Responding to the calls for equality

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The dialogue on pay transparency continues to evolve and progress (and the conversation is growing on LinkedIn under #paytransparency). On 27 September 2022, California passed a law requiring employers to publish detailed information on salaries. The Broad Pay Transparency Law aims to boost fairness for workers and clamp down on gender and other wage gaps by expanding on the state's current laws on pay disclosure and pay data reporting requirements.

Changes in California

Pay disclosure requirements

California currently prohibits employers from asking applicants about their salary history during the hiring process and requires employers to provide the pay scale for a position to an applicant upon a reasonable request. When the new law comes into force on 1 January 2023, these pay disclosure requirements will be expanded as:

- all companies with 15 or more employees must include a pay range in all job listings;
- all employers must provide the pay range for the position in which a current employee is employed, upon their request; and
- all employers must maintain records of job title and wage history for each employee for the duration of employment and three years after the end of employment.

This new law will enable California's Labor Commissioner to determine whether wage discrepancies remain. Non-compliance could see employers subject to civil penalties of US$100 to US$10,000 per violation.

Pay data reporting requirements

The number of companies required to submit annual pay data reports to the state's Civil Rights Department is also being expanded. The reports will be annually reviewed from May 2023 and will provide a snapshot of employees by race, ethnicity and sex, as well as the median and mean hourly pay rate for each group. Non-compliance could see the Civil Rights Department seeking a court order requiring compliance and recovered associated costs. The courts may also impose civil penalties of US$100 per employee.

The US and beyond

California is not the only state to have passed laws that aim to shed light on pay practices. In Colorado, the Equal Pay for Equal Work Act came into force in 2019 and implemented measures intended to prevent pay disparities. In other states, such as Maryland and Connecticut, there are laws requiring pay and compensation levels to be disclosed upon request. On 1 November 2022, New York followed suit with its Salary Transparency Law.

The driving factor behind such laws is the pressing problem of wage gaps, notably the gender pay gap. An Argentinian study found that, on average, women ask for 6% less than their male counterparts in terms of salary expectations. Although women's careers are more likely to be disrupted by childcare responsibilities, providing a snapshot of pay rates across a firm's workforce may provide evidence of how different groups, such as women, progress within companies and thus if there is an imbalance which needs addressing.

This is a global movement which began years ago but is continuing to gain momentum. In Denmark, legislation to increase pay transparency was introduced in 2006 which has helped narrow the gender pay gap whilst retaining firm profitability. The climate of the labour market in the past two years has helped push these changes along. The "Great Resignation" in the aftermath of the COVID-19 pandemic, which saw mass resignations and job moves throughout 2021, has left the UK with low unemployment levels and labour shortages across many industries. Workers are empowered and this has forced employers to provide greater transparency as firms have needed to work harder to attract talent.

The benefits of pay transparency

One of the main benefits of greater pay transparency is increasing accountability regarding wage gaps. In practice, providing a salary range prior to interview may also prevent the perpetuation of inequality when a candidate is asked about their current (and perhaps unequal) salary at recruitment stage.

Other potential advantages of more pay transparency include eradicating information asymmetries and potentially streamlining recruitment processes. Daniel Zhao, lead economist at Glassdoor, notes that both employers and candidates could avoid interviews in which a prospective employee's pay expectation differs significantly from the employer's. This may lead to short-term pain for long-term gain. Employees who realise they may be underpaid may initially gain confidence to resign and seek employment elsewhere. However, a less opaque market could also lead to higher retention rates and more stability in the future.

Potential problems and limitations

Despite the benefits, experts have warned that new laws to increase pay transparency should not be considered a panacea for making the labour market fairer overall. Mabel Abraham, associate professor at Columbia Business School, notes that accurately reporting pay gaps "will not uniformly lead to a closing of all pay gaps and an eradication of inequality". Ultimately, research has shown that one of the key factors enabling a company to successfully close its pay gap is for the leaders to understand why the pay gap exists in the first place. Therefore, pay transparency alone will not suffice in ensuring a positive workplace for employees; leaders must demonstrate a proactive stance in tackling pay gaps in their firms.

A risk of increasing pay transparency is that current employees may be disgruntled when they see the pay ranges that are being offered to new employees. This may increase short-term instability and the number of internal issues for HR professionals to manage. We recommend completing equal pay audits prior to publishing such information.

Recent job postings in New York also suggest attempts are already being made to circumvent the legislation, with quoted salary ranges being so broad as to provide no useful information.

The UK pilot scheme

In response to a report published by The Chartered Management Institute on 8 March 2022, the UK government launched a pilot scheme on International Women's Day. The scheme, launched by Baroness Stedman-Scott as Minister for Women, requires participating employers to list salaries on job advertisements and to refrain from asking about salary history during the recruitment process. This aims to address the findings in the report that the gender pay gap had increased from 7.0% in April 2020 to 7.9% in April 2021. Whilst further details about how the pilot scheme will operate are awaited, it is hoped that the scheme will improve pay transparency in the UK and help tackle pay inequality. As Baroness Stedman-Scott said, "increased pay transparency will build on positive evidence of the role information can play when it comes to empowering women in the workplace".

Although pay transparency is not a complete or perfect solution to improving workplace wage gaps, it is certainly a good start and we eagerly await the outcome and findings of the pilot scheme as the calls for action get ever louder.

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