

Update on Mandatory Gender Pay Reporting

Do not waste time, start planning now!

The Small Business and Enterprise Act 2015 means that the Government must adopt regulations requiring mandatory gender pay gap reporting by 25 March 2016.

Following a consultation which closed in September 2015, the Government published the draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 on 12 February 2016. It has also put in place a follow up consultation, to seek comments on the details of the draft regulations which will come into force in October. The consultation closes on 11 March 2016.

Be prepared

For the reasons set out in this document, you should consider allocating time and resource sooner rather than later to consider:

- Assessing and reviewing your organisation's pay and bonus arrangements
- Identifying potential areas of concern and the reasons for any differences in pay and bonuses
- Taking steps to address identified areas of concern
- How your information will be reported when reporting becomes mandatory.

Using a lawyer to carry out the assessment will ensure you obtain legal privilege from disclosure of this information. The results of an assessment may be potentially harmful to an organisation and potentially extremely useful to an employee considering an equal pay claim.

Who will be required to report?

Private sector employers in England, Wales and Scotland with 250 or more employees will be required to publish gender pay information. The Government has said that it will bring in equivalent duties for non-devolved public authorities.

An employee is someone who ordinarily works in Great Britain and whose contract of employment is governed by UK legislation. This definition appears to exclude workers.

For the purposes of considering whether the threshold has been met, companies are assessed on an individual basis rather than by reference to the number of employees employed in a group of companies. Given that this appears to offer opportunities to avoid the reporting requirements, there is currently speculation that this position may change when the final version of the regulations are published.

What information will have to be reported and when?

Employers will be obliged to report the following on 30 April each year:

- The overall gender pay gap figure showing both the mean average and the median average pay differences between male and female staff as at 30 April each year
- The difference in average bonus pay, paid to men and women during the 12 months to 30 April
- The proportion of male and female employees who received bonus pay during the 12 months to 30 April
- The number of men and women working in each salary quartile.

For the purposes of the regulations, employers must prepare their figures by reference to actual pay received during the relevant period (excluding overtime, benefits in kind and the value of salary sacrifice schemes). For example, for female employees on maternity leave, the figures will include their maternity pay rather than their notional salary.

Employers should also be aware that the definition of “bonus pay” is wide and will include various arrangements such as profit sharing payments, long term incentive plans and the cash equivalent value of shares.

There will not be any requirement for employers to report separate figures by reference to grade or job type, and for full time and part time employees, as had been indicated in the first consultation. Employers may volunteer this information if it assists in explaining an overall pay gap.

There is no requirement for employers to publish a statement explaining their figures.

The first reports will be required to be published on 30 April 2018, based on figures as at 30 April 2017. This means that employers have just over a year before having to take a “snapshot” of the gender pay gap in their organisation.

Where will the information be published?

Reports must be published on the employer’s website and remain there for at least three years. The website must be accessible to the public, so publishing figures via an intranet will not meet the requirements. Employers will also be required to upload their figures to a government website.

Compliance and Fines

There will be no penalties for non-compliance although the Government is keeping this under review.

However, from a commercial perspective most employers will feel obliged to comply with the reporting requirements for reputational reasons, particularly in view of the Government’s statement that it will run periodic checks for non-compliance and “name and shame” organisations with the worst gender pay gaps for their sector or who fail to publish any figures at all.

Potential Issues

For a number of reasons, it is likely that the figures to be reported will not show all employers in a positive light.

The Telegraph has reported that the UK's Office for National Statistics show that an average woman earns around 80 pence for every pound earned by a man. Further, the Government has stated that it believes that the gender bonus gap may be as high as 57%.

As employers will be obliged to report the overall gender pay gap figure, it will be necessary for employers to consider preparation of additional information to put the figure in context to avoid damage to their reputation. Employers will need to carefully consider the reasons for their gender pay gap and how they will reduce the gap in the future.

There will be many private sector employers who do not have comprehensive pay grades and scales in place for every role in their organisation. Furthermore, the experience we have gained from defending equal pay claims for private sector employers, is that often job descriptions do not fully reflect the role that a particular employee undertakes, or adequately reflect the level of management or responsibility that an individual undertakes when compared to others in the organisation who are paid less.

This may make it difficult for employers to identify the reasons for the gender pay gap and exposes employers to the risk of equal pay claims. Any compensation payable may be significant, as an employee can potentially claim pay going back six years.

Reporting adverse figures may have a damaging effect on the employer's reputation, making it more difficult to engage and retain staff. For example, if pay gaps are due to underrepresentation of women at more senior levels, employers will need to consider what they are doing to develop and retain female employees.

There will also be implications for tendering for work, especially when tendering for work with a local authority.

You need to prepare

As mentioned at the start of this briefing, there is time for you to make changes before you are required to report your organisation's gender pay gap. You should consider:

- Assessing and reviewing your organisation's pay and bonus arrangements
- Identifying potential areas of concern and the reasons for any differences in pay and bonuses
- Taking steps to address identified areas of concern
- How your information will be reported when reporting becomes mandatory.

How can Taylor Walton help?

We can carry out an assessment to identify gender pay gaps in your organisation and provide you with a report identifying areas of risk. This report would be a confidential legally privileged document.

In addition, we would highlight potential arguments to support any pay differences and make recommendations for change to minimise risk.

As a result of working with employers in the private sector over many years, we understand that this exercise may not be relatively straightforward in all areas of an organisation. Work may be required in the first instance, to group and classify roles and to make appropriate changes to job descriptions. Our practical way of working with our clients can help your organisation plan for this mandatory change.

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