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10 Pitfalls

in Pay Transparency

(EU Pay Transparency Directive & National Implementation)

With the implementation deadline for the EU Pay Transparency Directive approaching on 7 June 2026, all employers in Germany-including those previously unaffected by national law- must prepare for sweeping new requirements. Proactive compliance is essential: the new rules will significantly lower the thresholds for information and introduce reporting obligations, and regulatory scrutiny is set to increase. Companies that address pay transparency early strengthen trust, mitigate litigation exposure, and avoid the financial and reputational consequences of non-compliance.

1 Overestimating Existing Compliance

Many companies assume the new EU Directive won't go beyond the current German Pay Transparency Act ("Entgelttransparenzgesetz") and take no action. In reality, the EU Directive introduces much broader and stricter obligations that will require a substantial overhaul of pay structures, HR policies, and documentation-early preparation is the only option to ensure smooth implementation.

2 Not Disclosing Salary Information During Recruitment

In the future, the initial pay or pay range will need to be made transparent to candidates as a regular part of the recruitment process (e.g., job vacancy notice, prior to the interview), based on clear, objective, and gender-neutral criteria. In addition, asking questions about a candidate's previous pay history will be specifically prohibited.

3 Treating Pay Criteria as Internal Information

Companies will no longer be able to treat salary structures, grading systems or progression criteria as confidential HR matters; instead, they need to proactively disclose the objective and gender-neutral rules for pay-setting (pay, pay levels, pay progression). Employees will have to have easy access to this information, and a lack of transparency could undermine trust and fuel pay discrimination complaints.

4 Being Unprepared for Individual Pay Transparency Requests

Every employee, regardless of employer size, will have the right to request detailed pay information about the individual pay level and average pay levels, broken down by sex, for categories of workers performing the same work as them or work of equal value to theirs. These requests must be answered fully and employers must notify staff annually of this right-ignoring or delaying such requests exposes the company to financial risks. Moreover, employees shall not be prevented from disclosing their pay for the purpose of enforcing the principle of equal pay, and any confidentiality clauses in employment contracts that attempt to restrict such disclosure will be rendered unenforceable.

5 Ignoring New Pay Gap Reporting Obligations

Businesses with 100 or more employees will be required to periodically analyze and publicly report various information on their gender pay gaps, with the first reports due as early as June 2027 covering year 2026. Reports must be transparent, published (e.g. on the company's website), and inaccuracies or delays can result in legal, financial, or reputational risks.

6 No Clear Process for Addressing Gender Pay Gaps

Where an unjustified gender pay gap of 5% or more is identified in a comparator group, employers will have to take corrective action, unless differences are justified by objective, gender-neutral criteria , which may be further defined by the national legislator. The works council will need to be involved, and measures to eliminate pay gaps may be considered, such as increasing the pay of the underpaid group or freezing/reducing the pay of the overpaid group until equality is achieved. Failing to act or insufficient justification may result in mandatory pay adjustments, legal claims, and loss of trust.

7 Underestimating Sanction Risks

Violations of pay transparency requirements will trigger a reversal of the burden of proof, exposing the company to unlimited compensation and damages (including full back pay, bonuses, and non-material damages), as well as sanctions such as fines. Senior management and directors may face personal liability, and the resulting disputes can generate significant reputational and commercial risks for both the business and its leadership.

8 Incorrect Definition of Comparator Groups

Employers will be required to establish comparator groups for employees performing equal work or work of equal value. These groups must be defined objectively and gender-neutrally, based on the four core factors - skill, effort, responsibility, and working conditions - along with any additional factors relevant to the specific role. Pay assessment should not be limited to a single employer or the current workforce; but shall be extended to a single source establishing the pay conditions, and other evidence may have to be used, such as statistics, if no comparable employees are available. Properly defining comparator groups is crucial to ensure fair pay and compliance with transparency and equal pay obligations.

9 Arbitrary or Discriminatory Factor Weighting

Once comparator groups and relevant roles are defined, the next step is to weight the selected factors according to their importance for the specific job. Not all criteria carry equal weight: for intellectual roles, skills may be prioritized, while for physically demanding roles, working conditions may be more important. All criteria should be clearly defined, objectively measurable, and reviewed for hidden bias, including "soft" factors or seemingly neutral ones like years of experience. A points-based system can help score each role consistently and fairly. Clear documentation and simple, transparent structures reduce complexity and legal risk while ensuring pay decisions remain objective and gender-neutral.

10 Reacting Instead of Proactively Creating Compliance

Organizations should now adopt a strategic and proactive approach rather than waiting for employee complaints, media attention, or regulatory inspection. This begins with a thorough assessment of the full pay system, capturing all pay components and identifying potential weaknesses or compliance gaps. Next, the pay system should be designed or adapted to meet transpareny requirements, forming comparator groups and defining objective, gender-neutral criteria while checking for gender pay gaps. Implementation then integrates the system into HR processes, contracts, and recruitment, accompanied by training for HR, managers, and employee representatives. Finally, continuous review, optimization, and early involvement of employee representatives ensure transparency, fairness, and ongoing compliance.

Prof. Dr Michael Johannes Pils
Partner, Düsseldorf
+49 211 8387-215
m.pils@taylorwessing.com

Equal Pay Tracker

Fair Pay Check

About Us – Your Trusted Advisors for German Labor and Employment Law

Dr. Christian Maron, a leading international labor and employment lawyer at Taylor Wessing Germany, has been advising global companies expanding into the German market for more than fifteen years. Alongside his dedicated team, they help businesses align their global operations with German labor and employment law, providing strategic guidance on HR matters, employment contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection-both in and out of court.

Want to learn more?
Get in touch with the team today.

Contacts

Dr. Christian Maron
Partner, Munich
+49 89 21038-257
c.maron@taylorwessing.com

Dr. Benedikt Groh
Salary Partner, Munich
+49 89 21038-414
b.groh@taylorwessing.com

Dr. Larissa Burger, M.A.
Senior Associate, Munich
+49 89 21038-323
l.burger@taylorwessing.com

Carolin Wagner
Associate, Munich
+49 89 21038-313
c.wagner@taylorwessing.com

Kyan Hadji
Associate, Frankfurt
+49 69 97130-132
k.hadji@taylorwessing.com

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