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Equal pay for men and women

Since 1 July 2020 and the amendment of the Federal Gender Equality Act (GEA), companies with more than 100 employees must carry out an internal equal pay analysis and have one year to do so. It is not certain that all employers concerned are aware of this new obligation!

On 1 July 2020, an amendment to the Federal Gender Equality Act (GEA) came into force. This amendment went hand in hand with the entry into force of the Ordinance on the Verification of Equal Pay Analysis. This amendment seems to have gone almost unnoticed, although it has an impact on enterprises employing more than 100 employees.

Indeed, new Articles 13a to 13i were introduced into the GEA on 1 July 2020. These articles impose an obligation on “employers with a workforce of at least 100 employees at the beginning of a year” to carry out an internal equal pay analysis for that year. Apprentices are not counted as part of this workforce”.

This analysis must be repeated every 4 years unless the analysis shows that equal pay is respected or if the number of employees falls below the 100 threshold, in which case the analysis must be repeated when the figure of 100 is again reached.

In certain cases listed in Article 13b, the undertaking is exempted from carrying out this analysis.

The analysis must be carried out using a scientific and legal method, and the Confederation has set up an analysis method on its website free of charge. This is the “Logib” method or tool (<https://www.ebg.admin.ch/ebg/fr/home/prestations/logib.html>).

Once the analysis has been carried out, the employer must have it verified by an independent third party, either an auditing company, an organization within the meaning of Article 7 GEA or an employee representation within the meaning of the Participation Act of 17 December 1993.

If the audit is carried out by an auditing company, it must draw up a report within one year of the analysis being carried out by the employer.

More importantly, once the analysis has been carried out, the employer must inform the employees in writing of the result of the analysis no later than one year after it has been verified.

If the employer is listed on the stock exchange, the result of the analysis must be included in the appendix to their annual report (Art. 959c, para. 1, ch. 4, of the Code of Obligations).

Public sector employers must publish the detailed results of the analysis and audit.

Thus, the first analyses must be carried out by employers by June 30, 2021 at the latest.

One of the peculiarities of the obligation imposed on employers is that the GEA does not provide for any sanctions if the employer does not carry out the analysis, but also if the analysis highlights wage inequalities between men and women.

However, it is possible that there may be indirect sanctions, through actions brought by employees who consider themselves to be victims of discrimination on the grounds of sex.

Another peculiarity is that the Ordinance on the Verification of the Equal Pay Analysis has an effect until 30 June 2032, i.e. it is valid for a limited period of 12 years.

Although there are no direct sanctions provided for in the GEA, employers employing more than 100 workers are of course advised to carry out the analysis by 30 June 2021 and to draw the consequences if it should reveal pay inequalities.

Source : <https://www.wg-avocats.ch/en/news/labour-law/equal-pay-men-women/>