

Equal pay for men and women: the measures to take in 2019



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The French President has decreed gender equality in the workplace to be a « major national cause » for his administration.

Law n°2018-771 issued on September 5, 2018 concerning the freedom to choose one’s future career has made the elimination of pay gaps obligatory for companies with more than 50 employees.

The actions that companies must undertake to eliminate pay gaps are specified in decree n° 2019-15 issued January 8, 2019, made effective retroactively starting January 1, 2019.

All companies with more than 50 employees must:

1. Establish an **equality index** according to which they will measure pay gaps between men and women **using 4 or 5 benchmarks**,
2. Give a **rating from 0 to 100** based on a statutory scale,

By virtue of the new law, the elimination of pay gaps constitutes a “performance obligation” (obligation de résultat). This means that it is not enough for companies to simply make their best efforts to suppress pay gaps. They have the legal obligation to meet this objective.

3. Send the equality index to the Social and Economic Committee “CSE” and the regulatory agency “DIRECCTE” and **publish the rating online**,
4. If the rating is less than 75/100, take corrective measures that will increase the rating to 75 points or more.

When does the first equality index rating need to be published?

The equality index rating must be published online:

- Before March 1, 2019 for companies with at least 1000 employees,
- Before September 1, 2019 for companies with more than 250 employees but less than 1000 employees,
- Before March 1, 2020 for companies with between 50 and 250 employees.

What are the applicable benchmarks and scales?

For companies with more than 250 employees, the 5 benchmarks are:

1. The pay gap between men and women, rated from 0 points (for a gap greater than 20%) to 40 points (for a 0% gap),
2. The gap in individual pay raises, excluding promotions, between men and women, rated from 0 points (for a result exceeding 10 percentage points) to 20 points (for a result equal to or less than 2 percentage points),
3. The gap in the rate of promotion between men and women, rated from 0 points (for a result exceeding 10 percentage points) to 15 points (for a result equal to or less than 2 percentage points),

The “CSE” is the new representative body for personnel. It replaces staff representatives in companies with at least 11 employees and all three representative bodies (Staff representatives, the Employee Representative Committee, and the Committee for Hygiene, Safety and Working Conditions) in companies with at least 50 employees.

The “DIRECCTE” is the decentralized state body charged with overseeing compliance with French labour law.

4. The percentage of female employees having benefited from a pay raise during the year following their return from maternity leave if pay raises were given during this leave, rated 0 points (for a result less than 100%) or 15 points (for a result equal to 100%),
5. The number of employees of the underrepresented sex that are among the top ten wage earners, rated 0 points (for 0 or 1 employee), 5 points (for 2 or 3 employees), or 10 points (for 4 or 5 employees).

For companies with 250 employees or less, benchmark n°3 is not taken into account and benchmark n°2 is rated from 0 points to 35 points.

How should the benchmarks be evaluated?

The methodology will be specified by executive decree.

What is the deadline for putting in place corrective measures?

If a company does not obtain at least 75 out of 100 points, it has a three-year deadline to obtain the minimal score of 75/100 starting from the publication date of the equality index rating.

The DIRECCTE can, in certain cases, grant a one-year extension.

Are any penalties stipulated?

Companies that have not obtained a score of 75 points within the prescribed deadlines will be subject to a fine of up to 1% of the total payroll.

According to the French minister for labour, the French regulatory agency responsible for gender equality in the workplace will perform 7000 inspections each year.

Depending on the results, companies can provide a budgetary allocation in the context of the Obligatory Annual Negotiation and/or a readjustment of their employment policy and career management programs.

Corrective measures can be outlined in an agreement or action plan concerning obligatory professional equality between men and women in companies of 50 employees or more (article L.2242-9 of the French Labour Code).

Key Points

The new regulation requires companies to obtain concrete and rapid results with regards to equal pay for women and men.

The government insists on the transparency of companies' wage policy (publishing the equality index rating online) in order to obtain equality in the workplace.