

Peru begins equal pay audits on companies

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As Peruvian authorities begin inspections to check companies are complying with anti-pay discrimination legislation, lawyers fear many local companies will not be prepared and may face sanctions.

From 1 July 2019, the Peruvian National Labour Inspection Superintendency (Sunafil), will begin audits to check for compliance with the obligations established by the country's law prohibiting pay discrimination between men and women. The equal pay law, which was passed in December 2017 and published in the Official Gazette "El Peruano", requires employers in Peru to evaluate and categorise jobs to ensure that men and women are being paid the same, not just for doing the same job, but also when performing different jobs if those jobs are categorised as being of equal value.

While audits will begin straight away for many multinational and large companies operating in Peru, micro and smaller-sized enterprises will not face audits until December this year, giving them slightly longer to ensure compliance. Despite this, members of the legal community fear many local companies have waited too long to act and may be caught short of requirements. "Even though the legislation was passed on 2017, there are still plenty of employers who have not even developed a plan to comply with all requirements provided by the legislation nor have an accurate diagnosis of the situation of the gender pay gap within their companies, because they do not consider equal pay a priority or are still unsure of the extent of obligations provided by this new legislation," says Monica Pizarro, partner at Estudio Echeopar member firm of Baker McKenzie International.

Under the law, companies must set employee pay in a way that does not discriminate on gender grounds and keep tables detailing employee categories and functions. Employers are also prohibited from dismissing or failing to renew employment contracts of pregnant or breastfeeding employees for any reason relating to their condition.

A failure to comply with any of the obligations established will be considered a very serious infringement by the labour authority and businesses will be fined, the level of which will

depend on the number of workers affected. “Non-compliance with the obligations set forth in the law, such as not informing employees about the salary policy or not having a chart of categories and duties, qualify as serious offences,” says Mario Pasco Lizarraga, partner at Rodrigo, Elías & Medrano Abogados. “Serious offences can be penalised with fines ranging from 2.25 to 45 tax units, which is approximately US\$2,850 to US\$57,300, depending on the number of employees affected by the breach.”

Companies also face the risk of being sued for salary discrimination based not only on sex, but on any prohibited ground, including any unjustified wage differentiation. “The most severe consequences of infringement will probably arise by the way of lawsuits for back payments,” Pasco points out.

All businesses in Peru must have the documentation in order required by the law relating to employee categories, functions and remuneration policies by 1 July 2019 and must ensure information relating to the compensation scheme has been communicated to employees, among other requirements, to avoid being sanctioned. “In order to comply with the new legislation, companies must identify the categories and rates for each job, detect the ones that are being paid unequally, and fix said inequality, but local companies, with the exception of the very large ones, clearly are not prepared,” says Pasco.

For companies that have not yet began ensuring compliance with the new law, Pizarro recommends that GCs initiate the process to implement key documents required by the law immediately, including a comprehensive salary policy and chart of categories, and that all employees are informed about the policy. “Afterwards, employers can start taking care of the complementary obligations provided in the legislation such as implementing measures to prevent and sanction sexual harassment and guarantee a more equalitarian work place,” she says.

Balancing equal pay-related requirements and employers’ needs of freedom to manage the salary of their personnel is a complex task, but getting the right legal advice is key according to Pizarro. “Conducting an analysis of positions and duties, and implementing a salary policy could turn into an opportunity to review compensation schemes and convert them into useful tools to attract, retain and manage effectively talented personnel,” she says, adding that companies that do not move ahead with changes fast will likely face more negative impacts than government sanctions. “Equal pay has become a hot topic, which employers will have to address as a way to avoid having to pay large fines but also to avoid gaining bad publicity,” she says. “Let’s remember that in Peru, there is a growing group of consumers and clients that demand that their service or goods providers engage in ethical behaviour while conducting their businesses.”