

# European sex discrimination laws

## Issues for the multinational employer

Using three case studies, Melanie Thomas, Hans-Peter Löw, Jean-Marc Albiol and Nicolas Martin consider issues surrounding the employment of women in Europe by international employers and suggest ways in which to minimise the risk of facing the potentially large compensation payouts and damaging publicity which accompany sex discrimination cases.

The issue of discrimination has come under the spotlight recently as a result of the experiences of those employers on Wall Street and in the City of London who have found themselves having to defend massive claims for compensation, in the full gaze of the tabloid and financial press. In addition, major changes are taking place in Europe in the area of anti-discrimination law.

In the early days of the millennium, the EU endorsed two far-reaching directives (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation). These aimed to prohibit discrimination on grounds of race, sexual orientation, religion or belief, age and disability in all member states (now including the accession states in Eastern Europe). This radical expansion of the reach of European discrimination law has, in particular, focused the attention of employers on the enthusiastic approach of the EC (in particular the European Court of Justice (ECJ)) over the last 50 years to the area of discrimination over which it has always had competence: sex. (For an overview of legislation in this area see box, *EC legislation on sex discrimination*.)

Using three case studies, this article considers issues surrounding the employ-



## EC legislation on sex discrimination

- Article 141 of the Treaty on European Union 1992 (establishes the principle of equal pay as one of the foundations of the EC).
- Council Directive 1975/117/EEC on the approximation of the laws of the member states relating to the application of the principle of equal pay for men and women (Equal Pay Directive) (deals with remuneration).
- Council Directive 1976/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Equal Treatment Directive) (deals with other terms and conditions of employment; amended in 2002).
- Council Directive 1986/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (Equal Treatment in Social Security Schemes Directive) (deals with equality in occupational pension schemes).
- Council Directive 1992/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (Pregnant Workers Directive) (sets out minimum standards for the treatment of women who are pregnant or on maternity leave).
- Council Directive 1997/80/EC on the burden of proof in cases of discrimination based on sex (Burden of Proof Directive) (reversing the burden of proof in favour of the claimant in sex discrimination cases).
- Council Directive 1997/81/EC concerning the framework agreement on part-time work (Part-Time Work Directive) (prohibiting discrimination against part-time workers).
- Council Directive 1999/70/EC concerning the framework agreement on fixed-term work (Fixed-Term Work Directive) (prohibiting discrimination against fixed-term employees).
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Discrimination Directive) (prohibiting discrimination on grounds of race).
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Equal Treatment Framework Directive) (prohibiting discrimination on grounds of age, disability, religion or belief and sexual orientation).

ment of women in Europe by international employers and suggests ways in which to minimise the risk of facing the potentially large compensation payouts and damaging publicity which accompany sex discrimination cases. In particular, the following areas are investigated:

■ **Case study 1.** Sexual harassment and governing law, looking at:

- where to bring a claim for sexual harassment, and which jurisdiction's law would apply;
- what conduct can amount to sexual harassment in different jurisdictions; and

□ recommendations for planning a corporate sexual harassment policy.

■ **Case study 2.** The controversial area of bonuses in sex discrimination law, including:

- the variations in the approach of different jurisdictions;
- the burden of proof required to bring a sex discrimination claim;
- the rights of women on maternity leave; and
- recommendations for a company operating a bonus scheme.

■ **Case study 3.** The variations in remedies and enforcement measures in different jurisdictions.

### The scenario

The three case studies in this chapter are based on the following scenario. Farley Rockwell (Farleys) is a global investment bank which has its headquarters in New York. It employs over 17,000 employees worldwide, including around 13,000 spread across 16 European countries. Its main European operations are in London, Paris, Frankfurt and Madrid. From these centres it provides asset management, investment banking and wealth management services to both institutional and private investors.

### Case study 1: sexual harassment and governing law

Claire Weiss is an assistant vice-president with responsibility for co-ordinating the firm's real estate research strategy. She is based in New York but her job requires her to visit the European offices on a regular basis to maintain strong relationships with the property analysts there and to ensure that a co-ordinated strategy to the analysis of property markets is maintained. She spends, on average, around 30% of her working year in Europe, evenly split between London, Madrid, Paris and Frankfurt.

In January 2005, Claire travels to an important meeting in Paris, attended by the respective heads of the research desks for each country she works with. After the conclusion of the formal meeting, a dinner is arranged at the hotel at which everyone is staying. The dinner is very relaxed and much wine is consumed. Towards the end of the evening, she finds herself in conversation with Moritz Schumann, head of the research desk in Frankfurt. Moritz compliments her on her dress and goes on to say that, in his view, women should not be allowed to wear trouser suits, as nature did not intend a fine pair of legs to go unnoticed. Claire is taken aback and tries to change the topic of conversation. Later, as she is leaving, Moritz suggests that she join him in his room for a nightcap and a discussion of her promotion prospects. She refuses and calls her line manager in New York, as she is very upset. He tells her that he is sure Moritz meant no harm and that she should just put the incident behind her. The following morning, Claire consults her friend, who

is an employment lawyer, about her legal options.

### Jurisdiction, governing law and extra-territorial scope

The first question to consider is where Claire could bring her claim (the forum) and which country's law would apply (governing law). In relation to the European jurisdictions, this should (in theory) make no difference, as the principles on discrimination apply Europe-wide. However, there are still considerable variations between EU countries on the interpretation of sex discrimination prohibitions, and on the remedies available. The potential for forum shopping is therefore significant.

The French and German courts would not accept jurisdiction on these facts, as Claire does not usually work within those countries. The Spanish and UK courts, however, are likely to accept jurisdiction on the grounds that Farley has places of business in the UK and Spain. A court in New York is also likely to accept jurisdiction on the basis that the employment relationship is centred in the US. New York law would be applied by the US court, but in the right circumstances, the relevant European law might be used to determine the question of whether or not the alleged harasser had contravened the standards of behaviour expected of him.

If the case proceeded in Spain or the UK, the next question is which country's law would be applied by the Spanish or English courts to the dispute. If the case is brought in any of the EC jurisdictions, the Rome Convention on the law applicable to contractual obligations (1980/934/EEC) (Rome Convention) determines which country's law is applied. Under the Rome Convention, the starting point is to decide which country's law applies if there is no express choice of law in the contract. The basic principle is that the law of the country in which the employee habitually carries out her work will apply, even if she is temporarily employed in another country. In Claire's case, this means that New York law will apply. However, this is subject to an important limitation. Any rules which the forum regards as mandatory, irrespective of the governing law of the contract, will apply. In all of the relevant jurisdictions, the law on sex discrimination is regarded as mandatory and will therefore be applied, regardless of the fact that New York law governs the contract.

However, in most jurisdictions, there is still a requirement that there be some sort of connection between the act of discrimination and the country concerned. In Spanish law, it is unclear whether it would be necessary for Claire to be providing her services in Spain at the time the act of discrimination occurred. In the UK, the statutes on discrimination apply if an employee performs even part of her work in the UK. It does not matter that the incident complained of took place somewhere else. The UK therefore exerts extra-territorial jurisdiction in the field of discrimination. This means that, even if an act of sex discrimination occurs in New York, an action could be brought under UK law provided that the UK courts have jurisdiction over the employer and the employee works at least partly in the UK.

### Sexual harassment

Council Directive 1976/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Equal Treatment Directive) was amended in 2002 to make it clear that sexual harassment is a discrete form of sex discrimination. It also, for the first time, provided a legislative definition of harassment. The definition distinguishes between conduct relating to the victim's sex and conduct which is sexual:

- **Sex harassment.** This takes place where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

- **Sexual harassment.** This is where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

In France, national laws prohibit any unfavourable treatment being meted out to an employee as a result of having suffered from, or having refused to suffer from, any act of sexual harassment by any person whose aim was to obtain favours of a sexual nature. The focus is not on prohibiting all inappropriate behaviour in a professional context, but

rather on protecting employees from any negative career consequences. However, even if Claire could not demonstrate any negative impact on her career, she could potentially rely on the general law on moral harassment, which prohibits any conduct which has the object or result of the deterioration of someone's working conditions in a manner likely to violate their rights or dignity. However, it is not enough to rely on isolated incidents like this one; an element of repetition is essential in order to show moral harassment. Like sexual harassment, this is regarded as a criminal offence in France, punishable by a fine of up to EUR15,000 (about US\$19,316) and one year in prison. This is in addition to a claim for civil damages by the victim.

In Germany, conduct is actionable if it has the effect of either violating the victim's dignity or creating a hostile environment. As a result of the amendments to the Equal Treatment Directive, there will no longer be any requirement that the harassment be intentional; the focus will be on its effect.

In the UK, there has been a long-running debate about whether a woman who has been sexually harassed has to prove that a man would not have been, in order to make a claim for sex discrimination. Once the EC definition of sexual harassment (*see above*) is implemented (by October 2005), it will be clear that this is not necessary. What this means in practice is that Claire's claim for sex discrimination will succeed, as there will be no space for debating whether or not Moritz would have behaved in the same way towards a man. The position in Spain is similar; for an allegation of sexual harassment to be actionable, there is no requirement that the employee compare her treatment to the treatment that a man would have received.

### Recommendations

When planning a corporate sexual harassment policy, the following key issues should be considered:

- It is important for any firm to have a comprehensive harassment policy which sets out clearly the sort of behaviour which is regarded as unacceptable and which provides for disciplinary action to be taken against an employee who contravenes it. This provides a measure of protection for the employer against vicarious liability for harassment.

■ Simply having a good written policy is not enough. The policy should be drawn to the attention of all staff (regular e-mail reminders are a good idea) and training should be offered, particularly for line managers and HR personnel who might be expected to deal with any complaints.

■ In addition, when complaints arise they should always be taken seriously, investigated promptly and fairly, and resolved appropriately.

■ In summary, a zero-tolerance approach must be the message from any employer who wishes to avoid liability in these situations. This is particularly critical in an international business where an employee in country A can create liability for the company under the laws of country B, where there may be very different cultural understandings of what is, or is not, acceptable behaviour.

## Case study 2: bonuses

Towards the beginning of April, all attention at Farleys is focused on the upcoming pay round. It has been a very good year and there is much anticipation that some of this good fortune will be passed on to the workforce. While some employees in administrative functions are wondering whether they will receive any salary increases, the main source of speculation is the size of the bonus pool and the question of who the winners will be this year. April is traditionally a time when all employees spend a great deal of time trying to charm their immediate superiors, as the decision on bonuses rests largely in their hands and creating a good impression is therefore crucial. The amount of money available to pay bonuses is decided by the board of directors in New York. They also decide how much is allocated to each of the five regions in which the firm operates. The heads of those regions then meet with their direct reports straight after the board meeting, to decide how to allocate bonuses in their respective regions.

Cecile Barthe, an investment banker specialising in the health sector, is expecting a bumper year, as results in her team have been excellent. She is pacing the floor of her flat in Paris when the phone rings with the news from New York. Unfortunately, she has done rather less well than she expected. Her line manager explains that, even though her department's results were extremely good, it was felt that she needed

to work on her "visibility" in the firm, as many of the most senior managers did not know who she was. She is extremely disappointed, particularly when she hears later on that her counterpart in London, Jack Fellows, has received a significantly higher bonus than she has. Still though, she comforts herself with the thought that at least she is in a better position than her friend in the Madrid office, Maria Suarez. Due to a surprise pregnancy, Maria was on maternity leave for seven months in the last financial year and the Farley bonus policy will not pay a bonus to anyone who has been absent (for any reason) for longer than three months in the year.

One of the most difficult and controversial areas in sex discrimination law is the question of discretionary bonuses. The law in this area is complex and tends to shift significantly as the courts continue to grapple with how far the principle of sex equality can extend. The basic principle is, of course, that men and women should not be paid differently on the grounds of sex. However, it is difficult to give a definitive statement as to what this means in practice.

### Global comparisons

The first challenge raised by the case study is to identify the appropriate comparator - in particular, can an employee situated in one country choose as her comparator a man employed in another country? This question has not yet been decided by the ECJ, so the following country analyses remain subject to change once it has been before that court.

While there are subtle variations in the legal approach of the different jurisdictions (*see box, Cross-border equal pay comparisons*), the particular circumstances of this case study would in all likelihood justify allowing a cross-border comparison in most of them. A multinational organisation with global working practices, employing senior staff across the world who have comparable responsibilities and whose remuneration is centrally determined, would find it difficult to resist cross-border comparisons.

Even if such comparisons are permissible, it will still be open to an employer to argue that any differences in pay are due to regional issues (such as differentials in supply in the local job markets or differences in cost of living) rather than sex. A mere assertion or generalisation as to these differences will not be sufficient -

hard evidence of these differences and their impact on remuneration will be required in order for an employer to succeed. In this case, Farleys must demonstrate that a higher demand for analysts in London, and therefore retention, was the reason for Jack's higher remuneration.

### Proof of sex discrimination

Probably the most controversial legal issue in this scenario is whether Cecile has enough evidence to start a discrimination claim. At an EC level, Council Directive 1997/80/EC on the burden of proof in cases of discrimination based on sex (Burden of Proof Directive) requires that, once a complainant is able to establish facts from which it may be presumed that discrimination has occurred, the onus shifts to the employer to prove that there has been no discrimination.

In all of the jurisdictions, the Burden of Proof Directive has been implemented into domestic legislation in an expansive way. There are slight variations in approach, including a difference as to whether or not merely showing a difference in treatment, coupled with a difference in sex, is enough in itself to shift the burden of proof. In France, any difference in salary is regarded as suspicious and it is the employer's responsibility to establish that the difference is based on objective criteria (for example, by pointing to regular monitoring of pay structures which test whether or not remuneration is based on objective factors). In the other jurisdictions, this is generally not regarded as sufficient to shift the burden. Instead, some further evidence which tends to show sex discrimination usually needs to be produced.

Importantly, however, that evidence need not be direct evidence of discrimination - all that is required is facts from which discrimination can be presumed. There are an array of facts which could help a claimant to build her case. The most important factor which would help Cecile is that the process of determining bonuses at Farleys is not transparent - decisions appear to be made in a subjective and unco-ordinated manner, with decision-makers relying on vague reasons with dubious commercial content. The law regards a system like this as containing an inherent risk of unconscious discrimination.

For example, there is a risk that the reasons for Cecile not being as "visible" to

## Cross-border equal pay comparisons

- While UK legislation contains an express prohibition on cross-border comparisons, a UK employment tribunal has recently held that they may be permissible under EC law.
- The French courts are, in general, unlikely to accept such a comparison. They take the view that regional variations in working conditions (including different statutory requirements) are so great that cross-border comparison is not feasible. However, this is not a bar in principle and, in the right circumstances, a comparison might be accepted.
- In Spain, there is no express prohibition against a woman nominating a man in another country as her comparator, provided that their working situations are genuinely comparable.
- This question has not yet been decided by the German courts, but it is thought unlikely that such a comparison would be allowed. Even if it were allowed, the company in these case studies, Farleys, is likely to find it easy to justify the difference in pay on the grounds of regional differences.

senior management as her male counterpart are connected with sex. Senior management might be predominantly male and social events might be organised in such a way that it is difficult for junior female employees to raise their profile within the firm. Alternatively, management might subconsciously pay more attention to rising stars who are male and, therefore, perceive them as being more visible.

That might not in itself be enough to shift the burden if, for example, Farleys ran special training programmes for all managers who made remuneration decisions, to ensure that their decisions were based on merit alone and that they did not allow themselves to be influenced by subconscious personal assumptions. However, in the absence of any measures of that sort, a court is likely to require Farleys to produce an adequate explanation of why Cecilia is paid less.

Mere assertions and generalisations will not be enough in discharging the burden of proof - Farleys will have to support their explanation with cogent evidence. So, for example, Farleys might say that the purpose of the bonus scheme is not to reward past results, but to identify the rising stars of the future and incentivise them to remain with the firm. If Farleys produces convincing evidence of this, it might be able to mount a successful defence. However, if there is evidence that the way in which the bonus scheme is constructed consistently results in women being paid less, then Farleys will have to go one step further and justify objectively why the bonus scheme is a necessary and propor-

tionate way of achieving their business objectives.

### Bonuses and maternity leave

The extent to which a woman on maternity leave can claim the right to receive a discretionary annual bonus is an area of debate. Under EC law, while a woman is on maternity leave, she is in a unique position which is not susceptible to comparison with a man. This has two consequences:

- She has the right to a set of specific entitlements which cannot be challenged in law on the grounds that they are not available to men in comparable situations (for example, who are off on sick leave).
- She is not entitled to seek equality of treatment with men. The comparative equality principle is temporarily suspended.

The EC framework of rights for women on maternity leave treats pay differently from other employment rights. While all other terms and conditions of employment must be maintained during pregnancy and maternity leave, pay need not be. The woman on maternity leave is entitled only to an adequate allowance and the level of that allowance is set by each EC country for its own territory. The key question for Maria Suarez is: where do discretionary annual bonuses fit into this?

Spanish law provides a great deal of protection for women on maternity leave and gives them the right to maintenance of all their working conditions on their return

to work. However, bonuses are not, in general, regulated by law but are a matter of contract between the parties. A contractual clause which provides that all employees on long-term leave do not receive elements of remuneration which are linked to productivity is acceptable, as long as women on maternity leave are treated in the same way as other employees (for example, those on long-term sick leave).

French law proceeds on a similar basic principle. It is not discriminatory to discount a woman's bonus to reflect any time she has spent on maternity leave, as long as other employees who are absent from work for similar periods are treated in the same way. The outcome may be different, however, if the bonus is calculated on the basis of criteria other than mere presence at work. The general principle is that, while performance-related pay is permissible, any differences between employees who are performing the same duties must be objectively justified. The question of whether or not being on maternity leave is an objective criteria which justifies a difference in bonus has not yet been decided.

In Germany, maternity leave only lasts for six weeks before the birth and eight weeks after the birth. However, both parents are entitled to additional parental leave for a period of up to three years after the birth. In the case study, the reason that Maria has been absent for more than three months is that she was on parental leave. Since parental leave is available to both sexes, her exclusion from the bonus scheme is not discriminatory.

In the UK, it would clearly be discriminatory to completely exclude Maria from the bonus scheme on the grounds that she was on maternity leave for seven months of the year. This would have the effect of paying her less than a male comparator for the five months during which she was at work. The fact that men on long-term sick leave are treated in the same way is irrelevant; the only reason she is suffering this penalty is because she is on maternity leave and that is enough to establish direct sex discrimination.

As a result of the special position of women on maternity leave, many employers pro-rate their bonus schemes so that Maria would receive 5/12ths of the bonus she would have got if she had not been on

## Enforcement and compensation

### France

The employee can claim damages in an industrial tribunal. These will cover all proven losses resulting from the act of discrimination and there is no statutory limit on the amount.

In addition, any dismissal which follows the filing of a claim, and which is subsequently found to be unfair, is null and void. The tribunal has the power to reinstate the applicant, or to award compensation of not less than six months' salary.

Trade unions are also able to file claims on behalf of their members.

### Germany

The employee has the right to lodge a grievance with the employer and is entitled to stay at home (on full pay) if this is necessary - for example, to protect the employee against further harassment.

She can also claim compensation for economic loss and injury to feelings. Compensation is assessed on the basis of the losses suffered by the employee and is not subject to any statutory maximum.

The level at which awards are made is currently not high, but this is expected to change as a result of the EC requirement that sanctions be dissuasive.

### Spain

The Labour Court has a special urgent procedure for discrimination claims. Once a claim is accepted, the parties are invited to a conciliation hearing and subsequent trial within five days. The judge is required to give judgment three days after trial. Any decision by an employer which is found to be discriminatory is null and void. The public prosecutor (who always attends these proceedings) is empowered to take any action necessary to enforce this.

The Labour Court also has the power to order compensatory damages. Alternatively, if an employee resigns and claims constructive dismissal, she will be entitled to compensation of 45 days' salary per year in the job, up to a maximum of 42 months.

In addition, an administrative fine of up to EUR90,000 (about US\$80,475) can be imposed for serious breaches.

Sexual harassment is a criminal offence (punishable by either a fine or imprisonment), as is failure to obey a mandatory court order which seeks to restore equality in the workplace.

### UK

A claim for damages can be filed at an employment tribunal. Although proceedings are designed to be informal and cost effective, in practice they have become much more sophisticated and expensive, leading to a substantial rise in the cost of litigation.

A successful claimant is entitled to recover damages for all the losses resulting from the act of discrimination; there is no limit on compensation. In addition, an award for injury to feelings can be made.

It is generally thought that exemplary (punitive) damages are not available, but a recent decision has generated some uncertainty about this.

Before (or after) initiating proceedings, a claimant can file a statutory questionnaire on the employer. This is designed to allow her to gather information and evidence. The questions can be very wide ranging and can require a great deal of expense and management time to answer properly. The employer that fails to respond, or that responds inadequately, is taking a substantial risk, as an inference of discrimination can be drawn and the burden of proof will shift.

maternity leave. However, it has always been thought that even this can be discriminatory, depending on the nature of the scheme. For example, a company which pays a "13th cheque" or "Christmas loyalty bonus" to all employees, regardless of their personal performance, could not lawfully exclude a woman on maternity leave from the bonus, as it is not actually remuneration for the period she was away, but consideration for continued service and loyalty throughout the year. If, however, the bonus scheme is designed to reward personal performance, then it is legitimate to pro-rate the bonus to include a discount for time spent on maternity leave.

This thinking has recently been cast into doubt in the UK by a case in which a tribunal held that an employer could pro-rate a contractual bonus (other than for the two weeks of compulsory maternity leave), regardless of the criteria used. The fact that it was contractual meant that it constituted remuneration for the period of maternity leave and there is no entitlement to remuneration, let alone equal remuneration, while on maternity leave. However, this must still be regarded as an open question, because it has not yet been addressed by higher courts.

### Recommendations

In any company which operates a discretionary bonus scheme, careful attention must be paid to the mechanisms by which bonuses are awarded and a concerted effort made to avoid the danger of any unconscious sex discrimination tainting the process. Measures which can be taken to maximise the chances of successfully defending a discretionary bonus system include:

- Identifying in advance the performance targets an employee is expected to reach every year and communicating these clearly to the individual.
- Operating a consistent system of performance appraisal with the use of criteria which are as specific and objective as possible.
- Ensuring that managers who make remuneration decisions have received appropriate equal opportunities training to ensure that the risk of subconscious gender-based assumptions is minimised.
- Being open and honest with an employee as to the factors that determined

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the level of his/her award.

- Implementing a system of statistical monitoring and feedback, which can alert the firm to any gender anomalies in the results of the bonus decision-making process.

### Case study 3: procedure and remedies

Cecile, Maria and Claire bump into each other at a conference in Madrid and start discussing their respective grievances against Farleys and what to do about them. Maria suggests they consult a friend of hers who is a specialist Spanish employment lawyer, but who also has experience in other European jurisdictions, about their options.

All EU countries are required to provide appropriate legal machinery for the enforcement of the individual's right not to be discriminated against. The exact nature of the remedies and enforcement mechanisms, however, varies significantly between countries. In some jurisdictions, harassment and discrimination are criminal offences for which certain company

officers are personally liable. In others, there is provision for administrative fines. In all of the jurisdictions, there is some provision for enforcement by the individual through a claim for damages, but the exact nature of the remedy, and the frequency with which employees resort to it, varies widely. For a comparison between the key EU jurisdictions see box, *Enforcement and Compensation*.

Between the different jurisdictions, there is a noticeable difference in the incidence of litigation. In the UK, there have been many thousands of cases, particularly since the cap on compensation was removed in the early 1990s. The highest award ever made to an individual for discrimination is GB£1.3 million (about US\$2.5 million) (based principally on actual loss of earnings), although there is currently a claim in London by a former senior investment banker for US\$13.8 million (about EUR10.7 million). Although the claim was rejected by the tribunal, it is currently on appeal. In the other jurisdictions, individual litigation has not been common, but there is a widespread expectation, particularly in France and Germany, that this will soon change significantly.

## Key points to remember

The case studies above have highlighted some of the important principles and issues to consider for any multinational company operating in Europe. In summary, the five key things to remember are:

- Have clear and consistent policies which deal with equal opportunities issues. These should include a comprehensive harassment policy, as well as policies or statements of practice on processes like recruitment, promotion and wage determination.
- Make staff aware of these policies and give line managers equal opportunities training which enables them to identify any subconscious reliance on inappropriate factors when making decisions affecting female employees.
- Be honest with employees; for example, communicate clearly the reasons for decisions. If people understand why they have been paid a particular level of remuneration at the outset, it is easier to justify those decisions later on.
- Conduct a review of the business's existing policies on issues like part-time work, promotion, maternity rights and discretionary benefits, in order to conduct a discrimination health check.
- Finally, the best line of defence for employers dealing with these issues is a professional and robust HR function. Ensure that HR professionals have the independence and knowledge to provide impartial advice to the business during all the stages of the employment relationship, from recruitment to termination. Put in place a procedure which makes sure that they are alerted at the first sign that something is amiss.

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