

Pay discussions? Shhhhhh...

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According to research by the TUC announced this week, almost a fifth of workers don't talk about their pay at work because they are not allowed to. The TUC called pay secrecy clauses "a get out of jail free card for bad bosses", with more than half of workers asked saying that they were not given any information on what other people were paid in their organisation. The TUC is calling for pay secrecy clauses to be banned completely so that workers can discuss their pay and benefits freely. Whilst acknowledging that talking about pay can make people feel a bit uncomfortable, the TUC's position is that it is essential to building a fairer workplace. And according to a YouGov poll for job site Indeed earlier this year, 56% of workers supported making personal salary information available.

Pay transparency legislation is already in place in some European countries – with countries like Sweden, Norway and Finland publishing pay and tax information. With gender pay and chief executive pay ratio reporting already in force in the UK, is wider pay transparency next?

Wait – weren't pay secrecy clauses banned back in 2010?

Not quite. The Equality Act 2010 made any clauses which prevented the disclosure of pay information unenforceable in certain circumstances – namely where the disclosure was made for the purpose of enabling the person who made it, or the person to whom it was made, to determine whether and to what extent there is a connection between pay and having (or not having) a protected characteristic.

So a contractual clause preventing the disclosure of pay would be enforceable where a group of workers were simply having a chat about pay levels but unenforceable where the purpose of the discussion was to find out if person A was paid less because of their gender or race (or any other protected characteristic). This would not simply be limited to pay discussions between a person who holds a protected characteristic and one who does not – having identified a pay disparity, a worker might want to test their hypothesis that the relevant protected characteristic is the reason for that disparity by discussing pay with someone who shares the same protected characteristic.

But employers are not mind readers – and whilst there may be some circumstances where pay discussions are held which are clearly not for the purpose of identifying whether there are any discriminatory difference in pay, in others, it will be hard for an employer to challenge an employee's "purpose" in raising the issue.

So is transparency good or bad?

The answer to this may well lie in the fairness or otherwise of your pay structures!

Where employees actively discuss their salaries, any discrepancies can lead to informal (or formal) complaints being raised, resulting in increased administration and management time taken up in attempts to resolve matters – and this is the case even if there are entirely sound, genuine and non-discriminatory reasons for any disparities. Pay disputes can also lead to employees voting with their feet, affecting both retention rates and recruitment costs.

However, genuine transparency and openness over pay can lead to more open dialogue between workers and their managers, and a greater understanding of what steps need to be taken to progress and develop their remuneration. It can work as an effective motivational

tool and transparent pay structures can also eliminate potential disparities caused by paying more to those who shout the most, or help address unconscious bias.

The 2019 CIPD Reward Management report found that 60% of employees had never had their pay explained to them – and that poor communication over pay was driving perceptions of unfairness. It seems that currently at least, there remains a lack of transparency over pay in a large number of workplaces.

The road ahead

Transparency, to some degree or another, is remaining firmly in the headlines – with calls to extend pay reporting to cover ethnicity and disability pay gaps, and reports on high-profile equal pay claims such as Samira Ahmed's successful equal pay claim against the BBC last week, and the Asda equal pay claim due to be heard by the Supreme Court.

The changing make-up of the workforce may also result in a different approach being taken as there are suggestions of a generational divide between those willing to discuss their salary and those not. More millennials and generation Z moving upwards in organisations could therefore result in a greater appetite for greater openness over pay.

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