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NEW GENDER PAY EQUALITY REGULATIONS IN FRANCE: AN ORIGINAL SCORING MECHANISM

In 2019, a significant step has been made in France in terms of gender pay equality requirements based on an original scoring mechanism whose practical efficiency still remains to be demonstrated in the near future.

A statute voted in September 2018 and to be implemented gradually as from 2019, creates new obligations for companies with more than 50 staff which (i) must publish annual indicators in relation to potential gender pay gaps and (ii) must achieve certain targets in terms of equal pay.

These new obligations are actually based on a three-step process.

First, companies must gather all relevant data with a view to create a gender equality index that will be used every year to measure the company's own situation as regards equal pay between women and men. This index results from a scoring mechanism based on 4 to 5 criteria (defined by law and depending on the company headcount) such as salary gaps (40 points), difference between men's and women's rates of individual salary raises (promotion situations excluded – 20 points), percentage of women who received a salary increase in the year following their return from maternity leave¹ (15 points), percentage of female employees amongst the 10 highest remunerations (10 points), and the difference between women's and men's promotion rate (15 points).

Companies must reach a minimum score of 75 points each year.

The second stage of this process consists in the yearly disclosure by the companies of their final score (100 maximum) on their website.

As a final step, companies which have not obtained the minimum score of 75 have 3 years to take corrective actions/measures, failing which they will be liable to a financial maximum penalty of 1% of their total annual salary costs at the end of that three-year period; efforts made by the companies concerned to reduce gender pay gaps over that period will be taken in account though to determine exactly this penalty.

¹ *The objective of this particular criteria is actually to measure companies' compliance with a legal obligation (Article L1225-26 of the French Employment Code) to grant female employees upon their return from maternity leave the same salary increase as the one granted to all the staff during such absence (or, as the case may be, to the staff belonging the same professional category).*

All these new obligations have been effective respectively since 1st March 2019 for companies with more than 1,000 employees and since 1st September 2019 for companies with 251 to 999 employees; companies with 50 to 250 staff will have to publish their first index by 1st March 2020.

For each of the first deadlines (March and September), the French Employment Administration has regularly communicated details about the scorings that were published by companies on their website. The Administration recently indicated (September 2019) that at that time 99% of companies with over 1,000 staff had published their global index and that only 68% of companies with 251 to 999 employees had done so; 17% of those companies do not reach the minimum score of 75 while 3.5% obtain a score equal to 99 or 100.

Ultimately the efficiency of these new regulations will depend on the sanctions that will be applied by the French Administration against companies that are not compliant and which have not taken appropriate corrective measures: in September 2019, the French authorities had already summoned 17 companies that had not published their global scoring on time and one company eventually published its index after an administrative notification to have to pay the financial penalty...

In the meantime, French companies are advised to review their remunerations policies and practices in order to comply with those gender pay gap reporting requirements.

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