

NEWS, LATEST, CURRENT TOPICS

MAIN RULES ARISING FROM THE PAY TRANSPARENCY DIRECTIVE

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In May 2023, Directive (EU) 2023/970 of the European Parliament and of the Council was published in the Official Journal of the European Union, which has been referred to as the Pay Transparency Directive (the "Directive"). This Directive, as its name suggests, aims to combat unequal pay between men and women by creating and implementing mechanisms that guarantee pay transparency.

The rules contained in the Directive must be transposed into national law by 7 June 2026 and, in general, will impose new obligations on employers in the context of recruitment processes and also in terms of providing information deemed appropriate to ensure pay transparency. On the other hand, and with regard to employees, the Directive recognises the right to access information needed to assess compliance with the right to equal pay.

The Directive applies to all employers in the public and private sectors, although, as will be detailed below, whether they are subject to certain obligations depends on the number of employees. The Directive also covers all employees bound by an employment contract, including those bound by part-time employment contracts, fixed-term employment contracts and temporary employment contracts.

As far as recruitment procedures are concerned, the Directive introduces two new and notable changes concerning the content of job adverts and the candidate assessment process. Firstly, employers must ensure that all job adverts include the starting salary applicable to the position to which the advert relates. Secondly, the Directive prohibits employers from asking candidates about their previous employment's salary history.

As far as employees are concerned, the Directive provides for their right to request and receive information on their individual level of pay and on the average levels of pay, broken down by gender, for categories of employees who perform work equal to their own. The request for information must be submitted through employees' representatives or the equality in employment public entity.

In this regard, it should be emphasized that the Directive ensures that if the information provided involves the processing of personal data, this can only be legitimately used to apply the principle of equal treatment. In this way, the Directive prevents the unnecessary and/or disproportionate disclosure of personal data, and employees requesting such information can be prohibited from using it other reason than to claim their right to equal pay.

From the point of view of employers, the Directive establishes an obligation for them to provide information, within the framework of their organization, on pay disparities between male and female employees. Specifically, employers will be obliged to provide the body monitoring the implementation of the measures provided for in the Directive with the following information:

- a) The gender pay gap;
- b) The gender pay gap in complementary or variable components;
- c) The median pay gap according to gender;
- d) The median pay gap according to gender in complementary or variable components;
- e) The proportion of female and male employees benefiting from complementary or variable components;



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- f) The proportion of female and male employees in each quartile of the pay range;
- g) The gender pay gap between employees by categories of workers, broken down by basic salary or wage and by complementary or variable components.

However, the Directive establishes a different periodicity for the fulfilment of this obligation depending on the number of employees employed by the employer. Therefore, and considering, as mentioned above, that the Directive must be transposed into national law by 7 June 2026, employers who:

- a) must provide the above information every year;
- b) Employ 100 to 249 employees, they must provide the above information every 3 years.

In addition, for employers with fewer than 100 employees, the Directive allows the Member State to decide whether they should be obliged to provide information on the pay gap between female and male employees. Therefore, the true scope of this obligation will only be truly determined when the Directive is transposed into national law, which, as mentioned above, should be by 7 June 2026.



