

Pay Transparency - A few legal issues

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Pay transparency - legal

Equal pay initiative

- ▶ Equal Pay - Treaty of Rome – **1957**
- ▶ Transparency Directive – part of wider initiative (work-life balance, board presence etc)
- ▶ Moderate costs involved.....???
- ▶ Definition of pay
 - Reference in explanatory memorandum to law and collective bargaining
 - Case law ECJ uses wider notion
- ▶ Intersectional discrimination is sex discrimination
- ▶ Comparable work/Work of Equal value
 - How to define?
 - Objective criteria: educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of tasks involved
 - Role seniority?
 - Valid comparator: not necessarily same employer (single source setting conditions needed); not necessarily at same time; and even hypothetical comparator

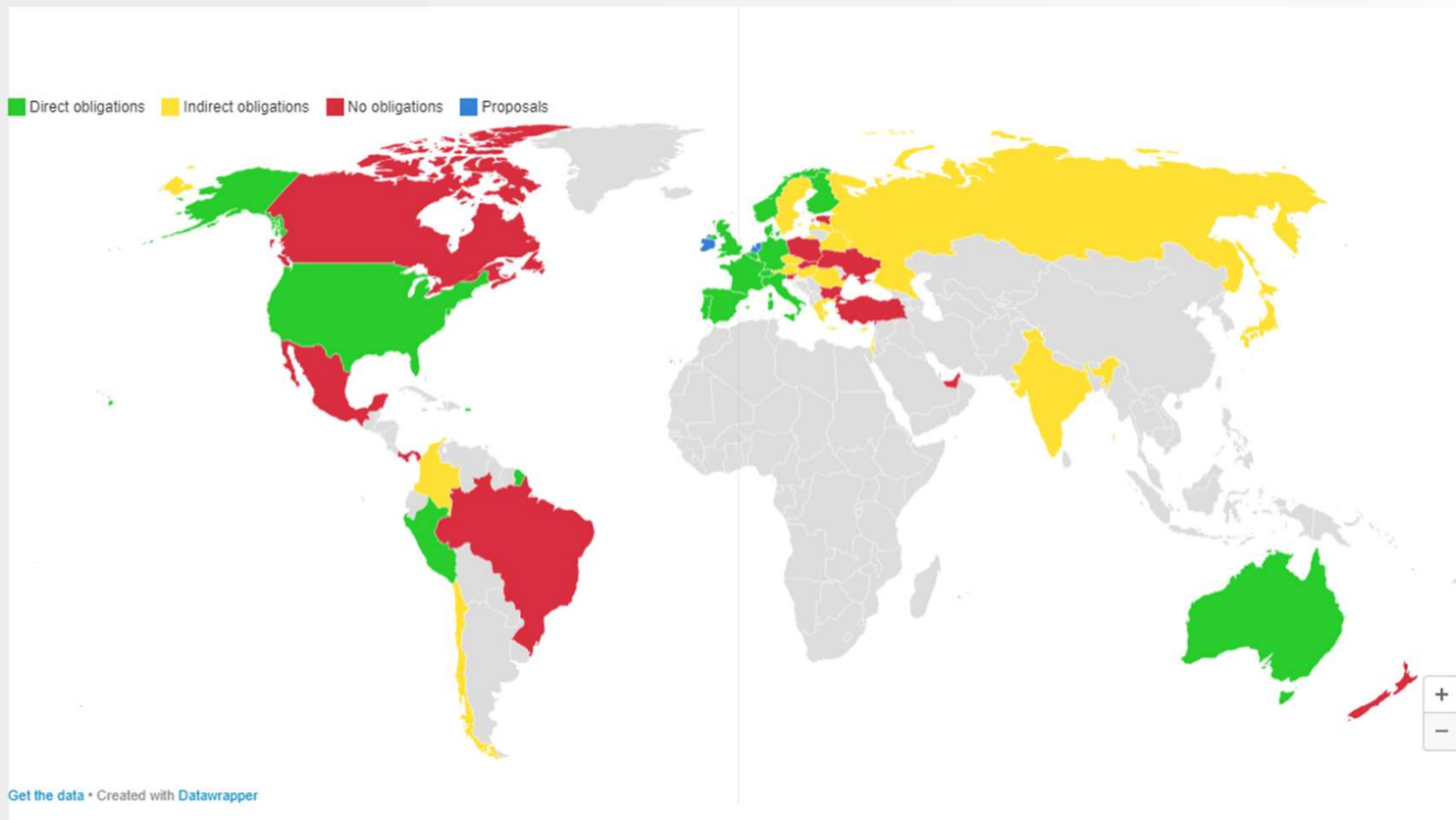
Pay transparency - legal

Equal pay initiative

- ▶ Transparency required prior to start of employment
 - Info on pay level or range needs to be available
 - Without applicant's request
 - Not allowed to inquire about pay history – but negotiation still possible...
- ▶ Pay gap information to be provided during employment
 - Workers can ask for individual pay level
 - Info on criteria that determine career progression need to be easily accessible
 - Large companies need to report (partly public/partly based on employer specific combination and weight of criteria)
 - Joint pay assessment - gap of at least 5% and no gender neutral justification
- ▶ Shift of burden of proof
 - Without even prima facie case required if employer does not live up to pay transparency requirements
 - Confidential information
- ▶ Full compensation/reparation
 - Full recovery of back pay and related bonuses or payments in kind, compensation for lost opportunities and moral prejudice...

Gender pay gap map

Reporting on pay disparities between men and women is a tool many governments worldwide employ in the fight against discrimination in the workplace. This map shows at a glance which countries currently have reporting obligations in place for employers in relation to what men and women are paid in their organisations.



WRITTEN BY

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Under new gender pay gap proposals in Brazil, employers would face heavier penalties for failing to pay men and women equally. This article explains.

On 30 March, the Brazilian Senate approved a legislative bill applying a new sanction to cases where organisations have a gender pay gap without a non-discriminatory reason.

If approved by the President, the bill would increase the penalties but will not change the substance of the existing laws. These consist of the following framework:

- All forms of discrimination are prohibited by the 1988 Constitution.
- The Labour Code has provided for equal pay for equal work since 1943. Paragraph 6 of Article 461, Labor Code, included in 2017, provides for a financial penalty imposed by the courts for cases of 'discrimination against gender or ethnicity' payable to the victim. The penalty is equal to 50% of the maximum Social Security pension.
- Since 1999, the Labour Code prohibits employers from including consideration of gender, age, colour, and family status in determining pay, training and career opportunities (article 373-A, item III).

► <https://iuslaboris.com/insights/the-new-gender-pay-gap-proposals-in-brazil-what-they-may-mean-for-employers/>



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