

Employment

Gender pay gap reporting – what you need to know

The Equality Act (Gender Pay Gap Information) Regulations 2017 (Regulations) came into force on 6 April 2017 and apply to the private sector. Similar provisions applying to the public sector came into force on 31 March 2017. The Regulations require employers with 250 or more employees to publish gender pay gap details highlighting the difference in gross pay and bonus payments made to female, as compared with male, employees.

Who is affected?

The Regulations apply to private and voluntary sector employers in England, Wales and Scotland with at least 250 employees. A relevant employee means someone who ordinarily works in Great Britain under a contract of employment, apprentices, and those who are contracted to undertake work personally.

When is publication required to take place?

The first information had to be published by 4 April 2018. This related to:

- pay details in the pay period that includes 5 April 2017 (the ‘snapshot’ date); and
- bonus pay details relating to bonuses paid between 6 April 2016 and 5 April 2017.

Employers will be required to calculate the gender pay gap information in their business as at 5 April each year, and publish it within 12 months.

In the public sector, the first information had to be published by 30 March 2018 and the snapshot date was 31 March 2017.

What is pay?

Pay includes basic pay, allowances, shift premium pay, pay for leave and other pay (including car allowances paid through the payroll, and on call and standby allowances). It does not include overtime pay, expenses, the value of salary sacrifice schemes, benefits in kind, redundancy pay, arrears of pay and tax credits.

What needs to be published?

1. Difference in mean pay

The mean gender pay gap is the difference between the hourly earnings of the employer’s female employees on full pay (ie ignoring

those paid less because they are on leave) and the average hourly earnings of its male employees on full pay. Reflecting the full earnings distribution, the mean can be useful as women can be over-represented at the low earning extreme and men over-represented at the high earning extreme.

2. Difference in median pay

The median gender pay gap is the difference between the mid-point value of hourly earnings of the employer’s female employees on full pay and the mid-point value of hourly earnings of its male employees on full pay. The median is the best representation of the ‘typical’ difference as it is unaffected by a small number of very high earners.

3. Difference in mean bonuses

The mean gender bonus gap is the difference in average bonus payments paid to men and women during the period of 12 months to 5 April each year. This average will take into account the full distribution of bonuses paid by an employer.

4. Difference in median bonuses

The median gender bonus gap is the difference between the mid-point value of bonuses paid to male employees as compared with female employees.

5. Proportion of men and women who receive bonuses

Employers are required to publish the proportion of male and female employees who receive a bonus. Bonus pay includes securities and interests in securities plus other remuneration that relates to profit sharing, productivity, performance incentives or commission.

6. Gender split between quartile pay bands

Employers have to divide their employees into four groups, containing equal numbers of employees, by reference to their rate of pay. They must then report the gender split in each of those four groups.

Where to publish?

The relevant gender pay gap details need to be signed by a director or equivalent to certify them as accurate and be published in English on the employer's website, where they must remain for at least three years. In addition, the details must be uploaded to a Government sponsored website. This latter step will allow the Government to produce 'league tables' of employers' reported pay gaps by sector.

Enforcement

The Equality and Human Rights Commission has announced that it will take steps to encourage compliance but ultimately it can take court action, which includes unlimited fines.

Comment

The introduction of mandatory gender pay gap reporting will certainly lead to increased gender pay transparency. However, there could be concern about:

- reputational damage and negative publicity;
- the impact on employee attraction, engagement and retention;
- the risk of significant financial damage resulting from employee claims for equal pay, which could include claims for up to six years' back pay; and/or
- the adverse impact the reporting could have on any procurement process.

Acas and the Government Equalities Office have published non-statutory guidance to accompany the Regulations.

Action points for employers

- Consider how best to protect any pay modelling and the results of any related analysis. Such material may be classed as 'privileged' if generated for the purpose of obtaining legal advice.
- Be proactive – understanding pay arrangements will help employers manage and present information meaningfully and in context.
- Calculate and consider gender pay gaps which exist on a departmental/geographical/functional level and compare these with the composition of the workforce.

- Analyse the rationale behind the current arrangements to identify potential risk areas.
- If pay gaps are due to underrepresentation of women at more senior levels, look critically at what the business is doing to attract, recruit, develop and retain female employees.

How we can help

Our employment specialists have over 30 years' experience of dealing with equal pay issues, and can support businesses in complying with this legislation and carrying out an equal pay review. We can help by giving legally privileged input into:

- calculating the gender pay gaps and pay quartile information necessary for compliance;
- assessing the information, broken down by job function and different elements of pay, to understand the causes of any gap;
- advising on the scope for justifying any gap and/or high risk factors in the context of a potential equal pay challenge;
- helping employers to remedy any gaps; and
- putting together a communication and reporting strategy, to include a narrative to sit alongside and explain the published information.

Our Gender Pay Gap Toolkit contains further detailed guidance. If you are interested in obtaining a copy, please email genderpay@wbd-uk.com.

Key contacts:



Lorraine Heard
Legal Director

T: +44 (0) 191 279 9284
E: lorraine.heard@wbd-uk.com



Hilary du Randt
Managing Associate

T: +44 (0) 191 279 9115
E: hilary.durandt@wbd-uk.com



Lisa Robertson
Managing Associate

T: +44 (0) 191 279 9691
E: lisa.robertson@wbd-uk.com

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