

THE COUNTDOWN BEGINS: GETTING YOUR GENDER PAY GAP REPORTS READY FOR PUBLICATION

The Equality Act (Gender Pay Gap Information) Regulations 2017 (Regulations) came into force on 6 April 2017, requiring all private and voluntary sector employers with 250 or more employees to publicly report a range of gender pay information each year. The first reporting deadline falls on 4 April 2018, leaving employers with only two months to get their gender pay information into shape. We look at how the land currently lies, what you can do to prepare for the publication of your results and measures to consider for the future.

AS THE REPORTING DEADLINE APPROACHES, HOW DOES THE LAND LIE?

An estimated 9,000 UK employers must publish their gender pay gap information by 4 April 2018. At the time of writing, 734 employers have published their results – only 8% of those required to do so. What can we learn from those who have reported their results so far?

Recent analysis by Deloitte of the large, private sector employers (i.e. those with 2,000 or more employees) who have reported so far reveals median gender pay gaps ranging from -15% to 45.5%. However, within this broad range, the middle half of employers reported median pay gaps ranging between 4% - 21%, with the average median gender pay gap at 9%. This is notable because the Office of National Statistics (**ONS**) expects the average median pay gap across UK businesses to be 18%. This shows that the cohort of large employers who are reporting early tend to have relatively good pay gap results.

This is also broadly true when viewed by sector. For example, the average median pay gap reported to date by large financial and insurance sector employers was approximately 28%, which compares favourably with the expected ONS average median pay gap figure of 36% for this sector. Similarly, in the manufacturing sector, the average median pay gap was 5%, compared to the ONS expected figure of 32%. Indeed, of the 19 sectors looked at by Deloitte, 13 outperformed the expected ONS median pay gap figure for their sector.

What we can take away from this is that the less impressive results have yet to be published and these will come in a wave over the course of the next eight weeks. It also seems possible that not all of the 92% of outstanding employers will publish their reports in time suggesting there will be some degree of non-compliance. The EHRC are currently consulting on new proposals for tackling non-compliance by employers.

The other point to note is the media clearly has the appetite to scrutinise the reported results. Predictably, the focus has been on [employers who are household names](#) and it seems likely this will continue. However, the media scrutiny has extended to analysis of the credibility of the figures reported, with the Financial Times highlighting sixteen [companies who had reported a "statistically improbable" nil gender pay gap](#). This led to some companies [adjusting their reported figures](#). Furthermore, a persistent problem with the media reporting is the conflation of the gender pay gap with unequal pay – seen most recently in the [reporting of the scandal concerning the BBC and Carrie Gracie](#).

The take away here is that you should expect scrutiny from the national media and, in due course, industry-specific media, who will inevitably look to compare employers operating within the same sector. Given the misreporting of the gender pay gap, it is important that you explain the distinction between the two concepts in your voluntary narrative (see below) and your internal and external communications.

WHAT AREAS SHOULD YOU ADDRESS IN YOUR VOLUNTARY NARRATIVE?

If you haven't reported your results yet, you are probably at the stage of beginning to prepare your voluntary narrative to accompany the results. What areas should you think about including to create a really compelling narrative?

- ▶ **Opening statement from a senior stakeholder:** an opening statement from a senior stakeholder gives you the chance to set the tone and demonstrate support for gender pay gap reporting at senior level. This helps to add credibility to the report, show that it is being taken seriously by the business and is more than just a compliance exercise.

- ▶ **Getting across the culture of the business:** in the opening statement or elsewhere you might wish to highlight any relevant diversity awards or commendations that the business has received, as well as any relevant memberships or initiatives to which you are a signatory (e.g. Think, Act, Report). Again, this will help to show that diversity is taken seriously within the business. Another way of delivering a positive message about the business culture would be to include profiles of employees who have a relevant story to tell.
- ▶ **Explain the difference between the gender pay gap and unequal pay:** we would strongly recommend that an explanation of the difference between the equal pay and the gender pay gap is included in your narrative. An equal pay audit compares men and women performing the same, similar or like work. It reveals unequal pay, which is unlawful (unless there is a material factor defence). The gender pay gap analysis compares the mean and median rates of pay of all men and women within an organisation regardless of job role. It typically reveals an underrepresentation of women in highly paid roles. The presence of a gender pay gap does not necessarily mean an employer is paying men and women unequally (although this may be a contributory factor). The two terms are still regularly conflated by the press (see above). It's important to clarify this distinction, not least because main readership of the report is likely to be your employee population. The Deloitte analysis revealed that 69% of the large employers who had reported included this explanation in their narrative.
- ▶ **Set the scene for the results:** it's worth explaining which entity is covered by the report and whether you are reporting only on that basis, or whether you intend to go further and provide additional group-wide figures. Again, given that the main readership will be your employee population, it's a good idea to explain the different types of gender pay information being reported and what they show. It's also a good idea to flag the difference between mean and median and why the median figure is the better indicator of the pay gap. This should help promote a better understanding of what the results show.
- ▶ **Set out your results and explain the underlying causes:** having set out your results, you should go on to provide an explanation of the underlying causes for any gaps, perhaps providing additional data on a voluntary basis if helpful. For example:
 - ▶ Is the gap partly attributable to a predominance of women in lower paid roles and a lack of women in higher paid roles within the entity reported on? If so, and the position is improved when viewed from a group-wide perspective, then you might want to supplement your figures with group-wide results.
 - ▶ Is the gap partly attributable to the location of staff? If so, consider breaking up your results by location to demonstrate this.
 - ▶ Is your bonus gap related to the fact that you have higher numbers of female part-time workers? If so, then you should explain that actual bonus payments are used in the calculations, rather than full-time equivalent amounts, which will have the effect of inflating the bonus gap where you have a high number of part-time, female staff.
 - ▶ You may also be able to point to sector-specific causes of the pay gap within your industry (e.g. fewer women entering STEM professions). If helpful, you could also benchmark your results against peers within your industry (this will be easier in to do in the second year of reporting when you can look back at the previous year's figures).
- ▶ **Explain your action plan to close the gap:** having identified the causes for the gap within your business, the next step is to explain what initiatives you already have in place and plan to put in place to help you achieve the closure of the gap. We discuss some examples of relevant initiatives in more detail below. It's worth noting that the Government's advice is to focus your efforts on three key areas where you can make traction, rather than opting for a scatter gun approach. When setting out your action plan, it's also a good idea to manage expectations on how quickly you will be able to reduce the gender pay gap. Most of the initiatives you are likely to adopt will not generate an overnight improvement (e.g. recruiting more female graduates at relatively lower rates of pay may have the immediate impact of inflating your pay gap but, in the longer term, will improve the results as they rise to more senior roles).

WHAT SORTS OF INITIATIVES MIGHT HELP TO CLOSE YOUR PAY GAP?

Below is a non-exhaustive list of some of the strategies that might help you tackle the pay gap within your business. The Government Equalities Office has recently published a [toolkit for employers](#) with further suggestions on how to close the gender pay gap.

- ▶ **Ensuring your recruitment strategy is focused on reaching a diverse mix of candidates:** if your results have identified a need to attract more women to your business, particularly at senior level, then consider how your recruitment strategy could be adjusted to enhance female recruitment. For example:
 - ▶ Advertise all job roles in a gender neutral way and as being open to flexible working.
 - ▶ Recruit through a variety of different channels to reach a wider pool.
 - ▶ Ask recruitment agencies to provide you with a diverse mix of candidates.
 - ▶ Train all those involved in recruitment on unconscious gender bias.
 - ▶ Ensure you can justify recruitment decisions (e.g. by reference to objective skills-based tests and/or panel interviews).

- ▶ **Measures to help women rise to senior positions:** if your results have identified a need to improve female representation at senior levels, then consider what support you can offer your female staff to rise to those positions. For example:
 - ▶ Provide female staff with appropriate technical and soft skills training.
 - ▶ Offer mentoring and networking opportunities.
 - ▶ Implement a targeted female development programme.
 - ▶ Review the distribution of performance ratings between male and female staff and ensure development opportunities are offered to those with similar performance levels.
 - ▶ Monitor the level of female lateral hires and internal promotions and identify any barriers that exist.
 - ▶ Where appropriate you could consider using the positive action provisions in relation to recruitment and promotion under the Equality Act 2010. In broad terms these provisions would potentially permit an employer to select a woman as part of a recruitment or promotion decision in preference to a man, when the man and woman are as qualified for the particular role.

- ▶ **Ensure you have a robust pay and reward structure:** if your results have indicated there may be an issue with men and women being paid fairly then consider what you can do to improve your pay and reward structure:
 - ▶ Conduct a job evaluation to understand which job roles should be treated as the same, similar or equivalent.
 - ▶ Consider introducing annual equal pay audits to check for gender discrimination in pay.
 - ▶ Train managers who are responsible for making decisions about performance and pay on unconscious gender bias.
 - ▶ Ensure your pay and reward system is transparent and objective and decisions are capable of justification.

- ▶ **Family friendly initiatives:** if your results have identified an issue in retaining female employees after having children (thereby affecting the pipeline of women for senior roles) then consider how you can support working mothers and also encourage working fathers to play a more equal role in childcare: For example:
 - ▶ Champion flexible working for all staff and make it available from Day 1 of employment.
 - ▶ Equalise shared parental pay with maternity pay and allow it to be paid in a fully flexible way.
 - ▶ Provide support for colleagues on family leave (e.g. maintain contact; use KIT days; implement a buddy scheme).
 - ▶ Introduce a returner programme for women who have taken a career break.
 - ▶ Promote these initiatives to your staff to encourage uptake.

CONTACT

If you would like to discuss your gender pay gap report or your future strategy for closing your gender pay gap, please contact [Amanda Steadman](#) or your usual AG contact.

10-19515517.1

addleshawgoddard.com

Aberdeen, Doha, Dubai, Edinburgh, Glasgow, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

© 2018 Addleshaw Goddard LLP. All rights reserved. Extracts may be copied with prior permission and provided their source is acknowledged. This document is for general information only. It is not legal advice and should not be acted or relied on as being so, accordingly Addleshaw Goddard disclaims any responsibility. It does not create a solicitor-client relationship between Addleshaw Goddard and any other person. Legal advice should be taken before applying any information in this document to any facts and circumstances. Addleshaw Goddard is an international legal practice carried on by Addleshaw Goddard LLP (a limited liability partnership registered in England & Wales and authorised and regulated by the Solicitors Regulation Authority and the Law Society of Scotland) and its affiliated undertakings. Addleshaw Goddard operates in the Dubai International Financial Centre through Addleshaw Goddard (Middle East) LLP (registered with and regulated by the DFSA), in the Qatar Financial Centre through Addleshaw Goddard (GCC) LLP (licensed by the QFCA), in Oman through Addleshaw Goddard (Middle East) LLP in association with Nasser Al Habsi & Saif Al Mamari Law Firm (licensed by the Oman Ministry of Justice) and in Hong Kong through Addleshaw Goddard (Hong Kong) LLP, a Hong Kong limited liability partnership pursuant to the Legal Practitioners Ordinance and regulated by the Law Society of Hong Kong. In Tokyo, legal services are offered through Addleshaw Goddard's formal alliance with Hashidate Law Office. A list of members/principals for each firm will be provided upon request. The term partner refers to any individual who is a member of any Addleshaw Goddard entity or association or an employee or consultant with equivalent standing and qualifications. If you prefer not to receive promotional material from us, please email us at unsubscribe@addleshawgoddard.com. For further information please consult our website www.addleshawgoddard.com or www.aglaw.com.