



# **PAY TRANSPARENCY TO CLOSE THE GENDER PAY GAP**

**June 2018**

Founded in 1973, the **National Women’s Council of Ireland (NWCi)** is the leading national women’s membership organisation. We represent and derive our mandate from our membership, which includes over 180 groups and organisations from a diversity of backgrounds, sectors and locations across Ireland. We also have a growing number of individual members who support the campaign for women’s equality in Ireland. Our mission is to lead and to be a catalyst for change in the achievement of equality for women. Our vision is of an Ireland and of a world where women can achieve their full potential and there is full equality for women.<sup>1</sup>

## Executive Summary

Transparency around pay is essential, so that we can remove the question of gender-influenced pay.

The Programme for Government includes commitments to reduce the gender pay gap, including plans to force companies to reveal internal pay differences.<sup>2</sup> A public consultation on the issue took place August 2017, followed by a Symposium in early 2018.

The Labour Party’s private members Bill the *Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill* was accepted in principle by Government. The legislative agenda for Spring/Summer 2018 refers to a new Bill, the *Gender Pay Gap (Wage Transparency) Bill 2018*, the details of which have yet to be finalised.

Pay transparency is an internationally recognized tool in closing the gender pay gap. The Organisation for Economic Cooperation and Development, the International Labour Organisation and UN Women lead the Equal Pay International Coalition (EPIC)<sup>3</sup> which also identified pay transparency as an important device in closing the pay gap.

In 2014, the European Union Commission passed a recommendation that its member states implement pay transparency.<sup>4</sup> Numerous countries have introduced pay transparency measures, including Iceland, Australia, Austria, Germany, Denmark, Belgium and the UK.<sup>5</sup>

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<sup>1</sup> More information is available at [www.nwci.ie](http://www.nwci.ie)

<sup>2</sup> *A Programme For A Partnership Government*, (2016) 105.

<sup>3</sup> Launched in 2017.

<sup>4</sup> Recommendation C(2014) 1405 final.

<sup>5</sup> *Pay transparency in the EU A legal analysis of the situation in the EU Member States, Iceland, Liechtenstein and Norway* (April 2017).

[file:///C:/Users/deniser/Downloads/PaytransparencyintheEUAllegalanalysisofthesituationintheEUMemberStatesIcelandLiechtensteinandNorway%20\(1\).pdf](file:///C:/Users/deniser/Downloads/PaytransparencyintheEUAllegalanalysisofthesituationintheEUMemberStatesIcelandLiechtensteinandNorway%20(1).pdf) (last accessed 28.05.2018)

Significant pay transparency already exists in Ireland. Civil service and public sector workers' pay structures are already transparent because they are unionized employees with publicly available collective agreements that outline pay scales.

Legislating to facilitate pay transparency will hold organisations publically accountable for their pay structures and the actions taken to eliminate the practices that serve to perpetuate the gender pay gap. Recognising those with equitable practices while extending the opportunity to be recognised, as such, ensures the fair implementation of this new measure.

## Recommendations for consideration as part of the Gender Transparency Wage Bill

1. Apply to all employers with 50 or more employees.
2. Apply to the broadest definition of employees to ensure capture of those on zero hour contracts, "if and when" contracts and contracts of personal service.
3. Include a comprehensive list of transparency reporting obligations, including a broad definition of what would constitute 'pay'.
4. Require a qualitative analysis of the pay transparency reports to be accompanied by an Action Plan to reduce the pay gap.
5. Impose mandatory timelines for filing pay transparency reports.
6. Pay transparency reports must be made publically available with the information presented in a standardised format.
7. Equip the Workplace Relations Commission to enforce the new requirements.
8. Penalties for non-compliance should be set at a level at which the cost of noncompliance is significant.
9. Address the hidden discrimination inherent in wage negotiations.
10. Improve transparency around existing legal remedies.

## Anti-Discrimination and Equal Pay Laws

By its nature it is difficult to measure the impact of discrimination but it is often considered to account for the "unexplained" portion of the gender pay gap.<sup>6</sup> So while the existence of a gender pay gap does not necessarily denote discrimination neither does it entirely discount its presence.

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<sup>6</sup> The Department of Justice Equality and Law Reform, "Developing Sectoral Strategies to Address Gender Pay Gaps: A Comparative Analysis of Sectoral Wage Differentials in the European Union" (2003), para 7.28.

The Universal Declaration of Human Rights provides the international framework for anti-discrimination.<sup>7</sup> The principle that men and women should receive equal pay for equal work has been enshrined in the European Treaties since 1957.<sup>8</sup>

Discrimination in the workplace on the grounds of gender is prohibited under Ireland's *Employment Equality Acts 1998 – 2015*.<sup>9</sup> The legislation enunciates the principle of equal pay for 'like' work between the genders, and defines discrimination as treating a person less favourably than another person is being, has been, or would be treated in a comparable situation.

However, many women do not actually know if they are being paid less than comparable male staff. This is because most employers do not make pay records publicly available. The recent case of RTÉ news anchor Sharon Ní Bheoláin, highlights this, and also demonstrates the difficulty in discovering what your male counterparts are being paid in the first place.

So, despite the introduction of equal pay legislation over 40 years ago, women still earn less than men in Ireland today, as our national gender pay gap stands at 13.9% (according to Eurostat as of 2014).<sup>10</sup>

## **Achieving pay equity at work requires greater pay transparency.**

Gender pay equity will not happen by itself.

Pay transparency will ensure employee access to the information necessary for them to be able to enforce their rights to non-discriminatory pay. This will strengthen our current employment laws and effectively "shift the onus" of responsibility away from individual employees, who must currently file complaints about wage discrimination to get action, and onto employers to show they are complying with the law.

Pay transparency has some other major benefits as well for both employees and employers. First, it can help ensure that workers are being paid equitably for equal work. Secondly, it removes suspicions of discrimination, favouritism and general unfairness. Being open and honest about wages establishes trust between management and employees.

Publication will increase employee confidence in pay information and the remuneration process and will help employers find ways to increase female participation rates. Sector based competition should also drive employers towards best practice.

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<sup>7</sup> Its principles have been applied in more detailed conventions such as convention 111 of the ILO on discrimination in employment and occupation, which was ratified by 171 countries.

<sup>8</sup> Article 157 TFEU. The European Commission included equal pay for equal work and work of equal value as one of the five key areas for action in its Strategic Engagement for Gender Equality 2016-2019.

<sup>9</sup> The legislation also outlaws discrimination on the grounds of civil status, family status, age, race/nationality, religion, disability, sexual orientation or membership of the Traveller community.

<sup>10</sup> This figure reflects the 'unadjusted' gender pay gap which accounts for structural factors (such as occupational segregation, educational achievement, number of working years etc.) however the 'adjusted' figure (one which removes these structural factors) is estimated to be 15.9%, suggesting that the 'unexplained proportion' of the gender pay gap is much higher. See <http://notesonthefront.typepad.com/politiceconomy/2018/05/next-step-womens-rights-in-the-workplace.html> (last accessed 5 June 2018)

## Recommendations

### Recommendation 1: Apply to all employers with at least 50 employees

A micro enterprise is an enterprise that has fewer than 10 employees, a small enterprise has fewer than 50 employees, a medium enterprise has fewer than 250 employees, and a large enterprise has more than 250 employees.

According to the latest data published by the CSO, in 2016, small and medium sized enterprises (SMEs) account for 99.8% of the total enterprise population and nearly 69% of total persons engaged. Large enterprises employed over 31% of people working in the private sector.

These facts and figures must be recalled in determining the threshold number of employees that will trigger the requirement to produce a pay transparency report under the new legislation.

The law must apply to as many organisations as possible otherwise it will not operate as an effective deterrent to discriminatory behaviour. Recent reports suggested that the law would be introduced over a phased basis and would initially apply to larger organisations with 250 or more staff.

Comparing with pay transparency legislation in other jurisdictions, the UK with a population of 68 million applies its laws to employers with at least 250 employees, Belgium with a population of 11.3 million applies its laws to employers with at least 50 employees, and Australia with a population of 24 million applies its laws to employers with at least 100 employees.

Iceland with a population of 334,000 has decided to stagger the implementation of its laws. However employers in this context will be subject to external audits. Employers with 250 or more employees need to have implemented the Equal Pay Standard by 31 December 2018; employers with 150-249 employees by 31 December 2019; employers with 90-149 employees by 31 December 2020; and employers with 25-89 employees by 31 December 2021.

As outlined in the Programme for Government and reaffirmed in the National Strategy for Women and Girls initially the legislation should apply to companies of 50 or more employees. This should also encompass the voluntary sector. Public sector employers and agencies should be subject to a similar duty regardless of employee numbers. This requirement should extend to all those securing government contracts at any level.

Should the new legislation be initially limited to a greater number of employees, this should be a graduated scale similar to that undertaken by Iceland. In any event group companies should be required to aggregate employees across different subsidiaries. This will ensure that large employers do not fall outside the scope of these requirements if they do not have a single entity that employs 250 or more employees.

**Recommendation 2: Apply to the broadest definition of employees to ensure capture of those on zero hour contracts, “if and when” contracts and contracts of personal service.**

In the case of the *Employment Equality Acts 1998 – 2015*, the definition of ‘employee’ and ‘contract of employment’ is broadly defined. Adopting this definition will ensure a consistent approach to equality measures and anti-discrimination measures on a general basis. Moreover it will also capture those on zero hour contracts, “if and when” contracts and other contracts of personal service.

For example, RTÉ requires many journalists to accept self-employed contracts; others are allowed to establish companies and are represented by agents. These individuals should be captured by any pay transparency report produced by RTÉ.

One issue that emerged during the course of UK companies publishing their pay transparency reports was that many major law and accountancy firms opted to not include partners in the published data because they were paid from profits, and as such considered shareholders rather than employees.

Following public pressure, some companies restated their figures. Deloitte’s average gender pay gap jumped from 18% to 43%, while Ernst & Young went from 20% to 38%. It is essential that the data recorded is as comprehensive as possible, and in that respect it should capture ‘partners’ whether they are equity or salaried.

**Recommendation 3: Include a comprehensive list of transparency reporting obligations, including a broad definition of what would be considered ‘pay’.**

All qualifying organisations should publish a comprehensive annual pay transparency report covering the numbers of women and men at different levels in the organisation, their pay, their employment status and their working hours.

Data on retention during and after parental leave should also be published.

The pay scales recorded should clearly refer to not only to wages but also to holiday entitlement, bonuses, pay and reward schemes, pension payments and other benefits.

The 'Think, Act, Report' framework,<sup>11</sup> which encouraged voluntary reporting in the UK, suggests detailed ways of measuring the pay gap that employers might consider adopting voluntarily in the interests of greater transparency.

The core reporting obligations must be included in the legislation itself, with authority to develop regulations which would allow reporting obligations to be expanded in the future.

While sharing pay information might give rise to privacy or data protection concerns, particularly in light of GDPR, the information will relate to pay structures, with aggregated figures, and presented in an anonymized way so that it could not be classed as personal information or lead to the disclosure of individual employee data.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499925/2016ThinkActReportframeworksummary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/499925/2016ThinkActReportframeworksummary.pdf) (last accessed 29 May 2018)

**Recommendation 4: Require a qualitative analysis of the pay transparency reports to be accompanied by an Action Plan to reduce the pay gap.**

Employers should provide a narrative around their pay transparency report, and an action plan to reduce the pay gap. The Government should put in place guidance to support employers in creating such a plan.

Organisations with a gap above a certain threshold should have to report further data on their pay bands, parental policies and recruitment and promotion demographics data at each stage. These should be broken down by measures including gender, ethnicity and disability, which have a multiplying effect on the pay gap.

**Recommendation 5: Mandatory timelines for filing pay transparency reports.**

For reasons of clarity, the legislation must include mandatory timelines for filing pay transparency reports, rather than being left to regulation.

**Recommendation 6: Pay transparency reports must be made publically available, with the information presented in a standardised format.**

Pay transparency reports must be made publically available and in a manner that is accessible to all employees. The results should be published on the employer's website and a government website.

The information should be presented in a standardised format for comparative purposes. Having a consistent measure that can be compared across employers and sectors will encourage employers and employees to compare the gender pay data with competitors and the national average.

**Recommendation 7: Equip the Workplace Relations Commission to enforce the new requirements.**

The Workplace Relations Commission should have the power to enforce any failure to comply with the legislation. Personnel from the Commission should be granted the authority to conduct on-site inspections to ensure compliance or gather information.

Additional resources should be allocated to the Commission to enable them to have an immediate impact with monitoring, compliance and enforcement activity.

**Recommendation 8: Penalties for non-compliance should be set at a level at which the cost of noncompliance is significant.**

Civil penalties for noncompliance should be introduced, and set at a level at which the cost of noncompliance is significant, along with additional resources for the Workplace Relations Commission to enable them to have a more immediate impact with enforcement activity.

Organisations that do not comply should be subjected to an external audit, publically named and declared ineligible from doing business with government, including tendering for work and joining trade delegations.



And if organisations release inaccurate or incomplete data, or fail to take action to close the gap, they should face penalties but, in practice, the first step would be for the Commission to assist them to correct their data and to ensure that their available report is accurate.

A cautious approach to whole-sale reliance on court enforcement mechanisms should be taken due to potential costs and delays. For example, the UK's Equality and Human Rights Commission is using enforcement powers which include seeking summary convictions with an unlimited fine, but only after an employer has been investigated, issued with an unlawful act notice and has still failed to comply. This is a disproportionately drawn out process and should not be followed in this jurisdiction.

### **Recommendation 9: Address the hidden discrimination inherent in wage negotiations**

Addressing the hidden discrimination inherent in wage negotiations is essential for pay transparency. An initial salary at an early job can affect salary at a later one because hiring managers often base their offer on previous pay. Research has shown that those who get lower salary offers are often women.

The legislation should prohibit employers (and by extension recruiter agencies) from asking about salary history. Employers should also be prohibited from seeking this information through an agent or from other sources, such as the applicant's former employers.<sup>12</sup>

Employers should also be legally required to state the minimum salary that they are prepared to offer for an advertised role, regardless of whether it is advertised internally or externally. Employers should also be generally prohibited from inserting terms in a contract that prevent employees from disclosing/discussing their wages.

These measures will help to ensure that salaries reflect the qualifications, skills, experience and achievements of the particular employee. They will also help shift the emphasis from presentism to the quality and output of the work done, so that taking extended periods of time off of work will not unduly affect future wages. This is essential for women as they tend to have more career interruptions than men.

Disrupting inadvertent gendered wage patterns that follow women from job to job or penalise carers (predominately women) returning to paid work after an extended period of time out of the workforce are essential to eliminating the gender pay gap.

### **Recommendation 10: Improve transparency around existing legal remedies**

Mandatory pay transparency reporting laws alone will not close the gender pay gap. Anti-discrimination laws must play their part, but they must be revised to ensure their effectiveness.

Right now the focus is on individualised remedies – even if a woman successfully proves that she has been discriminated against, she will be financially compensated but little will be

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<sup>12</sup> Numerous laws to this effect have been implemented in the US.



done to affect the broader behavioural change of the offending employer, thus undermining any systematic progress towards pay equity.

The use of class actions (or multi party actions) to combat discrimination could promote solidarity among the members of the group and would spread the cost of litigation. The *Multi-Party Actions Bill 2017* aims to reduce the cost of litigation, provide greater access to the courts and allows the resources of the Courts to be put to better use.

The Workplace Relations Commission or applicable court should impose wider orders on offending employer to change their pay practices or back-pay the wages of similarly affected employees. Moreover, transparency should be central to the work of the Commission and a review of its practices and procedures should be conducted to ensure that it carries out the transparent administration of justice.

Consideration should also be paid to the Icelandic approach. The country has gone further than any other, becoming the first to require employers to submit to external audits to prove they are paying women on a par with men. Within four years from January 2018, any public or private body in Iceland employing more than 25 people that has not been independently certified as paying equal wages for work of equal value will face daily fines.

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