Seyfarth’s Pay Equity and International Law Groups Present:

An International Women’s Day Webinar:

Pay Equity Around the Globe

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Joining You Today

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Is global pay equity required?

As a legal requirement: No
No country or tribunal requires that you pay women in China similarly to their male counterparts in Germany, even after adjusting for market.
As a diversity and employee relations necessity: Maybe

Happy International Women’s Day
(a day early)

Increasing numbers of employers are undertaking global pay equity audits.
A look at the numbers . . .
By the Numbers

Global Average, Annual Earnings

2017

$12k

$21k

Source: Global Gender Gap Index 2017, World Economic Forum
The Income Gender Gap

Over 10 years

Among high income countries

Source: Global Gender Gap Index 2017, World Economic Forum
Think Globally, Act Locally
Global Pay Equity Trends

Non-Discrimination

Pay Transparency

Reporting Requirements
EUROPE
Iceland

• High-water mark on pay equity laws

• Public and private bodies employing at least 25 employees are now required to obtain a certificate from an accredited auditor as proof that women and men in their employment are paid on an equal basis. This certificate will be valid for 3 years.

• Rules staggered by employer size: employers with 250+ employees have until the end of 2018 to become certified, employers with 90+ employees but more than 25 have until the end of 2021.

• Employers who fail to become certified will face a daily fine of ISK50,000 ($400). All audit results will be published.
Germany

- ‘Act on Advancing the Transparency of Pay Structures’ came into force on 6th June 2017. Applies to companies with more than 200 employees.

- Gives employees the right to request the median pay of colleagues of the opposite sex in the same or a comparable role employed at their organization once every 2 years.

- Employer has 3 months to comply with the request. If the employer fails to release the information a presumption of unequal treatment will be made – employer will have to disprove.

- Companies employing 500 + employees must publicly report their plans to promote equality/equal pay every 3/5 years. But final version of law puts monitoring of equal pay in practice on a voluntary basis.
France

- Again, equal pay principle already exists.

- Also, mandatory negotiating on equal pay and gender equality through France’s collective bargaining system (larger companies only, plus national sector-level bargaining).

- Criticism that paid lip service only, and that no real sanctions.
  - From recent press reports, the Macron government is looking at Germany as a model for pay transparency. Considering requiring companies to release salary averages for men and women employees, and to use software to analyze disparities.
    - Concrete proposals awaited.
UK – Equal Pay - Background

• UK passed the Equal Pay Act in 1970 specifically to address gender pay disparity. Now expanded under the Equality Act 2010.

• Gives a right to equal pay for employees doing “equal work”.
  – Defined as “like work”, “work rated as equivalent” or “work of equal value”.

• Gives scope for equal pay claims where male-dominated jobs are typically paid at higher rates than female-dominated jobs.
UK – Attempts to tackle the gender pay “gap”

- Since 2010 “pay secrecy clauses” in contracts unenforceable so employees can share pay detail (and not be disciplined) if aim is to identify discrimination.

- Attempt to promote voluntary pay disclosure in 2011. 300 employers signed up; only 11 disclosed.

- Since October 2014, Employment Tribunals can order employers who lose an equal pay claim to carry out equal pay audits. Outcome of the audit is the publication of the gender pay gap for the role, statement of the reasons for those differences and set out the employer's plan to avoid breaches occurring or continuing. Low financial penalty for non-compliance (£5,000).

- Limited take up – though may be factor in settling litigation.

- Persistent pay gap between men and women in particular in the private sector has now led to new transparency rules: the Gender Pay Gap Regulations.
UK Gender Pay Gap Reporting Obligations

• **Who does it affect?**
  – All employers who employed more than 250 UK employees as at 5 April 2017, need to file a gender pay gap report by 5 April 2018 on pay over the previous 12 months. Ongoing annual obligation to publish a report

• **What must be reported?**
  ▪ **Overall gender pay gap figures** for relevant employees, calculated using both the mean and median average hourly pay
  ▪ **Numbers of men and women** in each of four pay bands (quartiles), based on the employer's overall pay range
  ▪ Information on the employer's **gender bonus gap**, i.e. the difference between men and women's mean and median bonus pay over a 12-month period and the proportion of male and female employees who received a **bonus** in the same 12-month period
  – Employers also have the option to include a narrative explaining any pay gaps or other disparities, and setting out what action, if any, they plan to take to address them
UK Gender Pay Gap Reporting Obligations

• Where must it be reported?
  – The report must be published on the company’s own website and kept online and publicly available for three years. Business must also upload the information to a government website.
  – A written statement confirming that the gender pay gap information is accurate must also be published. This must be signed by a director or equivalent senior individual.

• Enforcement
  – The UK’s Equality and Human Rights Commission (EHRC) can conduct investigations and is consulting on enforcement strategy.
  – Options are publishing tables of employers' reported gender pay gaps, establishing a database of compliant employers (*carrot*), and ultimately potentially unlimited fines (*stick*).
APAC and LATAM
Australia

• Workplace Gender Equality Act – non-public sector employers with more than 100 employees must submit annual report against established indicators on status of gender equality in the workplace.

• Fair Work Commission (labor tribunal) on application of an employee, employee organization, or Sex Discrimination Commissioner, may make any order it considers appropriate to ensure equal remuneration for men and women workers for work of equal or comparable value.

• Most cases brought with regard to industry pay inequity – workers in female dominated industry have argued that they were paid less than male workers engaged in another industry viewed as having comparable value.
China

• Equal pay for women has been a constitutional concept since 1954. Though not explicitly stated, it derives from the protection for women in the PRC to enjoy “equal rights with men in all aspects of political, economic, social and family life.”

• Constitution Law (1982) more explicitly referred to “equal pay for equal work” and pay between women and men.


• “Equal pay for equal work” was mentioned in articles 11,18 and 63 of the Employment Contract Law of PRC (2008) and its amendment (2012), which became a general principle in employment related laws and regulations.
• Equal Remuneration Act enacted in 1976.

• Court interprets this requirement as mandating payment of wages at equal rates for men and women for the same work or work of a similar nature.

• No public or government reporting obligation.

• Equal pay extends beyond gender – cases have found employers liable where they offered different sets of benefits to different sets of employees without business rationale.
Brazil

- Brazil Labor Code requires equal pay for equal work.
- Constitution and Labor Code prohibits discrimination against women in employment.
- Equal pay must be provided for workers' assignments that are identical, provide equal value, and provide at same locality.
- Tenure may be used as pay differentiation factor, but only if there is at least two years of difference performing the same function.
How Should Employers Approach their Global Pay Programs: Some FAQs
Will the Iceland law become the new global standard?
The general trend to more governance around pay equity is spreading in some parts of the world.
Can and should we conduct a global pay analysis?
Yes / But

**Who?**
- Typically just gender
- Remember: positive discrimination claims

**What?**
- Analysis country-by-country

**How?**
- Data privacy considerations
- Privilege issues
- Complicated adjustment process
- Positive
Data privacy

• Privacy aspects
• Individual pay data will be “personal data” if individuals identifiable
• Consider scope of data privacy notices and consents
• Consider whether basis for inter-company transfers e.g. privacy shield, model clauses
• Consider whether anonymising avoids data being “personal data”
• Consider security measures
Adjusting compensation

• In Europe, much of LatAm and some of APAC, there are strong protections for acquired rights. This includes current pay and can include “holding down” pay reviews.

• A reduction in compensation needs individual consent – or may be unenforceable even with individual consent (e.g., Brazil, Mexico).

• There may also be a need to consult employee representatives: typically unions in LatAm, and both internal Works Councils and Unions in Europe and some APAC countries.

• In Europe, pay levels are also often set by company or sector Collective Agreements, so employers do not have full flexibility.

• Unilateral pay reduction likely to trigger liability for the pay difference and potential termination liability if employees resign
Positive discrimination

• Local laws vary widely on whether positive discrimination (e.g. favouring under-represented female workers over men) is permitted
• Mentoring, training and targeted recruitment are all options
• But take advice before implementing schemes that actively favour women (or minorities), for example for recruitment or promotion.
• In a number of countries (e.g. the UK) this would give rise to a discrimination liability towards the man affected.
Your questions?