

# Update

## Newsflash May 2019

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### Gender equality: new obligation of equal pay analysis

**On 14 December 2018, the Swiss Parliament adopted the final text of the amendments to the Swiss Federal Act on Gender Equality (hereinafter the "Amendments") introducing the obligation for certain companies to carry out an analysis of equal pay between women and men. In particular, the Amendments require an equal pay analysis to be carried out every 4 years and to be monitored by an independent body.**

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The Amendments were proposed by the Swiss Federal Council with the aim of achieving equal pay entrenched in the Swiss Federal Constitution by means of additional state measures. This proposition resulted from the observation that unexplained wage gaps between women and men remain despite the entry into force of the Swiss Federal Act on Gender Equality on 1 July 1996 and the promotion of voluntary measures during a "dialogue on equal pay" project, which lasted from 2009 to 2014.

In November 2015, the Swiss Federal Council started the consultation on the amendments to the Swiss Federal Act on Gender Equality. At the end of the consultation, the Swiss Federal Council instructed the Department of Justice and Police to draft a message on the amendments to the Swiss Federal Act on Gender Equality, which was approved in July 2017. The Swiss Parliament adopted the Amendments, after alleviating the project of the Swiss Federal Council, on 14 December 2018.

A referendum could have been requested against the Amendments until 7 April 2019, but no

referendum has been initiated within the deadline. The Amendments will therefore soon enter into force.

The Swiss Federal Council will likely set the date of entry into force of the Amendments still this year. The Federal Ordinance on the monitoring of equal pay analysis, which is currently under preparation, will enter into force at the same time.

This newsflash briefly summarizes the key elements of the Amendments.

#### 1. Companies concerned

Companies who employ at least 100 employees at the beginning of a calendar year will be subject to the obligation to carry out an analysis of equal pay between women and men for that year.

The calculation of the number of employees will take into account all employees, regardless of their working rates. Apprentices will however not be included in the staff.

The equal pay analysis shall in principle be repeated every 4 years (see Section 2. Paragraph 3 below for an exception). If the number of employees falls below the 100 threshold during this period, the equal pay analysis shall not be repeated until the figure of 100 is reached again.

Companies employing 100 employees or more will be exempted from the obligation to carry out an equal pay analysis in the following cases:

- › the companies are subject to a control of compliance with equal pay between women and men in the context of a procedure for the awarding of a public procurement contract; or
- › the companies are subject to a control of compliance with equal pay between women and men in the context of an application for the awarding of state subsidies; or
- › the companies have already been subject to a control of compliance with equal pay between women and men and have demonstrated that they meet the requirements, provided that the reference month of such control does not date back more than 4 years.

Companies employing less than 100 employees will not be subject to the obligation to carry out an equal pay analysis. They may however decide to do so on a voluntary basis.

## **2. Equal pay analysis**

All companies subject to the obligation to carry out an analysis of equal pay between women and men shall use a "scientific and legally compliant method".

The Swiss Confederation will provide a standard analysis model free of charge. This model is currently used in the public contracts sector to monitor compliance with equal pay. It is available online (<https://www.ebg.admin.ch/ebg/en/home/services/equal-pay-self-test-tool--logib.html>). Nonetheless, companies will be free to use another scientific and legally compliant method. This method shall be transparent, understandable and practicable.

The equal pay analysis shall be repeated every 4

years. However, if the initial equal pay analysis shows that the companies meet the requirements, they will be exempted from carrying out any further analyses in the future. If the equal pay analysis shows that the companies do not meet the requirements, the next analysis will take place 4 years later.

## **3. Monitoring of the equal pay analysis**

The equal pay analysis shall be independently monitored.

To carry out this independent monitoring, the private companies will be entitled to choose between:

- › an authorized audit company;
- › an organization whose task is, under its statutes, to promote equality between women and men or to defend the interests of the employees within the meaning of Article 7 of the Swiss Federal Act on Gender Equality; or
- › an employees representation within the meaning of the Swiss Federal Act on Information and Consultation of Employees in Companies.

The Swiss Federal Council will establish the criteria governing the training of the persons leading the audit in the Federal Ordinance on the monitoring of equal pay analysis (which is currently under preparation).

If they choose to have their equal pay analysis monitored by an authorized audit company, the companies shall provide the audit company with all the documents and information it needs to carry out the audit. The audit company will then review the conformity of the equal pay analysis from a formal perspective. It will also prepare a report on the execution of the equal pay analysis to the attention of the management of the audited companies within 1 year of the analysis being carried out.

If they choose to have the equal pay analysis monitored by an organization within the meaning of Article 7 of the Swiss Federal Act on Gender Equality or an employees representation, the

companies shall conclude an agreement with them on the procedure to be followed for the monitoring and submission of the report to the companies' management.

#### **4. Information on the outcome of the equal pay analysis**

The companies subject to the obligation to carry out an analysis of equal pay between women and men shall inform their employees in writing of the outcome of the equal pay analysis no later than 1 year after completion of the monitoring.

Companies whose shares are listed on a stock exchange shall publish the outcome of the equal pay analysis in the appendix to their annual report.

#### **5. First equal pay analysis and duration of the obligation to carry out equal pay analyses**

It is expected that still this year the Swiss Federal Council will determine by when companies must have carried out the first equal pay analysis. It may set different dates depending on the size of the companies.

The validity of the Amendments is limited to a total duration of 12 years after their entry into force. The Swiss Federal Council shall also report on the efficiency of the equal pay analysis and its monitoring to the Swiss Federal Parliament at the latest 9 years after the entry into force of the Amendments.

**Please do not hesitate to contact us in case of any questions.**

**Legal Note:** The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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