

# Gender Equality in the Covid- Impacted Workplace: A Global View

Post meeting notes

15 March 2022

Bird & Bird and Sheppard Mullin jointly hosted a seminar titled **Gender Equality in the Covid-Impacted Workplace: A Global View**. It informed listeners about the global impact of the pandemic on gender equality in the life science and healthcare sector in particular, but the content is relevant more widely. These notes summarise the key points from the discussion.

## What is the impact of the pandemic on gender equality in the life science and healthcare sector?

- In many ways COVID-19 has highlighted and exacerbated the challenges faced by women. LeanIn.org has highlighted that women, and in particular women of colour, are significantly more likely to have been laid off, furloughed, or had their hours or pay cut because of the pandemic when compared with white men. McKinsey's latest Women in the Workplace report found that women are suffering from burnout more than men, and a third of women say they have considered down-shifting their career or leaving the workforce altogether this year.
- New research also suggests that women may be disadvantaged by hybrid and remote working models as men are expected to attend the workplace more frequently and benefit from 'leadership proximity bias', where leaders unconsciously favour those they see in person.
- All this threatens to undermine the gains made in improving equality and diversity over the past few decades. As we adjust to new ways of working, employers have an opportunity to redesign working practices and revisit diversity, equality and inclusion (DEI) strategies to ensure they are fit for the future.

## A global DEI agenda?

- DEI is now a key people management priority around the world. However, the concept of a global agenda is more complex.
- There are key similarities in how the UK and US approach this issue, which may be seen by the way individuals are encouraged to "bring their whole selves" to work. However, this may be contrasted with Germany, for example, where there is greater emphasis on the separation of personal and professional. In Hong Kong, there is no protection from age discrimination and in Singapore, whilst not enforced, the law still technically prohibits homosexuality.

- Organisations may have an 'ethical core' in terms their global DEI strategy, but must still listen and be locally appropriate to ensure that the strategy resonates with all parts of the organisation and is therefore effective.

## Equality legislation in Europe and beyond

- The legislative focus in Europe to date has been on public reporting of gender pay data. The UK, Spain and France have all introduced new laws in the last few years. In the UK, the data must be published on a government website which allows the public to search and compare employers.
- The EU Commission has just proposed equal pay legislation which would give employees the right to seek comparator pay information for colleagues doing the same or similar roles. Organisations with 250 or more employees would also be required to publish annual gender pay reports. Where the pay gap exceeds 5% the employer and employee representatives will be required to assess the reason behind that gap and compensation is potentially uncapped.
- The EU has also introduced a work life balance directive which must be implemented by member states by August 2022 which includes new minimum entitlements to paternity leave, carer's leave and the right to request to work flexibly.
- Attention is now extending to broader pay gap reporting, including to cover disability and ethnicity. For example, the UK government recently consulted on extending gender pay gap reporting to ethnicity. However, this poses challenges, particularly in Europe, where employees are not required to disclose their ethnicity, and in some jurisdictions it is unlawful to ask them to do so voluntarily.
- The impact of public policy on DEI varies between countries. In some Central and Eastern European countries, unfair dismissal laws are more protective and offer greater compensation than for discrimination, meaning employees are more likely to focus on the former and may not be less incentivised to engage with their employer's DEI agenda. This is unlike the UK where discrimination awards are potentially uncapped.
- The presence of worker representative bodies (such as works councils) may also change the emphasis. Employees may defer to these bodies to represent their interests and salary levels may be set by collective agreements meaning that the focus may be on other topics. We have seen that new technologies in the workplace, such as AI and monitoring technologies, are of particular concern for works councils in Europe.
- In the US there is a patchwork of laws addressing these issues. In Illinois, for example, a law was introduced in 2020 regarding interviewing applicants but in practice we are seeing little to no use of it in the courts so far. Instead, the focus in the US, particularly over the past couple of years, has been pay equity and transparency laws, with examples in Illinois, Colorado, Nevada, Rhode Island and New York City.

## What positive steps can employers take to improve diversity?

- When considering any global initiative, businesses need to be mindful of the legal risks of positive action as this can constitute unlawful discrimination in some countries.
- In the UK there are two forms of 'positive action' that are permitted: (i) a general provision relating to acts such as reserving places for a protected group on training courses, or providing mentoring for a particular group to increase their representation at senior levels; and (ii) a 'tie-breaker' provision allowing employers to take an individual's protected characteristic into account when making a decision about recruitment or promotion for diversity reasons, if they and the other candidate are equally suited for the role. Any positive action must be 'proportionate to a legitimate aim' and to show this, employers must have at least a year's worth of data showing that particular groups are under-represented in a particular area of work.
- An organisation may act with good intentions but the risk of getting this wrong in the UK could be a claim for so-called 'reverse discrimination'. As organisations take steps to improve equality and diversity, there is an increasing spotlight on discrimination claims brought by white men and those who feel they have been treated unfairly.

## Challenges of AI in the workplace

- The key challenge is ensuring AI remains neutral and does not end up perpetuating discrimination. We have seen high profile examples where tools have had to be abandoned for this reason e.g. racial bias in facial recognition software and gender bias in learnt AI algorithms for recruiting.
- The EU Commission is taking a lead on this and is still debating draft rules on AI published in 2021. The UK Trade Union Congress published a manifesto on AI in March 2021 promoting debate and trying to influence UK legislation. This is also a key topic for other countries, such as Germany, which empowers employee representatives where organisations introduce AI in the workplace.

## Collecting and using diversity data

- In Europe, strict data protection rules are a clear barrier to collecting data which makes it harder to collect this data and monitor progress and implement targeted initiatives. Although legislation derives from the EU GDPR, local implementing laws differ. In Germany, which has perhaps the most stringent rules, employers simply cannot collect data on employees' ethnicity or religion.
- In some countries in Europe and APAC there is also cultural reluctance to voluntarily share personal data at work particularly regarding more sensitive characteristics e.g. sexual orientation and religious views. There are therefore relatively few initiatives on this basis when compared with the UK and US.
- Employee representatives and works councils are also increasingly focussed on maintaining employee privacy.
- Employee engagement on DEI issues differs between countries despite increased public and media attention. Combined with cultural reluctance to provide data, and in some cases a legal prohibition on collecting data, initiatives at a global level (e.g. quotas in recruitment) can sometimes be difficult to implement on the ground.

## Practical tips for leaders to promote gender equality in hybrid and remote teams

**Leading from the middle:** We know it is important to lead from the top and we would generally expect CEOs and business leaders to be key advocates of any new strategy. The challenge is perhaps more with the 'middle' of the organisation - the people whose job it is to run the business day-to-day who are being asked to be more agile and flexible in their thinking and approach to the workforce. A strategy to bring those people along will be key to success.

**Invest time to train:** Ensuring there is sufficient time investment in formal training, but also more informal conversations, dialogue and debate to help influence and support people to adapt to organisational change.

**Measure and reward success:** Introducing KPIs for leaders and others throughout the organisation that signal that the success of the initiative is of critical importance to the business.

**Listening:** Business leaders may feel they have a good sense of the issues and challenges in their organisation but listening (e.g. through pulse surveys, exit interviews) can be powerful and offer new insights particularly in times of change.

**Find new boundaries:** Home working often results in blurring of boundaries between work and home life and when the working day starts and ends. It is therefore important that staff are empowered to have conversations about building working structures that work for individuals and their teams and minimise the risk of burnout.

**Design for success:** Look at processes, such as how work is allocated and who is invited to meetings, to challenge whether decisions are fair or can be more systematic to avoid making assumptions and proximity bias creeping in. A protocol for introducing and conducting hybrid meetings can also encourage inclusion of those on screen.

**Access to information and support.** Being intentional and deliberate about what information is shared to 'level the playing field' for those who are not in the office and may miss informal conversations. This applies to key developments in the team or wider business as well as practical things like IT support.

**Opportunities to learn:** There will inevitably be some trial and error as organisations navigate the new post-COVID workplace so consider if there are opportunities to share best practices to build consistency and drive continual improvement across the organisation.

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