminate the practice whereby salary negotiations begin not with the employer's presenting the employee with a salary offer, but rather with the employer's clear preference for the employee to state the expected remuneration first. This direction of changes is, in our opinion, the right one, since the approach of asking the employee for their expected salary first is not only usually beneficial for employers, but may also be one of the reasons underlying pay gaps between women and men. Nevertheless, the wording of the new regulations does not seem precise enough to actually eliminate this approach of employers to negotiations.

### New administrative requirements

The Act also introduces a requirement that, in addition to providing the candidate with the above-mentioned information on salary (or the range

thereof), the employer should also provide the relevant provisions of collective bargaining agreements or remuneration rules in force. It seems that it is not necessary to provide with the full text of these documents (although of course this may be done) and it will be sufficient to provide the text of the provisions affecting the candidate's potential future salary. Most importantly however, all the above information (including the proposed salary) must be presented to the candidate in writing or in electronic form. Although some Polish employers were already providing candidates with offers containing the proposed remuneration package (especially the candidates for higher positions), for many employers this will mean a new, additional bureaucratic burden connected with the recruitment process.

## Fundamental Requirements of the Directive

We see no rational justification for the legislator to treat the regulation of the above-mentioned issue as a priority, given that it has almost no practical significance for combatting the pay gap and ensuring pay transparency - when compared with the whole range of systemic solutions and requirements introduced by the Directive. To adapt to these requirements, employers may need to conduct a detailed audit and redesign the entire pay structure. The aim of the Directive is to enforce the implementation of transparent pay systems that ensure equal pay for equal work or work of equal value between men and women. This means, in particular, that the gender pay gap should not be higher than 5%.

Employers with 150 employees or more should ensure that their pay systems comply with the requirements of the Directive from **1 January 2026**.

**The second half of 2025 is therefore the last moment for employers to take steps to prepare for the implementation of these requirements.** This is all the more challenging given the unlikelihood that comprehensive statutory regulations on pay transparency will be adopted in Poland before the end of the third quarter of this year. For the time being, employers should therefore rely directly on the provisions of the Directive.

### Access to information

Under the Directive, employees have the right to be informed by their employer of their individual pay and the average level of pay of employees performing the same work or work of equal value.

### Reporting

The Directive imposes reporting requirements on employers. Employers with more than 150 employees are required to submit the first report by 7 June 2027, and the report should cover the calendar year preceding its submission, i.e. 2026. Employers with 100 to 149 employees are required to submit the first report by 7 June 2031 and every three years thereafter.

The reporting requirement applies to information on:

- the gender pay gap;
- the gender pay gap in complementary or variable components of pay;
- the median gender pay gap;
- the median gender pay gap in complementary or variable components;

- the proportion of female and male employees receiving complementary or variable components;
- the proportion of female and male employees in each quartile pay band;
- the gender pay gap between employees by categories of employees broken down into ordinary basic hourly or monthly pay and complementary or variable components.

## Consequences of a pay gap

If the report filed or information provided individually to the employee shows a pay gap that is not justified by objective factors, the employer exposes itself to the risk of sanctions from the state authority and the requirement to provide explanations and take corrective action. It is not yet known which authority in Poland will be competent in these matters, however it is likely to be the State Labour Inspectorate.

Perhaps even more importantly however, the existence of a pay gap could result in claims being brought by individual employees, who are guaranteed full compensation by the Directive, i.e. compensation that puts the employee in the position they would have been in had they not been discriminated against. In short, this means that the employee's salary is to be equalized to the level to which they would have been entitled if they had not been discriminated against.

Further, the existence of an unjustified pay gap may of course cause reputational risks for the employer and result in an unpleasant atmosphere in the workplace.

## How to prepare?

To comply with the requirements of the Directive, employers should ensure that their pay system is characterised by a gap in the average level of pay between women and men of no more than 5% in any employee category. To achieve this, it will be necessary to clearly organize and define:

- job positions – according to categories of employees. A category of employees means a group of employees performing the same work or work of equal value, grouped on the basis of non-discriminatory and objective criteria;
- remuneration and its components – with respect to each employee category.

The first step is therefore to review and analyse the internal organisational structure, the approach to valuation of job positions, and salary documentation, including the remuneration rules. In particular, in light of the requirements of the Directive, setting out in the remuneration rules the salary ranges for individual positions or groups of positions may prove unavoidable (this is not a new requirement, but in practice it has not been strictly complied with to date). The classification of employees in specific categories will also be a challenge because it will require assessment of the job positions in light of the value of the work performed.

The above steps may prove to be just the beginning of the necessary actions. The next step should entail a preliminary analysis to identify the current pay gap. If the pay gap is 5% or higher, it will be necessary to take remedial

action, identify the reasons underlying the gap and to verify whether there are any non-discriminatory, objective and gender-neutral criteria to justify the pay gap. If no such criteria are identified, the only solution may be to adjust the remuneration of individual employees.

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