

EQUAL PAY FOR EQUAL WORK

The pay gap between men and women is meant to close with a law coming into effect this year, but employers are not sure how to comply.

In December 2016, the government ratified the issue of equal pay for equal work into the law books. This means that companies who are found to pay one person less than another for the same job can be fined.

Previously, the “equality of treatment between men and women” was set out in a technical regulation. Now it’s a national law, according to Lydia Mutsch, the LSAP equal opportunities minister. “That means if you don’t follow the law, it is not only a regulatory non-respect, but it is a legal infringement. The fine is between €251 and €25,000 if the employer does not respect the obligations of equal pay: ‘Every employer ensures equal pay for equal work and of equal value for men and women.’ If the employer repeats the offence within two years, those fines can be doubled.”

However, the Chamber of Commerce issued a very critical opinion: firstly, it argued that equality between men and women was already set down in law in the labour code (*Code du travail*), in a technical regulation (*Règlement grand-ducal*) and in the constitution. Why add another one? Secondly, the criteria to establish “equal work” were unclear.

Thirdly, the focus was on the job, not the qualifications of the employee, and finally that financial sanctions can be imposed.

DIFFERENT QUALIFICATIONS

Anne-Sophie Theissen, head of the legal affairs service at the Chamber of Commerce, stated that: “Some criteria are confusing and focus too much on the job and not on the



LYDIA MUTSCH
A. Wage equality has been upgraded from the rule book to the law book
ANNE-SOPHIE THEISSEN
B. The Chamber of Commerce is sceptical about the practical implications of the equal pay law

employee. We think that a difference could be made--not just between men and women--but also between men or women for the same job, because they may have different qualifications or a different professional experience. These things would justify in our eyes a difference in salary.”

When asked for a clarification, neither the equality ministry nor the labour ministry could clarify how

the law would be applied; both simply sent *Delano* extracts from the bill that passed parliament last year without any additional comments.

Theissen warned that the new law would make companies more hesitant to hire: “One should be more insecure when penal sanctions are introduced because in general there is a tendency to impose more and more fines. Fines should be

given only when something wrong was done. Employers will be even more careful when they hire someone.”

The Chamber of Commerce has many questions: “It would have been better to keep the old regulation and the general principle, which is equality of treatment and not just salary. It is very complicated to work it out: how do you compare candidates now? What do you compare now? For that job, if the work is the same or of equal value, the salary needs to be the same—irrespective of the other things. It will be difficult to decide why a person should be employed and not another; or which pay to give for the same job where qualifications and/or experience are not the same. To find the balance between people for the same job under threat of sanctions will become very complicated. I am not sure how easily the companies will cope with this law.”

The Chamber of Employees (CSL) recognised that equal pay for equal work was a significant problem, especially when salary was determined in accordance with the salary grids in collective labour agreements. The biggest inequalities of pay are in temporary employment, where women are predominant.

The CSL had wanted stronger checks on inequality of pay by the labour inspectorate (ITM). When the law was being debated, the CSL had advocated that, when there were doubts, ITM should be able to check compliance by using the Logib-Lux tool, an IT program set up in 2012 and adapted to Luxembourg’s labour laws. This software can also be downloaded for free from the equality ministry’s website (www.mega.public.lu). It detects any potential pay inequalities between men and women within a company. However, this suggestion was not adopted by lawmakers.

POSITIVE ACTION PROGRAMMES

The government continues with its positive action programmes which provide financial subsidies to companies who voluntarily set up a plan to detect and remedy any wage gaps,

Mutsch says. “70 companies have so far participated, and we touched more than 43,000 people. It is also increasing competitiveness because if everything is done to create a fair and human environment for employees, they will be more motivated to work. It really is a win-win situation.” New applications can now be sent directly to the ministry of the economy.

The new law also stipulates the use of Logib-Lux as a pre-condition for any participation in these programmes. Mutsch explains: “The company fills in a questionnaire and with a mouse click, it gets the evaluation report which shows the pay structure by gender, identifies the causes and suggests improvements. The company gets a good

overview across the board.”

There are numerous criteria to be met when a company applies to this programme, among them setting measurable objectives. The new law adds the criteria of setting objectives which companies must set themselves to get a better balance.

Theissen criticised this double criteria: “We have the impression that companies already must fulfil the criteria before getting these subsidies. It’s like the snake eating its tail. These measures may be dissuasive and may not have the success that the authors wanted because the companies may fear that they don’t fulfil all these conditions and decide against even trying to participate in these positive actions. The law may miss its mark.” <



WAGE GAP

Women represent 39% of the labour market (including 32% of the public sector workforce). Women are most likely to work in the health, education, arts, events and other services and hospitality sectors. They earn less than men on average: the average annual salary for a man is €59,536, for a woman it is €49,188. This wage gap results mostly from the fact that many women work part-time. For full-time employment, the pay gap is reduced to 6% in Luxembourg: full-time employed men earn on average €61,182, while women earn €57,459. By contrast, the wage gap is 13% in Belgium and 24% in Germany.

WHAT TO DO

Employees can contact the equality delegate in their workplace about potential pay inequality. Their job is to ensure wage equality, access to certain positions, training, internal criteria for promotion and working conditions. The equality delegate must provide answers to employees. An employee can also contact the labour inspector (www.itm.lu), which handles official complaints.