Global Compensation Reporting Issues

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There is a growing body of research that shows two common areas of focus in countries around the world:

1. The pay gap between men and women, and
2. The pay gap between the top corporate executive(s) and average employees (or “say on pay”)

These create legal, business and reputational risks for global employers.

Increased focus on compensation reporting within the U.S. and outside

Requirements differ within jurisdictions so it is difficult for global employers to take a consistent approach in its review and measurement.
1. Gender pay gap

Research by PwC predicts that if nothing is done about the gender pay gap, it could take nearly a century for the divide to close entirely across the OECD countries.

In an attempt to close these gaps, many countries, particularly in Europe, are now requiring large and mid-sized companies to disclose the differences in how they compensate employees.

The theory behind these regulatory and legislative moves is that increased transparency on what companies are doing—or not doing—will ultimately lead to more equitable pay.
UK approach

Private sector employers with 250 employees or more on 5 April each year, starting from 2017, are required to:

- publish their gender pay gap information within 12 months of that date on a public facing website, and
- report it to the government.

The gender pay gap is the difference between the average earnings of men and women. Employers will also be required to publish:

- the mean difference between the bonus payments paid to men and women in the previous 12 months;
- the median difference between the bonus payments paid to men and women in the previous 12 months;
- the percentage of men and women who received bonus pay during the previous 12 months; and
- the numbers of male and female employees in the 4 salary quartile pay bands – lower, lower middle, upper middle and upper.

Note that the new regime is unlikely to result in a proliferation of equal pay claims. A gender pay gap, or the lack of one, cannot be equated with unequal or equal pay.
European laws

Germany

The German Pay Transparency Act came into force on July 6, 2017, putting into place a series of principles designed to help close the gender pay gap. For companies with more than 200 workers, every employee now has the right to information regarding the criteria used to determine his or her remuneration and the remuneration of employees in similar positions. Companies that fail to comply with these requests may have to provide evidence in court that there is no infringement of the equal pay principle. Meanwhile, companies with more than 500 workers are asked to implement certain measures to review and achieve pay equality, as well as to issue an equal pay report at least every three years. The first of these reports was due in 2018.

Belgium

Since 1987 employers have been required to prepare a general report concerning gender equality on an annual basis. In 2012, Belgian legislators introduced a series of measures to help further reduce the gender wage gap, including requiring Belgian companies to provide a detailed breakdown of the difference between how men and women are compensated, employed and tasked.
Iceland has gone further than perhaps any other country, with the government committing to completely close the nation’s gender pay gap by 2022. Currently, companies with more than 25 employees are required to submit themselves to external audits to prove that they are paying women on par with men for equal work, a move made in January 2018 in response to mass protests by women in October 2016.
Other approaches

1. Australia has several rules in place to ensure equitable pay across the corporate structure. Since 1998, publicly listed companies have been required to publicly report the compensation paid to their senior executives. Since 2012, companies with over 100 employees have been required to report on gender pay gaps, and companies with greater than 500 employees must have a formal policy or strategy in place for dealing with gender pay issues.

2. While not compensation reporting, in 15 U.S. states and 12 localities, there is now also a restriction against asking potential employees about their salary history. This law is intended to protect workers, particularly women and minorities, from further salary discrimination, ultimately providing them with more leverage in the labor market.
2. Wage disparity – European laws

Belgium has a long list of compensation reporting requirements for listed companies, including a so-called “remuneration report” that must include detailed information on the annual compensation for the CEO and non-executive directors, and aggregate compensation information for executive managers. However, these requirements do not extend to non-listed companies.

In the Netherlands, in 2018 a law was passed that calls for an annual meeting to inform and consult with the works council of the differences in aggregate remuneration of top executives and employees for companies with at least 100 employees.
United States – CEO pay ratio

Starting in 2015, most U.S. public companies have been required to report their CEO pay ratio, or the ratio between how much the CEO is paid versus the median employee. This mandate was included as part of the 2010 Dodd-Frank Act. A survey by Equilar found that the median CEO pay ratio was 140 to 1 and the average CEO pay ratio was 241 to 1 from 2018 proxy statements.

There is now also a growing debate within the Australian government about instituting mandatory CEO ratio reporting, following in the footsteps of the U.S.
2. Say on pay – EU law

EU—Set to go into effect on June 10, 2019, the Amended Shareholder Rights Directive (‘SRD’) is the EU’s answer to the rising gap between executive pay and employee pay. The rule will give company shareholders a right to approve the forward-looking remuneration policy for directors (any member of the administrative, management or supervisory bodies) at least every four years or in the event of a material change in policy, with companies only able to pay remuneration on the basis of approved policy. Member States, however, will need to adopt it in local law and have the possibility to opt for an advisory vote, allowing companies to apply a remuneration policy rejected by shareholders, with the requirement to submit a revised policy at the next general meeting.
Did these measures work? – UK

– When the UK released the results of its first gender pay gap study in April 2018, the results showed that women are consistently paid less than men—on average by 9.8%—with particularly wide gender pay gaps in the construction, finance and insurance industries.

– It is too soon since the deadline for the second report to have any official data on whether the gender pay gap has decreased. Based on anecdotal evidence so far, the gap has either not changed or, in some cases, it has got worse. According to the BBC who have done their own analysis, fewer than half the UK’s biggest employers have reduced their gender pay gap and in 45% of firms the discrepancy in pay increased in favor of men.

– The UK Government are considering introducing an ethnicity pay gap reporting to work in a similar way to gender.
Did these measures work?

1. In Germany, in 2018, the unadjusted gender pay gap remained unchanged at 21% compared to the previous year. The German Pay Transparency Act has had little effect so far; only a minority of companies have undertaken activities to implement it. The law has been most successful in companies with a younger than average workforce, i.e. with a high (more than 50%) proportion of employees under 30 years of age.

2. In the USA, the CEO pay ratio was introduced and made effective in 2015. In 2018, a survey by Equilar found that the average CEO pay ratio was 241 to 1. This was slightly reduced from the previous year where the average CEO pay ratio was 271 to 1. Pearl Meyer recently reported the average pay ratio this year so far as 156 to 1.

3. However, large CEO pay ratios received recent attention from the Disney CEO’s pay ratio for Robert Iger which was 1,424 to 1 which Abigail Disney called “insane” (although is less than Elon Musk’s pay ratio at Tesla of 40,668 to 1).
Reputational and business risks

- The media has not been shy about covering pay gaps, whether talking about the unfair labor practices in a country, in an industry or even at a specific company. No company wants to find itself at the center of a journalistic investigation, and even a few days of bad press can do substantial damage to a company’s stock price and its ability to attract talented employees.

- Businesses concerned about the new and evolving compensation reporting requirements likely don’t want to be subjected to a large fine that would hurt the company’s bottom line. Thus far, governments and regulatory agencies have been fairly slow to enact specific punishments for companies that don’t comply with compensation reporting requirements or companies that don’t improve their pay gaps year over year.

- The UK’s program offers a useful case study. Technically, there are no current penalties for qualifying companies that fail to report, or companies that report but with suspect numbers. However, failure to comply with a government-mandated obligation still constitutes an unlawful act, which empowers the Equality and Human Rights Commission (EHRC) to take enforcement action such as investigating the company in question and/or issuing an unlawful act notice. Non-compliance is therefore technically unlawful but, with limited resources, the EHRC will only be able to take a passive role with regard to enforcement.
Litigation and shareholder risks

– Many businesses are also understandably concerned that disclosing a large pay gap, or refusing to disclose any data at all, will make them susceptible to litigation in the form of class-action lawsuits. For example, a group of senior female executives could unite in demanding more equal pay with their male counterparts. However, these cases may be problematic. A gender pay gap does not necessarily equate to a lack of pay parity.

– Shareholders of public and sometimes even private companies want to know that the companies they are invested in are paying employees fairly. This focus on equal pay is just part of a larger trend on increased reporting on environmental, social and governance (ESG) issues
Conclusion

1. The overall trend is clear—more reporting, more transparency and stricter requirements.

2. Global employers concerned about the impact of these requirements on their business can get a head start now by taking active measures to push for equitable pay and collect relevant data.

3. The alternative—waiting to see what each country does—may result in companies losing their competitive position.
Questions?

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