

Pay Transparency for Works Councils

The European Pay Transparency Directive will be transposed into the Dutch Act Implementing the Pay Transparency Directive for Men and Women by 1 January 2027 at the latest. The Act aims to strengthen the enforcement of the principle of equal pay for men and women for equal or equivalent work. Below, we discuss the Act, concluding with a focus on the additional rights of the Works Council in the areas of consent and information.

Recruitment and selection



Job applicants must be informed of the salary or salary range before any pay negotiations begin and must not be asked about their salary in their current or previous employment.

Job evaluation and pay system



- o Employers must have an objective and gender-neutral job evaluation and pay system that allows the value of work and the associated remuneration to be assessed.
- o Jobs must, in any case, be assessed on the basis of skills, effort, responsibilities and working conditions; for organisations with at least 250 employees, work experience and education are also mandatory criteria. Additional, objectively gender-neutral criteria are permitted.
- o The level of remuneration must be derived from the job evaluation, with only objectively and gender-neutrally justifiable deviations permitted.

Transparency and information



- o Employees have the right to request information about their own pay and the average pay levels by gender within comparable job categories. This information must be provided within two months of the request.
- o Employees must not be prevented from disclosing pay information for the purpose of ensuring equal pay.

Reporting obligation and pay evaluation



Certain employers are subject to reporting obligations on the gender pay gap, with the frequency depending on company size:

Size	Obligation	First report
< 100 employees	No reporting obligation	–
100–149 employees	Once every three years	No later than 7 June 2031 (for 2030)
150–249 employees	Once every three years	No later than 7 June 2028 (for 2027)
≥ 250 employees	Annually	No later than 7 June 2028 (for 2027)

- o Most data in the pay report will be publicly accessible.
- o A pay evaluation will be required if (i) the pay report shows a gender pay gap of 5% or more, (ii) that gap cannot be objectively and gender-neutrally justified, and (iii) it is not remedied within six months following the pay report. The pay evaluation must include measures to address unjustified pay differences.

Claims/complaints

Employees may bring pay claims before the courts and/or file a complaint with the Netherlands Institute for Human Rights. Trade unions and other representatives may provide support in this regard.

Prohibition of victimisation

Employers may not treat employees unfavourably for asserting their right to equal pay or for supporting colleagues in doing so.

Works Council granted a broader right of consent

The Works Council already has a right of consent regarding a remuneration or job evaluation system. This right of consent will now also apply to other decision-making relating to remuneration, namely decisions to establish, amend or withdraw the following elements:

- The objective, gender-neutral criteria for job evaluation and classification.
- The classification of employee categories, i.e. the manner in which employees are assigned to groups performing equal or equivalent work.
- The manner in which unjustified pay differences identified in the pay report are remedied.
- The pay evaluation and an action plan to remedy identified unjustified pay differences, to be developed in close cooperation with the Works Council.

The existing right of consent in respect of a remuneration or job evaluation system relates primarily to the structure of the system as a whole. This extension of the right of consent gives the Works Council influence over the concrete application and implementation of that system, as well as over the remedial measures where the outcomes of the system prove to be unjust. The Works Council is thereby involved not only in designing a pay system, but also in enforcing equal pay in practice.

Extension of the Works Council's right to information

The information right that the Works Council already holds regarding the level and content of employment conditions arrangements is being extended from a passive, annual information right to an active information right and a right to be consulted on the accuracy and completeness of the data in the pay report.

What should the Works Council do?

With the introduction of the Act Implementing the Pay Transparency Directive for Men and Women, the Works Council will acquire significant new powers in the area of equal pay. It is important to exercise these rights actively: ask the right questions about the pay report, assess the criteria for job evaluation on the basis of objectivity and gender-neutrality, and ensure that an action plan to remedy pay differences is not adopted without your consent.

Would you like to be well prepared as a Works Council for this new role? We would be pleased to assist you in understanding and effectively exercising your expanded consent and information rights. Please contact Van Doorne's Employment and Pensions Team, Niels van Boekel & Mara Vos:



Niels van Boekel
Lawyer | Counsel
+31 (0)20 6789 123
boekel@vandoorne.com



Mara Vos
Lawyer
+31 (0)6 27 911 687
vos@vandoorne.com