What Companies Need to Know About the New Salary Equality Regulations

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Earlier this year, Law 14.611/23, the Salary Equality Law, was enacted to combat salary discrimination between men and women. Regulations under the Law have now been issued in Decree 11.795, on November 23, 2023, supplemented by Ministry of Labor and Employment Directive 3714, issued on November 24, 2023.

One of the provisions under the Salary Equality Law that generated the most questions was the requirement for companies with more than 100 employees to issue half-yearly transparency reports, which will be used to analyze potential salary inequalities. The Salary Equality Law, however, provided no guidance on how the reports should be prepared or submitted.

With the new regulations, and especially Directive 3714/23, which provides details on how companies are required to report information, bureaucratic routines are now clearer.

First, the transparency reports, which are divided into two sections, will be **prepared by the Ministry of Labor and Employment**, not by the employer. Section I of the report will be prepared on the basis of data input into e-Social (the electronic tax and social security reporting and remittance system used by employers in Brazil), and Section II on the basis of information provided by employers in a specific tab on the Emprega Brasil (Employment Brazil) Portal entitled "Salary Equality and Remuneration Criteria", which has not yet been created.

Data input in e-Social will include:

- employer registration data,
- the total number of employees per establishment, classified by gender, race, and ethnicity,
- the amount of each employee's contractual salary and monthly compensation, and
- data on positions or jobs within the company, identified by Brazilian job classification codes (CBO).

  On the Emprega Brasil Portal, companies will be required to provide information on:

- whether they have a career progression framework and a career and salary plan,
- compensation criteria for employee access and progression,
- incentives for hiring women, if any,

- criteria used for promotion to supervisory, managerial and senior management positions, and
- any employer initiatives or programs to support the sharing of family responsibilities.

Employers will be required to detail amounts of salary and all other components of each employee's compensation, such as commissions, overtime, and bonuses. The procedures for salary discrimination inspections will be determined by the Labor Inspection Department (*Secretaria de Inspeção do Trabalho*).

As for the reporting schedule, the regulations state that transparency reports will be published in March and September, and employers will be required to submit Section II information in February and August on the preceding half-year. Since the digital reporting mechanism has not yet been made available by the Ministry of Labor and Employment, the Directive states that publication of reports will only be mandatory after the tab is created in the employer section of the Emprega Brasil Portal.

One provision that will certainly attract employers' attention is that the transparency reports must be available not only to the employer's own employees and workers but also to the general public, by publishing the reports on official company websites and on social media or similar platforms.

The new regulations also deal with another aspect of the Law, which requires companies to implement an action plan if inequality in their salary and remuneration criteria is detected. Companies must develop their action plan within 90 days of receiving notice from a Labor Inspector, and the plan must include:

- the measures that will be adopted, with priority levels,
- goals, timelines, and the mechanism used to evaluate the results of the plan,
- annual planning, with a schedule for implementation, and
- evaluation of the measures, at least every six months.

Salary equalization action plans must also contemplate programs to educate managers and employees about gender equality, promote diversity and inclusion in the workplace, and provide training to enable women to pursue careers on equal terms with men. A copy of the action plan must be provided to the employees' union.

Like the Salary Equalization Law itself, Decree 11.795 provides that workers' unions and employees will participate in developing and implementing action plans, and their role will be defined by collective bargaining. In the absence of a collective agreement, a commission of employees will be formed in accordance with the Consolidation of Labor Laws (CLT – *Consolidação das Lei do Trabalho*), although employers that have from 100 to 200 employees may hold specific elections for employees to choose the members of the commission.

The channel for salary equalization complaints will be, preferably, through the Digital Work Card app (*Carteira de Trabalho Digital*). Responsibility for the issuance of measures and guidance to ensure implementation of the Salary Equalization Law, monitoring data, and assessing public policy impacts and outcomes is divided between the Ministry of Labor and Employment and the Ministry of Women.

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