

Your World First



Gender pay gap reporting: preparing for publication





The gender pay gap is something that continues to attract attention, with government moves to achieve greater transparency now gaining traction.

The mandatory duty to publish

The Draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 (the Draft Regulations) were finally published in February 2016.

Who is in scope?

The Draft Regulations apply to private and public sector businesses who employ 250 employees at the relevant date. The duty to publish will not come into effect until April 2018, although by 30 April 2017 employers should have produced a preliminary data snapshot.

What information should be published?

We now know that employers will be required to publish both the median and the mean gender pay gap figure for pay and the mean figure for bonuses. This includes commission payments, LTIP's and the cash value of shares. Employers will also have to state the proportion of employees who receive bonuses.

Rather than stipulate that employers must publish information demonstrating a breakdown at grade level, employers will be required to report on the number of men and women in each quartile of their pay distribution. For those who are unfamiliar with this term, it simply means taking the pay gap data and splitting it into 4 equal groups. Adopting this approach is intended to provide some form of comparative analysis amongst employers. Although the consultation paper asked if the pay gap should show the difference between full time and part time earnings, this idea was obviously abandoned, since this is not included in the Draft Regulations.

Rather surprisingly the Draft Regulations do not state that employers are obliged to produce a narrative to explain the reason for their pay gap, but we would still recommend that employers adopt this approach. Another omission is the lack of an enforcement mechanism. There will be no civil penalty for failure to comply, with compliance being enforced through naming and shaming. Employers are not only obliged to publish the information on their website but they are also required to send the information to the government who intend to publish league tables by sector.

For HR managers worried about publication, there are a number of preparatory steps that can be taken now. Businesses that start this process now will be in a much stronger position to improve their pay gap figure, or provide a more convincing narrative rather than waiting until the final details are known. Steps can also be taken at this stage in relation to communication with stakeholders and demystifying the gender pay gap and what it may mean for your organisation.

What is the gender pay gap?

The gender pay gap shows the difference between the average earnings of men and women as a percentage of men's earnings. The current national figure is 19.1%, although this figure varies across age ranges and when you consider full time and part time earnings.

Does a pay gap mean that an employer will be exposed to equal pay claims?

One of the most common myths around the existence of a gender pay gap is the concern that this will lead to a flood of equal pay claims. Since the vast majority of employers will have a pay gap it seems incredible to think that every employer will be the recipient of a claim.



Gender pay is a totally different legal concept to equal pay, which is based on individuals comparing their pay where they do work that is the same (or broadly similar), or where work is rated as equivalent under a job evaluation study or found to be of equal value in terms of effort, skill or decision making. As the government explain in their consultation response, *'An employer delivering equal pay may still have a large pay gap and an employer with no pay gap may be breaching the law.'*

Generally there will be a number of reasons why an organisation has a gender pay gap, and a small element of this may be because of unequal pay practices. More often than not though, a key reason for the pay gap is due to low female participation through occupational segregation, particularly at senior levels of an organisation, or within different roles. Occupational segregation is defined in two different ways: horizontal segregation where women tend to cluster in clerical, caring, cleaning and catering type roles, and vertical segregation where women are less prevalent in senior roles.

It may of course lead to a renewed interest in equal pay in the private sector, since historically this has been seen as a public sector issue. Employees who are already concerned about their pay who then discover that there is a large pay gap may be more willing to raise an equal pay claim.

What steps can an employer take now?

- Determine who is in scope. The Draft Regulations apply to UK employees but this definition also covers workers and certain contractors will be covered provided they are not genuinely self employed. The Draft Regulations apply to a specific pay period, which starts on 30 April 2017, and the 30th April each year thereafter.

- Assess what is included within the definition of pay. The Draft Regulations explain that this includes basic pay, paid leave, maternity pay, sick pay, area allowances, shift pay bonus pay and on call and standby allowances. It does not include overtime pay, benefits in kind or redundancy pay.
- Understand what your sectoral/industry average is to provide you with the wider context for your organisation's gender pay gap figure. There is a wide variation. For example the gender pay gap in the Scottish Legal Profession is 42% and the financial and insurance sector has a gap of 35%.
- Are your systems set up in a way to calculate pay data according to gender? While this may be simple for large companies with sophisticated systems this may not be the case for all organisations.
- Calculate the mean and median single figure pay gap for the organisation. Helpfully the Draft Regulations do set out how employers should calculate their pay gap figures since the method of calculation can produce very different figures. The figure must be expressed as a percentage of the mean pay of male employees during the relevant period. The pay period will run for a 12 month period from 30th April 2017.
- Assess your quartile pay information. This involves an assessment of the overall pay range based on gross hourly rate of pay for each relevant male or female listed in order of increasing value.

If your systems are capable of producing information at grade level then you may also wish to identify the pay gap per grade. To be meaningful this set of statistics should also identify the number of women to men at each level. This will give you information about whether the pay disparity is about low numbers of women or whether you may have an equal pay issue.



Interrogate the reasons for gaps in numbers or pay

Analysing this raw data can be very illuminating. It is often the first time that an organisation can see that there may be gaps in relation to pay or the numbers of women at a particular level. For the purpose of this update we have divided potential issues leading to a gap as being around pay and occupational segregation; there may be many more factors affecting an organisation's gender pay gap.

Occupational segregation issues

- If you have lots of women at a middle grade but very few at the higher grade then this begs the question why?
- Are there barriers which are preventing female career progression? Do you have a future female talent pipeline?
- Is there some sort of unconscious bias in operation here? Or are there issues around flexibility in terms of balancing work and family life?
- This is where HR can really add value to the process by getting involved in targeted activity. Is there any feedback from that area of the business that could assist you in understanding root causes or do you want to conduct a survey to help?

Businesses should be aware that tackling occupational segregation is not something that can be fixed overnight: there is a much longer lead-in time to address these types of issues. If you have already taken steps and can produce data from previous years which demonstrates improvements that have already taken place then it would be worth summarising this to demonstrate your commitment in this area.

Issues around pay

- First of all, are you confident that your pay grading systems are assessing people who are in comparable roles? This may be the time to review how your grading system works. Pay disparities can exist for many reasons particularly where mergers have taken place and people are working in similar roles at different rates of pay.
- Do you, for instance, need to conduct a job evaluation process to decide this and rule out any equal pay issues?
- Do you have concerns around the appraisal and reward system and what needs to happen going forward?
- What happens when new external recruits are hired – is there any pay scrutiny process around limits in a banding process? And how does this affect those who have been employed for many years with the organisation. This can be an area which can lead to significant discrepancies. Studies have shown that women are less likely to push for a pay rise.
- How are pay levels and pay rises assessed? In many private sector organisations there is very little pay transparency and managers may have a great deal of discretion. Do you need to introduce any further levels of accountability at the next pay review process to ensure that gender pay is being assessed? Do you need to broaden your metrics to take into account wider performance criteria? All of these issues can be considered in advance of the Final Regulations being introduced to tackle pay disparities.

In contrast to occupational segregation issues, pay can be a quicker fix to make, albeit a more expensive one. There are also greater legal risks arising from resolving pay disparities. For this reason we would recommend that any informal review, or job evaluation is sent to your legal adviser to obtain the benefit of legally privileged recommendations.



Objective setting

Having identified reasons the next step is to identify a set of measures that you will implement to the pay gap. This will assist you when the time comes to publish your pay gap figure where you can explain what steps you have taken so far to reduce the pay gap. Like all figures the context is everything. Employers are not obliged to produce a narrative, but it may well reduce the risk of claims.

You will want your objectives to be SMART – specific, measurable, accurate, realistic and timely.

Don't try and implement too many measures – focus very much on what is achievable.

Examples of objective setting include:

- Promoting flexible working at senior levels of management including job shares and home working
- Introducing mentoring programmes to increase the pipeline of female talent
- Supporting women returning from maternity leave

Next Steps

On a positive note, employers who are worried about this issue can take comfort in the fact that they will have time to prepare. We would strongly recommend that employers do not wait and start preparing for publication now.

For more information on tackling your gender pay gap please contact any member of the CMS employment team. We can assist you with your pay review and confidential recommendations for tackling your pay gap. We have also developed a practical training session focusing on steps employers should consider.

Contact details for our partners are overleaf.



Contacts



Anthony Fincham

Partner

T +44 (0)20 7367 2783

E anthony.fincham@cms-cmck.com



Sarah Ozanne

Partner

T +44 (0)20 7367 2650

E sarah.ozanne@cms-cmck.com



Alison Woods

Partner

T +44 (0)1224 26 7176

E alison.woods@cms-cmck.com



Gillian MacLellan

Partner

T +44 (0)141 304 6114

E gillian.maclellan@cms-cmck.com



Robert Davies

Partner

T +44 (0)20 7367 3400

E robert.davies@cms-cmck.com



Finlay McKay

Partner

T +44 (0)131 200 7632

E finlay.mckay@cms-cmck.com



Graham Paul

Partner

T +44 (0)20 7367 2458

E graham.paul@cms-cmck.com



The big question is whether the duty to publish will result in employers taking action to close their pay gap. Publication is only the first step. But there is no obligation to do anything else. In the absence of an enforcement mechanism, the government is hoping that corporate reputation and public pressure will incentivise change.



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CMS Cameron McKenna LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

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