

WHAT IS IT?

On **November 23, 2023**, **Executive Order No. 11,795/2023** ("Order") was published, to regulate Law No. 14,611/2023, which provides for equal pay for women and men ("Equal Pay Law").



The Order provides for transparency mechanisms applicable to salary and remuneration criteria, in addition to implementing the Transparency Report On Salary and Remuneration Criteria ("Transparency Report"), and the Action Plan for Salary Inequality Mitigation and Remuneration Criteria between Women and Men ("Action Plan").



On November 23, 2023, MTE Administrative Rule No. 3.714/2023 ("Rule") was published to regulate the Order and establish the administrative procedures applicable to the Ministry of Labor and Employment ("MTE") concerning the obligations brought by the Equal Pay Law and the Order itself.

TRANSPARENCY REPORT

PURPOSE

Direct comparison of salaries, remuneration, and the proportion of positions occupied in the companies.



MINIMUM INFORMATION

- Titles or positions referred to in the Brazilian Classification of Positions ("CBO"), with job descriptions; and
- **Aumnts of:**
 - contractual salary
 - Christmas bonus
 - gratuities;
 - commissions
 - overtime
 - night-shift premiums;
 - hazard pay;
 - hardship pay;
 - premium for dangerous work;
 - one-third premium on vacation;
 - notice period worked;
 - weekly paid rest;
 - tips; and
 - other payments that make up the employees' remuneration by law or collective agreements.

COMPANIES' OBLIGATIONS

WHAT	WHEN
Provide information in the eSocial platform	REGULAR e-SOCIAL DEADLINES
Provide additional information in the Portal Emprega Brasil, if necessary	FEBRUARY AND AUGUST
Publish the Transparency Report on the companies' websites, social media, or similar means	MARCH AND SEPTEMBER
Disclose the Transparency Report to employees, collaborators, and the general public	MARCH AND SEPTEMBER

MTE's ROLE

PUBLICATION (disclosure)

The MTE will collect the data provided by the companies and publish the Transparency Report in **March** and **September** of each year for companies with **100 or more** employees

FORMAT

The Transparency Report will be published on the Labor Statistics Disclosure Program platform.

DATA PROTECTION

Anonymization of employee data according to the General Data Protection Law ("LGPD")

OVERSIGHT

Request for additional information beyond that contained in the Transparency Report.

Monitoring data entered in eSocial	Request for additional information from companies	Notice to non-compliant companies to create an Action Plan within 90 days	Implementation of oversight protocol against salary and remuneration criteria discrimination between women and men	Implementation of tax proceedings arising from Law No. 9,029/1995	Investigation of complaints of salary and remuneration criteria discrimination in a hotline available at the Digital Work Record Booklet application	Monitoring Transparency Reports submitted by the companies	Analysis of information contained in the Transparency Reports
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ACTION PLAN

APPLICATION

Companies with 100 or more employees with unequal pay and remuneration criteria to women and men identified by the MTE.

DEVELOPMENT DEADLINE

90 days, counted as of the notice of violation.

CONTENT

Measures to be implemented, goals and deadlines.

Creation of programs to:

- a) train managers, leaders, and employees on equality between women and men in the labor market;
- b) foster diversity and inclusion in the workplace; and
- c) develop and train women to enter, remain, and grow in the labor market on equal terms with men.

REQUIREMENTS

Involvement of trade unions representatives and employees, preferably in the form outlined in a collective labor agreement.

In the absence of a provision in a collective agreement:



Companies with up to 100 employees: involvement of a committee of employees in the form of articles 510-A to 510-D of the Consolidation of Labour Laws (CLT)



Companies with 100 to 200 employees: possibility of implementing a specific electoral procedure to create an employee committee

COMPETITION LAW ASPECTS

- Broad dissemination of specific information (for example, non-consolidated and non-anonymized) on salaries and respective titles is considered sensitive by Cade from a competition law perspective.
- Public sharing of information among competitors is subject to the penalties prescribed by Law 12,259/2011 ("Competition Law").
- **Other jurisdictions:** Exchange of salary information among companies can be considered illegal (USA, Japan, and Hong Kong), per the "Competition in Labour Markets" report of the Organization for Economic Cooperation and Development ("OECD").

CADE



RISKS AND CONCERNS:

Considering that the Transparency Report might contain sensitive data for competition law purposes, it may raise CADE's concerns with regard to possible antitrust violations by companies, as its publication may pave the way for:

- Mapping and identification of the salary of each employee by mere reference to the title, even if anonymized;
- Coordinated behaviors among competing companies when offering salaries/benefits to employees in the labor market.



INVESTIGAÇÃO NO CADE E POSSÍVEIS SANÇÕES:

Violation of the Competition Law may subject companies to fines of 0.1% to 20% of their gross revenue. Non-pecuniary sanctions may also apply to companies and individuals for up to 5 years.

CADE already has at least one ongoing investigation involving a possible violation of competition laws pertaining to sharing salary data and hiring conditions information among competitors (See Administrative Proceeding No. 08700.004548/2019-61).

DATA PROTECTION

HOW TO BALANCE THE NEED FOR TRANSPARENCY AND EQUAL PAY WITH THE PROTECTION OF EMPLOYEES' PRIVACY AND SAFETY?

DIRECTLY IDENTIFIABLE DATA

Allows the immediate identification of an individual.

Example: Name and Surname, Tax ID (CPF) No. 123.456.789-10, female, black, title: commercial officer

INDIRECTLY IDENTIFIABLE DATA ("Indirect Identification")

Information that, added to others available, allows the identification of an individual.

Example: Woman, black, director of the company XPTO, with a monthly salary of BRL 35 thousand - in a context in which she is the only black woman with this title in the company.

RECOMMENDATIONS

Principle of Transparency: conversations with/presentations to employees to explain the Order, and how it is something that benefits them.

- Security Principle: protect data in systems with appropriate security and access control to mitigate risks of incidents when preparing the Report.

PROCESS OF ANONYMIZATION OF PERSONAL DATA BY COMPANIES

- **LGPD:** anonymization as a process that causes data not to be directly or indirectly associated with an individual. Possibility of Indirect Identification of employees. Data may not be deemed technically anonymized and there will be greater exposure to employees
- **Risk mitigation:** balance the disclosure obligation provided for in the Order with the provision of a minimum amount of information necessary – relevant, proportional and not excessive data (Need-to-Know Principle).

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