

## **More wage justice by law – dealing with the new draft law**

What is the essence of the draft Transparent Remuneration Law and what should employers consider already now?

On January 11, 2017, the Federal Government adopted the draft of the "Law for Promotion of Remuneration Transparency between Women and Men" (Transparent Remuneration Law), which was introduced by the Federal Minister of Family Affairs, Manuela Schwesig (SPD).

The following article provides a compact overview of the background, the purpose and the main contents of the legislative initiative, and shows in practical terms how to deal with the employer obligations envisaged in the planned statutory regulation.

### **Background and objective**

According to the justification of the draft law, the statistical remuneration gap between women and men in Germany (related to the average gross hourly wage) amounts to about 21 percent. Considering structural factors and gender differences between women and men, such as a gender-specific career choice, a lesser presence of women in management positions, family-induced breaks in employment and longer periods of part-time work, the average remuneration of a man exceeds that of a woman with the same formal qualification and similar characteristics according to the Federal Statistical Office still by 7 percent.

Considering the legislator's fundamental duty to work towards the enforcement of the principle of equal pay for men and women, the declared objective of the Transparent Remuneration Law is to eliminate direct and indirect gender discrimination by promoting the transparency of remuneration and remuneration regulations – "equal pay for equal and equivalent work".

### **Main contents of the draft law**

The ambitious objective of wage justice shall be achieved or promoted in particular by introduction of the following legal instruments:

#### **Individual information entitlement**

In order to check the equal pay principle, which is now expressly regulated in the draft law and which stipulates that less pay may not be agreed on due to gender for equal or equivalent work (such agreements are legally invalid by law), employees in companies with regularly more than 200 employees are generally granted an individual information entitlement.

Said information entitlement covers both the criteria and procedures for the determination of remuneration as well as the indication of the so-called comparative remuneration. The latter is calculated from the average gross monthly salary (consisting of the basic salary and up to two additional remuneration components, such as company cars or bonuses, which can be selected by the employee) of all employees of the other gender who carry out a comparable activity. In order to observe the protection of personal data, however, the information entitlement shall be forfeited if the comparative activity is performed by less than six employees of the other gender.

The information entitlement needs to be claimed in writing and can be submitted in principle every two years, however, for the first time six months after the Transparent Remuneration Law has come into force. Prior to the expiry of the two-year period, a renewed request for information may only be filed if the prerequisites have changed significantly, in particular if a change of position occurs.

If a works council exists, the request for information needs to be submitted to this body. The works council collects the requested information from the employer and provides the information in text form within three months. If no works council is established, the employer has to comply with the obligation to provide information. If the employer does not fulfill the employee's information entitlement, in a legal dispute he shall bear the burden of proving that there is no breach of the principle of equal pay.

## **Reporting obligation for employers**

Employers with regularly more than 500 employees, who are obliged to provide a status report according to the provisions of the German Commercial Code, regularly need to draw up a report on equality and equal pay in which they outline their measures to promote equality and equal pay. The report is to be made every five years by companies to which a collective agreement applies, all other employers are required to report every three years. The report is published in the German Bundesanzeiger (Electronic Federal Gazette) and available to the public. With the law coming into force, the legislator requires the first drawing up and publication in the following year.

## **Operational procedures for verification and achievement of equal pay**

The previous version of the draft law contained an obligation of private employers with regularly more than 500 employees to monitor the compliance of the existing remuneration structures with the equal pay principle on a regular basis. According to the adopted version of the draft law, the employers are just asked to do so. If an employer voluntarily carries out such an operational procedure, it has to comply with certain legal requirements defined in the draft law.

Practical handling of the employer's obligations

### **Identified fields of action for companies**

The question arises of how equal or equivalent work can be defined in the sense of the law. The legislature refers to essential factors such as the nature of the work performed, the training requirements and the working conditions that are linked to the job – regardless of the individual person or performance. Therefore, employees perform an equivalent work provided that they can be regarded as comparable on the basis of this totality of factors.

### **Job evaluation as an organizational framework**

The use of a classification or job evaluation methodology forms the basis for creating the clarity required by the law. In doing so, the job requirements are first objectively documented, analyzed and subjected to a comparative assessment based on predefined criteria. On the one hand such a systematic procedure facilitates the comparison of different jobs within the company; on the other hand it serves as a starting point for the design of fair and transparent remuneration structures. The creation of a comprehensive job architecture also ensures employees' acceptance of remuneration and facilitates the operational implementation of the rules in the sense of equal pay.

While in large German companies such organizational frameworks already form the basis for many HR processes and policies, small and medium-sized enterprises in particular are expected to have a need to catch up. Contrary to, for example, tariff-bound companies in which tariff-contractual pay arrangements provide the framework for the determination of equal or equivalent work, remuneration decisions are still strongly influenced by subjective decisions. Thus, this Act is particularly relevant for employees working outside of collective bargaining agreements. The salaries granted are often lacking comparability, they are intransparent and can create internal imbalances. The implications of the legislation are expected to place great challenges on those companies that have not yet created such organizational frameworks.

In the case of an implementation, employers are generally free in choosing the appropriate evaluation methodology, as far as the given requirements are considered. The range of job evaluation systems has risen significantly in recent years. The evaluation methods range from simple summarily, non-analytical to complex analytical systems. It is the responsibility of the HR manager to identify the appropriate approach from the variety of offers. The choice of the method is strongly dependent on the size and complexity of the company.

In addition to the evaluation of jobs and the obligation to provide remuneration information, it is recommended that companies with more than 500 employees implement operational control procedures in a further step. The process outlined in the draft law is divided into an inventory, followed by the analysis and the results report. The collected data, broken down by gender, are then summarized in a results report and can be made accessible internally. It is important to pay attention to a valid statistical methodology, to ensure data confidentiality, and to inform the works council at an early stage. In the application, a standardized and systemically implemented process, especially under efficiency and cost aspects, is indispensable in the long term.

Considering the increased requirements for companies, it is recommended not to wait for the final adoption of the draft law by the parliament, but to develop procedures and structures to ensure equality within the organization.

## **About Deloitte**

Deloitte's consultants support companies in the objective selection and implementation of a job evaluation system and help with the correct interpretation of the legal situation and the related requirements. With our Deloitte own methodology for job evaluation (JES), we also offer a flexible system, which can be individually tailored to company-specific needs and can also be used in combination with existing job evaluation systems. In addition to the quantitative comparison of remuneration data, the consulting services also include support for the fulfillment of the reporting requirements and the definition of appropriate measures.

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