

The Agenda podcast by Lewis Silkin: Pay Attention

Pay Attention Episode 5: A Finnish Line on Pay Transparency

Tom Heys: Hello and welcome to another episode of Pay Attention, a regular podcast coming to you from the Lewis Silkin offices in London and in Belfast. I'm Tom Heys.

David Lorimer: I'm David Lorimer.

Tom Heys: And once again, we've gathered around the virtual tables to talk about the Pay Transparency Directive (PTD). Today we're focusing on Finland, a country where the summer sun barely dips below the horizon, casting light around the clock, a fitting metaphor for a nation that leads the way in openness. Known for its quiet determination, a reputation for a refreshing lack of small talk and a culture where actions speak louder than words, Finland is a leader in transparency, especially on gender equality. From pay equity to family leave, fairness here is as unwavering as their northern sun. So let's get down to business, Finnish style, and explore how Finland's approach sheds light on what transparency can truly mean.

And with that, I'd like to welcome Nana Karanen to the podcast.

Nana Karanen: Hello everybody, nice to be here today to discuss about this matter. What an introduction, I have to say that was phenomenal, especially now when I'm here in Finland where I haven't seen sun in a few days! So that was very on point, but very lovely to be here.

David Lorimer: Excellent. Well, as Tom said then, let's get into it. And the starting point that we normally have with our wonderful guests from around Europe is to kind of ground us in where you are at the minute, what your existing reporting requirements in Finland are and what the challenges of those are. So, do you want to give us a bit of detail on that, Nana?

Nana Karanen: Yeah, of course. So basically in Finland, we have quite a lot of legislation on equal pay at the moment. We have regulation on equality between women and men, the so-called Equality Act. We have a non-discrimination act. And our General Law Employment Contracts Act also includes some rules on equal pay.

Under the Discrimination Act, it's included that all discrimination against gender, age, ethnic or national origin and so on is protected and that's why it also concerns the employees' pay. Under the Employment Contract Act, we have this very Finnish specialty – equality treatment. It means that all employees must be treated equally unless deviation from this is justified, taking into account the employees' task and position. And it's actually on trend right now to claim, or we have a lot of claims, on equal treatment, and I will come back to this probably later, but the PTD will include these litigations a lot. But these two acts, they don't include any reporting obligations.

But then we have the Equality Act, which requires the employer to promote equality between women and men, in terms of working conditions and especially with pay. And at the moment, all employers with at least 30 employees, they have an obligation to draw up an equality plan and conduct a pay survey relating to it. The pay survey is basically used to ensure that there aren't any unjustified pay differences between women and men, and obviously it is the tool for the employer to kind of see why there are changes and what we should do to kind of promote the equal treatment between those two genders. Under the current legislation, this survey must be carried out every two years, and like I said, it concerns all the employers with at least 30 employees, so the threshold is rather low compared to PTD. However, it can be agreed that the survey is done every three years if the employer makes the kind of normal equality plan every year. But the equality plan is rather a general document which kind of describes the equality situation at a workplace and so on. But the pay survey is the actual reporting obligation under Finnish law.

But one thing to know that it's internal, it is not something that is publicly given to authorities. It is not something that is... that you have to give to – we have this equality ombudsman in Finland that is the authority that takes care of the equality matters – you don't have to send it to them. So, it's a little bit different than the reporting obligations under the coming Directive. So this is what we have at the moment.

David Lorimer: That's really interesting. And so just on that, is there an obligation to share any of the results of the survey with staff or with employee representatives at the moment?

Nana Karanen: Yes, so the employer should handle the results of the pay survey and also the equality plan with the employees in their continuous dialogue, which is an obligation under the Cooperation Act, which concerns all the employers with at least 20 employees, but here the threshold is obviously 30. But it should be, the information should be given to the employees or the employee reps. And every single time the employer makes changes to the plan or if every single time the new survey is done, this should be informed to the employees, and it's very important to kind of do cooperation with the employees and see why we are in the situation where we are.

Tom Heys: So when we've been speaking with colleagues throughout Europe, often what we've heard is that the PTD will be very transformative, it will introduce a load of new obligations and rights that don't already exist, and there are a lot of countries that don't have any sort of reporting or rights to find information out about the pay of other people.

So how transformative or disruptive, depending upon your point of view, do you think the PTD will be in Finland? It sounds like you're already quite far advanced in the transparency direction.

Nana Karanen: That is an excellent question. Even though we have the current system, Finland is on the worst side on gender pay gap. Our gender pay gap was, for example, in 2020, it was almost 17%, because we have a very gender segregated labour market. So there's still a lot of work to be done. And the thing is, even though we have a good system right now, employers are not complying with it. So there's not, this is my personal opinion, there's probably not enough supervision. There aren't really any, or the employer does not suffer if they don't do the survey. So it's very hard for, at some point, if the employee makes a claim to the equality ombudsman, they can post a fine to the employer.

But the fines are very low and they're quite rare. Ombudsman have so much work with normal discrimination situations, so they don't have time to supervise each employer to have this internal pay survey. So I think the big thing about the new system is that you have the reporting obligation that is public, and that will require further employers to do more. They will actually have to do it, like at the moment because they can kind of ignore the obligation, obviously under the Transparency Pay Directive the thresholds are a lot higher. So now, we have to do the pay survey when there's 30 employees, it's totally different when you have 250 employees or 100 employees that are the thresholds under the directive. But I think this will also have an effect on the current system of pay surveys, so it's kind of like an indirect effect that the current system is also controlled more and also complied with more. So I think in that sense, it has a substantial effect on the Finnish market and the system; even though we have the system already, but it's really not as strong as it could be.

David Lorimer: That's really interesting because one of the big criticisms of the UK's gender pay gap reporting regime has been that it lacks teeth, it lacks enforcement power and there are some proposals to address that. But that's a really fascinating practical insight in terms of how things will change, and actually the interesting point you really make is that small employers will probably be impacted too because the government might take an opportunity to tighten up the existing obligations. So that's, it'll be interesting to see how that goes.

Just on the thresholds, one theme that we've been discussing with colleagues around Europe is whether or not their country might bring the threshold down to match the existing thresholds. So for example, in places

like Spain, the threshold might be 50. Do you think that the threshold for PTD reporting will be brought down by the Finnish government?

Nana Karanen: No. The Finnish government has already said that it will follow the minimum requirements under the directive. So it's very, very, I would say, unlikely that they will bring the thresholds down. But the question is, how will they kind of combine these two systems - the pay report system we have now and the new system? Because also the reporting, like I said, in the current system, it's internal reporting and in, obviously in the new system, there's two steps and also, it's public reporting. And also, they're a little bit different. There are like minor details: in the directive there's an increased level of detail with respect to the reporting. So right now in Finland, reporting is done by the whole pay, and obviously, as we know in the Directive, it has been split into that you have the basic pay, the add-ons, the overtime and so on, and bonuses. It's very specific. And also, it's a little bit different than how the employee groups are kind of generated under the Finnish current legislation and under the Directive. So it is actually very, very interesting to see how these two systems are combined or whether they are combined. And is it so that employers with 250 or 100 employees are released from their obligation to do the pay survey they would have to do now under the current legislation? But obviously we didn't know what is the outcome. I think at the moment, it would be quite an awful situation for an employer with 100 employees that you have to report every two years on the matters under the... or every three years under the directive on certain matters, and every two years or every year about matters under the Equality Act. It just doesn't work. It's a huge administrative burden for the employer, and I think that's really not the purpose of this directive. The purpose is to increase transparency and make the situation better and kind of, making systems where you're just ticking the boxes - it really doesn't help. So we'll see. It's very interesting to see how it's done in practice.

Tom Heys: You were saying before that enforcement of the existing regime is pretty weak. I was wondering to what degree at the minute employers in Finland face a lot of equal pay claims? Because I think with the PTD, that's the real risk for employers because it gives - we've talked about this a lot before - it gives employees everything they need to be able to bring equal pay claims. And that's the real threat, rather than fairly small fines by government bodies, massive equal pay claims brought by large groups of employees is a real potential issue. Is that something?

Nana Karanen: Yeah, I think at the moment, actually, well, obviously, we have claims that the employees also make based on their genders. But most of the claims that concern pay are based on the Employment Contracts Act's equality treatment regime, because it's easier. It's clear, it's easier, it does not require discriminatory ground. An employer can basically breach the obligation by accident, by paying, for example, different salary: if there were two lawyers in the same position and we were to receive our salary model would be totally different. The one who is kind of suffering could make a claim that they should receive the same salary than the other lawyer in the same position. So I think these claims are very common and they have been, the number of them have increased substantially over the years. But to be honest, claims that are based purely on gender discrimination or breach of that, I think they're quite rare, especially in our field where we assist employers. But the equality treatment claims are very common, and they are, we're talking about big amounts of money, because think, because usually it can be 200 employees who are claiming that - hey, by the way, you had 10 employees who received this kind of salary, we want it to, we should receive the same amount. So understandably, we're talking about big sums because of so many employees. So I think these are more common in Finland right now. But my prediction is that in the future, the pay or the equality claims concerning gender will actually also increase when people are being more aware and the awareness increases, because there's a lot of discussion in the news and lot of discussions in unions and so on. This will obviously - awareness is something that always helps. People are aware of their rights.

David Lorimer: We love a bold prediction on the Pay Attention podcast, so excellent thank you for that! And I'm going to put you on the spot Nana and ask you to make another bold prediction. We know at - plug alert - thanks to the fantastic Lus Laboris PTD implementation map that's available on the Lus Laboris website, that

a Ministry of Social Affairs and Health has established a working group in Finland to prepare for implementation of the directive.

Two questions, one is, do you have any insights on when they expect to report/publish some implementing legislation? And two, if not, we're going to ask you to place your bet now - when do you think the directive will be implemented in Finland?

Nana Karanen: Exciting question! I know, I have insider info that they're working very hard at the moment. They have had several meetings during the past weeks and they're really, because they're working on it very hard. But in Finland, we have a lot of upcoming changes with regard to labour legislation going on right now. So the process may be rather slow at the moment.

We don't have information when they are planning to give the government's proposal. It's kind of we have no information yet. Hopefully before the directive should be implemented because that's not always, that, that's not always the issue. But I think at the moment, I would assume that it would come during the spring. But I mean, anything can happen. It depends on what kind of commentary they get and how much they have problems with implementing the new legislation to the current legislation. Because obviously there are quite a few changes that needs to be done and quite a few things that needs to be considered. But we'll see. We'll see what happens.

David Lorimer: I see. So we're saying Spring '25 or Spring '26?

Nana Karanen: I would say five, probably. I'm optimistic, but we'll see what happens. I could be totally wrong too!

David Lorimer: Excellent!

Tom Heys: Thanks for that. So, one of the biggest challenges for employers across Europe is dealing with the categorisation point of the PTD - so this requirement to categorise your employees into categories that are of equal value. Is that something that will similarly be a big challenge for employers in Finland? Is there anything like that that currently exists that employers can be able to use or will it, or is it going to be a brand-new challenge?

Nana Karanen: Well, obviously the categorisation included in the Article 4 is very specific, and we have categorisation in collective bargaining agreements. There are a lot of pay groups that are divided by applying some kind of objective grounds. So our view is that, for the employers who apply collective bargaining agreements to all of their employees, the categorisation will be quite easy, maybe, if the collective bargaining agreement system with regard to how the pay groups are determined is not exploited due to this change or the proposed changes. For the employers who do not have collective bargaining agreements, and for the employers who have employee groups to whose employment CBAs are not applied, I think they will have the most work ahead of them. Because obviously, especially in the leader or in the higher ranks of employees, we're talking about senior salaried employees and so on, quite often CBAs do not apply to their employment. It's a little bit harder to create these objective grounds how the salary should be determined, which employees should be compared to each other.

So, in my opinion, if the company has a good CBA or they have CBAs and so on, they currently already have a very objective system to determine how the employee salaries will go. But the problem is in the companies where there aren't any CBAs or employees who are not part of the CBA. So I think that will be a thing in general.

David Lorimer: That's a good insight. And how prevalent generally, a rough estimate, are CBAs among employers?

Nana Karanen: Oh they're so common. I would say at some point it was almost 90% of employees fall within the scope of CBAs because we have, in Finland we have a rather interesting CBA system. We have this kind of like a generally binding CBAs, which means that if you, you're either a member of the union and that's why

you have to apply a CBA or there's a generally binding CBA that should be applied within the field of your business, where you conduct your business. And it's kind of, even though you're not a member you have to apply it, so that's why the CBA field is very big in Finland.

However, the trend tends to be that the generally binding CBAs are kind of disappearing a little bit more, because companies are not willing to, kind of, they don't want to bind themselves, they don't want to be bind to an agreement they cannot have an effect on. But yeah, but at the moment it's around 90 and it is a high number. But obviously a lot of specialty work or like lawyers or whatnot, we don't have any CBAs. And I think for people doing such specialist work, it will be quite hard to also determine what are the objective grounds, how the pay should be determined. So we'll see.

And I think the most important - not most important - but the most interesting thing is the article or the recitals that state that the comparison can also be done between different companies, for example, within Europe. And I think that's going to be a huge thing because we have a lot of daughter companies in Finland that have their group companies in Europe and the pay decisions are made in the group level and the kind of, the pay kind of levels, if you have like L2 or L whatever the levels may be, are determined in, for example, in France or Germany and now those employees would have to be compared with each other and how this will be. I think that's very interesting to see how that will work, if it will work.

David Lorimer: Yeah, certainly there's lots to unpack around how that kind of single source when it comes to pay decisions is going to be implemented. I suspect that's one of the concepts that's headed for the European Court of Justice whenever this is all implemented, so we'll watch out for that!

Nana Karanen: Yes, I know. I've read about it before, but I don't think it has been applied in Finland, even though we probably should have. But I mean, like I said, the equal treatment, our legislation or case law, or a case law on equal treatment, is really not in line with the European case law. So it has been determined a little bit differently, so we'll see how that will change.

David Lorimer: I would say it's not all that uncommon for the practice to fall away from the theory, but certainly one to keep an eye on.

Moving on then, obviously much of this is collective in nature. There's a real emphasis on consultation and meaningful engagement with worker reps as a method for allowing transparency, allowing reporting, but also allowing discussions and audits and joint pay assessments, and worker reps are going to have a prominent role. It'd be good to know how much of a prominent role worker representatives and unions already have in Finnish labour law and whether that gives you some indication as to who the likely representatives will be once the pay transparency directive comes into place.

Nana Karanen: So at the moment, well, obviously, like I said, we have a lot of unions and all the unions have a rep within - okay not all the unions have a rep within the companies - but the employees are allowed to choose union rep amongst themselves to represent them in consultations. And like I referred when I was talking about the pay survey, the employer must have kind of continuous dialogue with the employer reps, which means that for around every four months or every three months, they must have a discussion where they discuss certain matters with respect to certain topics that are determined by the law. But honestly, I don't think the Transparency Act will change this at all. Honestly I don't see employee reps or unions to have any, or this will not have any effect on how things work at the moment. So I don't think, there is no significance with this respect in Finland.

Tom Heys: So do you think the new individual rights created by the PTD might have an effect in Finland? Could they be something that employees will be making use of?

Nana Karanen: I think definitely, if they read the news. But I think the employees are kind of expecting more than they will get. I think they think that in the job advertisement there should be a certain salary stated and they will think that they will be allowed to get more information. They can ask, hey, I want to know my co-worker's salary. And obviously these are not the rights the employees are given. So I think it's also very

important that the employer gives the employees proper information on what kind of information they can get and what is given. But I'm sure that this will have an effect and employees will use their rights. And it's very important they do, because obviously at the moment it has been deemed that the employees do not use their current rights. They're not really utilizing what they could, and they don't dare or whatnot. I would hope... because I mean in Finland right at the moment we have it, employees they have a right to ask for pay information but it's very hardly done. I think it goes so that you have to contact the equality ombudsman who can ask the information. So it's basically a dead article in our legislation. It's never used.

So I'm hoping that the new rules are a little bit more effective in a way that the employees will actually get the information they need. But it's very important to also manage their expectations in a way that they're not, they don't think they get more than they actually do. Because like I said, in the news, there has been a lot of misinformation with this regard and very catchy headlines on, oh that you can ask your co-workers salary! And it's really not that simple. But so yeah, I think it's going to be a big thing, but I kind of hope it will, but it is important, it's a very big part of the Directive.

David Lorimer: Yeah, absolutely. It's really interesting actually, you've kind of drawn out two themes here that we're increasingly coming back to. One is kind of expectation management and proactive communication around this. So employers need to kind of take control of the narrative and make it clear to employees and employee reps what they're doing now to prepare and bring them along on the journey so that they're not acting under false pretences, so that they're not on day one submitting lots of rights for information that they don't necessarily have or isn't quite right or isn't quite consistent with the Directive.

But also, perhaps more interestingly, Nana, one of the things that keeps coming up is, especially with these new individual rights, they're really about shifting the culture around the workplace. So in particular, this idea of the kind of ban on pay secrecy clauses as an encouragement for individuals to talk to each other about their pay and to work out whether there is pay inequality going on. It's interesting, you should say, that we will see how that plays out in the workplace, and actually, some of the anecdotal conversations we've been having with employers are - actually these conversations aren't necessarily as taboo anymore in some places as others, and Gen Z in particular are quite good at having these conversations openly in the workplace. Is that the position in Finland too?

Nana Karanen: And that's actually funny that you bring this, the ban of, the employee cannot be forced not to give information about their salary or whatnot. I don't think that has been a problem in Finland because people don't talk. So there has not been... it's a very big culture-ish thing! Like you said in the introduction, people don't do small talk. So money talk is also something that we don't do, we haven't done.

So basically, I've never seen a clause that the employer would forbid the employee to give their salary or they weren't allowed to tell their salary, so I think that's something that will not have any effect on Finland. But the funny thing also, like kind of relating to this about culture things is, I was actually listening to a discussion amongst different lawyers from Europe and they were saying, yeah, it's going to be a huge thing that the employer cannot ask the employee's previous salary history, it's going to be a major thing. And I was like thinking, I've never heard in Finland that an employer asks the employee's salary history. That is just not, that's not something that is done in Finland. Employers may ask that, Hey, what is your wish? What is your salary wish for this current position? But they never ask what has been your salary before. So these are very culture issues and very culture matters, and I think the Finnish approach is a little bit different and a little bit kind of, more hesitant because this money talk is not a big thing here. So I think these clauses, it's very good that there's legislation about them, but they will not have any effect on the Finnish current situation because, I mean, they haven't been used. I hope when Gen Z and so on comes to the workplaces, they have more discussion about these matters, but like millennials or older generations, there's no discussion about salaries, and hence we have problems with pay transparency. So yeah, but it's very interesting.

But I think actually, an additional point about also this culture thing, I know it's a little bit outside this subject, but under the Directive, the employers must start to use gender neutral titles. And this will be a problem in

Finland, because our language is made in a way that, for example, authorities in Finland, if you translate it directly, is authority-men. Like policeman in Finland, it is a policeman, fireman, lawyer is a lawman. So what we will do with those titles, how do we have to kind of... because we have to remove...we have to continue to start using gender neutral titles. What are we going to do with several legislation on authority employees whose title is authority men? So, this is something that will, actually, I don't know how it's going to go and what is going to happen. Otherwise, legislation works quite well with respect to gender neutrality. But then the titles, it's a totally new game. It's a totally different ballgame. I'm just very interested to see what happens with those, because the Directive is quite clear on this matter.

David Lorimer: Get all the man job titles in the bin.

Nana Karanen: I don't know! I mean, I know they're doing it already. For real, I'm not a law man anymore. I'm a, well, obviously I'm an attorney, but I'm also a jurist, so they have changed titles and they're going closer to the gender neutral.

David Lorimer: Authority Man sounds like the worst kind of superhero!

Okay, well that brings us to the *Finnish* line of today's podcast, sorry about that! Thank you so much, Nana, for bringing us up to speed on what's going on in Finland and what we can expect and making some bold predictions that we'll be watching with interest.

We'll be back soon with another Pay Attention pod with lots more insights on the PTD. In the meantime, please feel free to reach out to your usual contacts at Lewis Silkin to talk more about the Directive.
