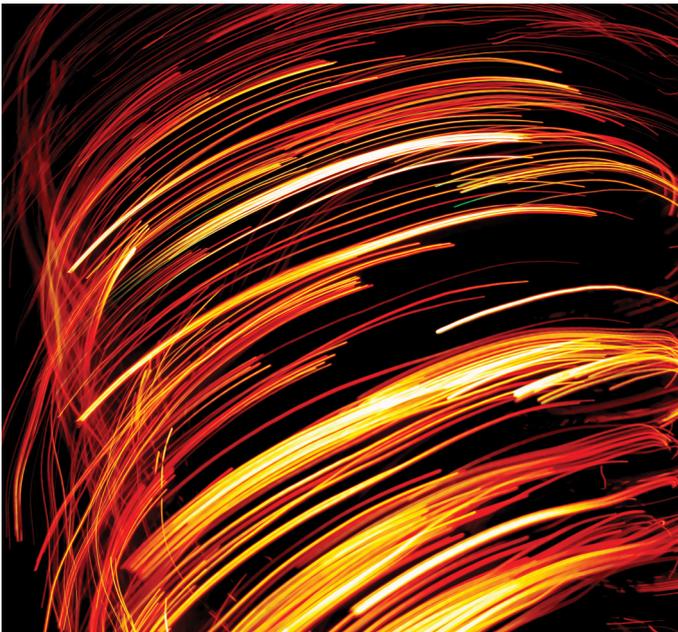


## Gender pay gap reporting

### What employers need to know



#### Key points:

- Employers with **250** or more employees will be required to publish gender pay gap statistics annually with the first reports due no later than **4 April 2018**.
- Employers will need to publish: the percentage difference in male and female **mean and median hourly pay**; the number of employees in each of **four quartile pay bands** based on the employer's overall pay range; the percentage difference between male and female **mean and median bonus pay** over a 12 month period; and the proportion of male and female employees who received a bonus during that 12 month period.
- There is no obligation on employers to provide a narrative or set out any action they plan to take to close any gap, but they are encouraged to do so.
- Employers should start preparing as soon as possible.

#### What is gender pay gap reporting?

In December 2016 the Government published the final Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the "Regulations"). Joint guidance on the application of the Regulations was published by ACAS and the Government in January 2017 (the "Guidance"). The Regulations came into force on 6 April 2017 and set out new obligations for large employers to publish statistics about the gender pay gap in their workforce.

#### Which employers are affected?

All employers (other than public authorities, in respect of whom there is a similar but separate regime) with 250 or more employees will be required to publish a gender pay gap report. Figures must be published by each employer within a group and there is no need to aggregate employee numbers across group companies.

#### Who is an employee?

The term "employee" is not defined in the Regulations, but the Guidance indicates that an employee means anyone who is engaged under a contract of service, a contract of apprenticeship or a contract personally to do work will be included. This includes all employees and casual workers as well as some contractors where there is a requirement for personal service. Partners in a partnership or LLP are excluded from the obligation to report, although it is arguable that they should be included for the purposes of determining whether a particular

employer reaches the 250 threshold. In addition, employees who are on leave at the relevant date and are receiving less than full pay (for example, employees on maternity leave) do not need to be included in the statistics.

#### What about overseas employees?

It is not entirely clear from the Regulations whether employees based abroad should be included either in the statistics or for the purposes of ascertaining whether an employer reaches the 250 threshold. The Guidance provides that overseas employees should be included if they have a sufficiently strong connection with Great Britain – the same test as is applied in relation to rights under the Employment Rights Act 1996 such as unfair dismissal. Applying this test to each overseas employee could be extremely onerous for employers with large overseas populations and we would suggest seeking advice in relation to the approach to such employees.

#### What is pay?

Pay is defined in the Regulations and includes basic pay, allowances, pay for piecework, holiday pay, shift premium pay and bonus pay. Importantly, pay does not include overtime pay, remuneration in lieu of leave, expenses, salary sacrifice, benefits in kind, redundancy or termination pay or pension contributions. Pay is calculated using gross figures before any deductions for tax or loans.

## What information will employers need to publish?

Employers will be required to publish six sets of data, as follows:

- The percentage difference in **mean** hourly pay between male and female employees as at a reference pay period which must include 5 April.
- The percentage difference in **median** hourly pay between male and female employees as at a reference pay period which must include 5 April.
- The percentage difference in **mean** bonus pay for male and female employees in the 12 months preceding 5 April.
- The percentage difference in **median** bonus pay for male and female employees in the 12 months preceding 5 April.
- The proportion of male and female employees who received a bonus during the 12 months preceding 5 April, expressed as a percentage.
- The numbers of male and female employees in four equal pay bands or "quartiles". Each quartile must represent a quarter of the total number of employees.

The Regulations set out a procedure for calculating hourly pay. It is clear that all non-cash amounts are to be treated as being received when tax becomes payable on them, rather than at the time of receipt.

## How and where must the information be published?

The relevant information must be published on an employer's own website and must be kept online for three years. It must be in English and be presented in a manner which is accessible to all employees and to the public. The information must also be uploaded to a government sponsored website, (<https://www.gov.uk/report-gender-pay-gap-data>). The information must be accompanied by a written statement, signed by a director (or equivalent), confirming that it is accurate.

The information must be published within 12 months of 5 April each year. Employers will therefore have until 4 April 2018 to publish their first gender pay gap report.

## Must employers provide a narrative?

There is no obligation on employers to provide any accompanying narrative or explanation with the bare statistics; nor is there any obligation on employers to provide any proposals for addressing their gender pay gap. However, the provision of a narrative is strongly encouraged in the Guidance. In any event, employers may want to take the opportunity to explain particular issues or anomalies in their figures and to identify positive steps they are taking to narrow the gender pay gap, if appropriate.

## What are the penalties for failure to comply?

There are currently no formal enforcement measures or financial penalties for employers who do not comply with the obligations. However, there is a definite reputational risk and the potential for non-compliant employers to be "named and shamed". In addition, the Guidance confirms that breach of the Regulations will constitute an "unlawful act" under the Equality Act 2010 in respect of which the Equality and Human Rights Commission will be able to take enforcement action.

## What should employers be doing now?

If they have not already done so, employers should start preparing as soon as possible. Initial steps should include:

- Analysing which employees will be in-scope and which elements of their remuneration package will be reportable.
- Identifying any risk areas or particular disparities at an early stage by carrying out spot checks and sample calculations, ideally with input from lawyers in order to benefit from legal advice privilege.
- Considering whether there are any steps which could be taken to deal with any tricky areas – or whether you can address them in a narrative to go alongside the bare figures.
- Getting early buy in from senior management to ensure that obtaining sign off from a director will not give rise to issues.

The Stephenson Harwood Employment team can help you prepare for gender pay gap reporting and provide recommendations on how to minimise risks and protect your organisation from claims. For further information, please get in touch with your usual Stephenson Harwood contact.



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