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Wage Equality Analysis Requirements under the revised Swiss Gender Equality Act

The Swiss Gender Equality Act of 1996 (GEA) aims to prevent discrimination based on gender in the work space. On 14 December 2018, the Swiss Federal Assembly passed a revision requiring employers to conduct a periodical wage equality analysis. The revised GEA and the new corresponding Ordinance on Wage Equality Analysis will enter into force on 1 July 2020.

Background

Since its enactment in 1981, the constitutional principle of wage equality requires equal pay for equal work within a company – regardless of an employee's gender. The GEA further elaborates on this principle and attempts to establish real equality between women and men. However, currently there is still a gender wage disparity in Switzerland which cannot be justified on objective grounds. With measures focused on the employer side, the recently passed amendments to the GEA represent a renewed effort to close the gender wage gap.

Applicability and Entry into Force

Entry into Force and First Analysis

The revised GEA and the new corresponding Ordinance on Wage Equality Analysis will enter into force on 1 July 2020. The validity of the new provisions is limited to 12 years and will expire in 2032.

Under the new law, employers are obliged to conduct a first wage equality analysis by 30 June 2021 and its audit needs to be completed by the end of June 2022 at the latest. Moreover, by the end of June 2023, the

respective employees have to be informed in writing about the results of the analysis.

Subsequently, every four years a new wage equality analysis needs to be conducted. However, once the analysis shows that there is no gender wage disparity within a company, no further wage equality analysis will be required.

Applicability

The requirement to conduct an internal wage equality analysis applies to private and public employers that employ at least 100 employees at the start of the respective calendar year (Art. 13a para. 1 revised GEA).

Notably, this threshold takes into account the actual number of people employed as opposed to the equivalent of full-time positions. Apprentices are not counted towards the threshold amount.

Neither the revised GEA nor the corresponding Ordinance on Wage Equality Analysis define the term employer. However, within a group of companies, it is assumed that each legal entity which formally engages employees is considered to be an employer and thus obliged to conduct the wage equality analysis if the minimum threshold is met.

Exemptions

Generally exempted from the obligation to carry out a wage equality analysis are employers who, in the context of public procurement or subsidies, are controlled with regard to equal pay compliance or have been controlled in such context between July 2016 and June 2020 (Art. 13b revised GEA).

Overview of the Revision

Wage Equality Analysis

According to Art. 13c para. 1 revised GEA, employers are required to analyze – in a scientific manner and in accordance with the applicable law – whether there is a gender wage gap in their organization. The state provides a standard analysis tool to employers free of charge.

Audit of the Conducted Analysis

The internal wage equality analysis must be reviewed by an independent body; this can either be an accredited auditor, a specially qualified organization, or an employee representation (Art. 13d para. 1 revised GEA).

The review of the wage equality analysis does not include any material control of whether or not wage equality is maintained in the specific company, but only whether the wage equality analysis has been carried out in a formally correct manner. An analysis made on the basis of the provided standard tool will be reviewed in a standardized way following a formal procedure. If the analysis is made by applying a different process, the audit includes a review of the validity of the selected method.

The regulations regarding the audit process only apply to companies of the private sector.

Publication of the Results

No later than one year after the review of the analysis, the employer must inform his employees about the results in writing (Art. 13g revised GEA).

In addition, companies listed on a stock exchange must report and disclose the results of the wage equality analysis in an annex to their annual report. Employers of the public sector are obliged to publish the findings of the analysis as well as the audit to the wider public.

Sanctions

There are no sanctions for non-compliant employers who do not conduct a wage equality analysis. Neither is there a penalty if the results of the analysis show a wage disparity. Furthermore, the revised law does not require the employer to take actions which go beyond the ones mentioned above.

Nevertheless, employers who fail to abide by these obligations or have a considerable wage inequality may come under pressure to explain themselves to their workforce and the general public.

Besides, employees affected by individual wage discrimination may bring legal action against employers to court under the previously existing provisions of the GEA.

Conclusion

It remains to be seen if this new revision achieves its goal of inching closer to true wage equality regardless of gender. At the bare minimum, the new requirements should raise awareness among employers and their employees.

To avoid undesired negative publicity and damage to a firm's reputation, it is vital to establish wage equality and meet the requirements of the revised GEA in a professional and timely manner.

If you require any assistance implementing the new wage equality standards, we will gladly support you and meet your individual company's needs.

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