

Employment Law

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ALERT**

Why Kenyan employers should watch South Africa's bold move towards pay transparency

In a significant step towards wage equality, South Africa introduced the Fair Pay Bill (Bill) in June 2025. The proposed law is aimed at eliminating unjustified pay disparities and embedding transparency into workplace pay structures. The Bill has sparked regional conversations on how African labour markets can address long-standing issues of wage discrimination, particularly along gender and historical lines. For Kenyan employers, the developments in South Africa offer a timely opportunity to reflect on local practices and consider whether a similar framework could take shape closer to home.

The Fair Pay Bill draws heavily from international best practice and proposes several key reforms. If the Bill is passed, employers would be prohibited from asking job applicants about their salary history, breaking the cycle where past inequality influences future pay. It also requires employers to disclose salary ranges when advertising jobs. The Bill also expressly provides that an employee has the right to discuss a job offer or the remuneration (or remuneration range) for a job role with another employee. This protects employees from retaliation for discussing their pay with colleagues, a measure intended to normalise conversations about remuneration and expose inequities that might otherwise go unnoticed. The Bill builds on South Africa's Employment Equity Act 55 of 1998, particularly section 6, which prohibits unfair pay

discrimination in line with the principle of equal pay for equal work or work of equal value. If the Bill is passed into law, it will represent a marked shift from the traditional culture of pay secrecy toward a system where fairness must be demonstrable and pay decisions accountable.

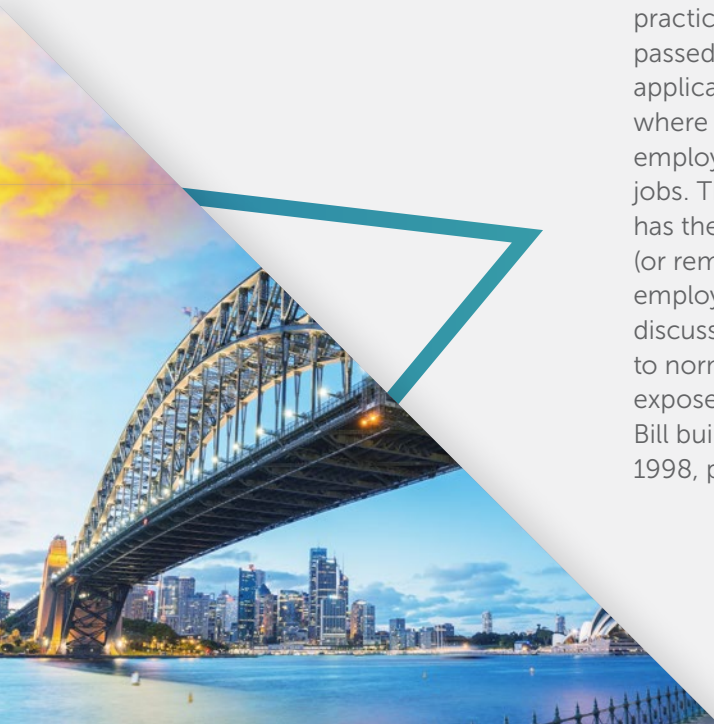
Comparative global and African legal insights

The developments in South Africa echo global trends that have already been codified in several jurisdictions.

At the EU level, the Pay Transparency Directive (Directive (EU) 2023/970), adopted in May 2023, requires employers to disclose salary ranges in job postings and provide employees with access to information on pay levels for comparable roles. Employers with 100 or more employees must report pay gap data and if disparities exceed 5% without justification, corrective action is required. The directive also strengthens employees' right to request pay information and imposes transparency obligations during hiring and promotion processes. EU member states are required to transpose the directive into national law by 2026.

In the UK, the Equality Act, 2010 (Gender Pay Gap Information) and Regulations, 2017 require companies with 250 or more employees to report gender-based pay differences annually, including median and mean hourly wages and bonuses.

In Canada, the Pay Equity Act, S.C. 2018 c.27 requires federally regulated employers with 10 or more employees to proactively create and maintain pay equity plans. Employers that fail to comply may face penalties from the Pay Equity Commissioner.



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In Iceland, the Act on Equal Status and Equal Rights Irrespective of Gender, No. 10/2008 (as amended), mandates equal pay certification for employers with 25 or more employees. Compliance is assessed using the Equal Pay Standard (IST 85), a government-approved audit framework that must be implemented and updated every three years.

In Namibia, the Labour Act 11 of 2007 similarly mandates equal pay for equal work. Recent reform proposals currently under consideration by the Ministry of Labour and Social Welfare (2023–2025) aim to introduce salary disclosure obligations and revise the Wage Commission framework to address pay disparities across sectors.

Closer to home, while Rwanda has not yet passed standalone pay transparency laws, the National Gender Policy (2010) and the Labour Law, Law No. 66/2018 require equal remuneration for work of equal value and encourage employers to mainstream gender equity in employment practices.

Kenya's legal context

In Kenya, the Constitution of Kenya, 2010 (Constitution) guarantees the right to fair remuneration and non-discrimination in pay. More specifically, Article 27(3) of the Constitution guarantees equality and freedom from discrimination and Article 41(2)(a) provides for the right to fair remuneration. Additionally, section 5 of the Employment Act, 2007 prohibits direct or indirect discrimination in employment, including on the grounds of sex, race, ethnicity and social origin.

However, there are currently no specific laws requiring employers to disclose pay ranges, avoid salary history inquiries or maintain transparent internal pay structures. In practice, most hiring and promotion decisions remain opaque and many organisations, especially in the private and informal sectors, lack consistent frameworks for setting and reviewing pay. This has contributed to persistent wage gaps, particularly for women and workers in lower-paid roles, despite Kenya's relatively strong legal foundation on paper.

Why Kenyan employers should take note

The South African approach suggests a more proactive model. Rather than relying solely on employee complaints or court intervention, if the Bill is passed it will require employers to take preventive steps to ensure fairness from the outset. For Kenyan employers, adopting similar practices voluntarily could bring multiple advantages. Transparent pay policies can help attract top talent, especially among younger professionals who prioritise equity and openness in the workplace. They can also reduce disputes over pay, improve employee trust and align businesses with global standards increasingly required by international clients, investors and regulators. Such measures would ultimately help to position a business as an employer of choice.



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Importantly, employers do not need to wait for legislation to act. Measures such as developing structured salary bands, avoiding reliance on past pay in recruitment and conducting internal pay audits can be implemented now as part of good governance. These steps not only demonstrate a commitment to fair employment practices but also help prepare organisations for the possibility of future legal or policy reforms in Kenya.

Conclusion

While there is no indication that Kenya is about to introduce a Fair Pay Bill of its own, the regional momentum toward pay equity is growing. As more countries adopt transparency laws and as conversations around social justice and decent work gain traction, it is increasingly likely that pressure for reform will emerge from both local advocacy and international influence.

In light of these developments, Kenyan employers would be well advised to assess their current pay practices and consider how they might evolve in a future where transparency and fairness are not just encouraged but expected.

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Cliffe Dekker Hofmeyr

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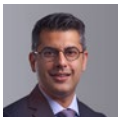
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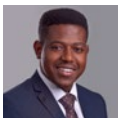
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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