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Employment – 20:20 vision

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Gender pay gap reporting – six months suspension to the enforcement of gender pay gap regulations



The Equality and Human Rights Commission (the “EHRC”) has announced that employers now have until 5 October 2021 to report their gender pay gap information for the 20/21 reporting year. Last year, you may recall that the enforcement of gender pay gap deadlines were fully suspended as a result of the pandemic – whereas this year the EHRC has provided an additional six months extension so that as long as reports are filed by 5 October 2021 no enforcement action will be taken.

Accordingly, gender gap reporting is still very much on the “to-do” list for employers with more than 250 employees. In this alert we remind employers of what they need to report and how to account for furlough leave in their gender pay data.

Reminder: What do eligible employers need to report this year?

As a reminder, employers are required to publish data including:

- **Mean hourly pay:** The percentage difference in mean hourly pay between male and female employees as at a reference pay period, which must include 5 April 2020 (referred to as the “snapshot date”).¹
- **Median hourly pay:** The percentage difference in median hourly pay between male and female employees as at a reference pay period, which must include 5 April 2020.
- **Bonus payments received:** The proportion of male and female employees who received a bonus during the 12 months preceding 5 April 2020, expressed as a percentage.
- **Mean bonus pay:** The percentage difference in mean bonus pay for male and female employees in the 12 months preceding 5 April 2020.
- **Median bonus pay:** The percentage difference in median bonus pay for male and female

employees in the 12 months preceding 5 April 2020.

- **Pay quartiles:** 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.

There is detailed guidance on what is considered “pay” for these purposes and how to calculate each data set – please do get in touch if you have any queries.

How should employers account for the furlough scheme when reporting data?

- The gender pay gap regulations require employers to omit from their calculations any employees who were on reduced rates of pay on the snapshot date. Given the Coronavirus Job Retention Scheme, employers may have significant proportions of their workforce who were on furlough receiving only 80% of their salary as at the snapshot date (or who were unwell/self-isolating and on reduced rates of pay on such date). Such employees **should not** be included in the calculations relating to mean and

¹ Most public authority employers use a snapshot date of 31 March 2020 whereas private, voluntary and other public authority employers use a snapshot date of 5 April 2020.

median hourly rates of pay nor in the pay quartile data.

- Furloughed employees should be accounted for:
 - where employers topped up furlough pay, so that furloughed employees were receiving 100% of pay at the snapshot date (as they wouldn't fall into the "reduced rates of pay" exception outlined above);
 - in all of the bonus pay calculations; and
 - when determining whether a business has 250 employees, this is as at the snapshot date of 5 April 2020.

What does this mean for gender pay reports due to be filed this year?

- Given widespread use of the furlough scheme, the data for April 2020 is unlikely to reflect actual pay practices and the reports may fail to provide any meaningful picture of gender pay gaps or steps to address the issue.
- As the reported gaps may be very different to previous years, in our view it will be more important than ever to provide a narrative to explain the trends shown.
- It is not compulsory to provide a narrative, but it can be a useful way to explain the data which can otherwise be interpreted rather bluntly. In particular, employers may want to consider including information on:
 - the number of staff on furlough during the relevant period;
 - the impact of any mass redundancy programmes;
 - how the report would have looked had the pandemic not occurred (which may give a more meaningful picture of an employer's pay gap);
 - any improvements made since the last report; and
 - any steps the business intends to take to improve their gender pay gap.

If you require further information about anything covered in this alert or a detailed explanation of the gender pay gap reporting process, please contact Paul Reeves, Leanne Raven, Charlotte Varela or your usual Stephenson Harwood contact.

Contact us



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