

## Bridging the pay gap

24/02/2016

**Employment analysis: What is the thinking behind the government's push for the publication of data on the gender pay gap? Amanda Steadman, professional support lawyer at Addleshaw Goddard LLP, considers the government's goal to close the UK's gender pay gap within a generation and what the plan means for employers and employees.**

### Original news

Draft Regulations on mandatory gender pay gap reporting, LNB News 12/02/2016 71

*Under proposed regulations from the Government Equalities Office, employers will be required to publish annual figures showing gender pay gaps, gender bonus gaps and the gender breakdown of paid employees. The regulations will introduce mandatory gender pay gap reporting and will apply to employers with 250 or more relevant employees, and are expected to come into force on 1 October 2016. A consultation on the draft regulations from the Government Equalities Office closes on 11 March 2016.*

### What are the key proposals in this area?

The draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 are expected to come into force on 1 October 2016. They will oblige employers with 250 or more employees in Great Britain to publicly report gender pay information on an annual basis. The first public reporting deadline will be 30 April 2018, although employers may report earlier than this.

The gender pay information that must be reported is as follows:

The gender pay gap on a mean and median basis

Employers must use data from the relevant pay period within which 30 April falls each year (with the first data snapshot to be taken on 30 April 2017). 'Pay' is defined in the draft regulations and includes:

- o basic pay
- o paid leave
- o bonus pay (also defined), and
- o various allowances and premia

### The gender bonus gap on a mean basis

Employers must include all bonuses paid to employees in the 12 months prior to 30 April each year (the first year will cover the period 1 May 2016–30 April 2017). 'Bonus pay' is defined in the draft regulations and includes:

- o profit-sharing and performance bonuses
- o commission
- o long-term incentive plans, and
- o the cash equivalent value of shares on the date of payment

### The proportion of men and women receiving a bonus

Employers must publish the proportion of male and female employees who received bonus pay within the relevant 12-month period.

### Salary quartile information

Employers must identify their overall pay range, divide this into quartiles and populate these with the numbers of male and female employees within each quartile.

### **What is the rationale behind the proposals? Are these proposals likely to achieve those objectives?**

The government's goal is to close the UK's gender pay gap within a generation. They hope to achieve this through a package of measures, including increased pay transparency. The hope is that public gender pay gap reporting will provoke a number of positive outcomes. For example, employers will be encouraged to establish an effective talent pipeline to help women fulfil their earning potential. Further, where an employer reports a high gap, competition and peer pressure (particularly within the same sector) will lead to action to tackle the gap.

In theory, placing the spotlight on an organisation's gender pay gap should help address some of the structural issues which accentuate the pay gap. However, other European jurisdictions which have had gender pay gap reporting for some time have not seen an accelerated closure of their pay gap. For example, the French gender pay gap stood at 16.9% in 2008 and 15.2% in 2013—a reduction of only 1.7%. The same reduction was seen in the UK over the same period. Similar results were seen in Sweden, Denmark and Austria (all of which have gender pay gap reporting) over the same period.

Further, gender pay gap reporting alone will not close the pay gap. It is one aspect of a wider package of measures which must attack other causes of the pay gap (eg initiatives in schools to encourage young girls towards a broad range of careers and supporting women to return to work and progress in their careers after having children).

### **What would the introduction of these proposals mean on a practical level? Could there be any challenges or difficulties in implementing them?**

The first challenge for employers is to ensure that they have the necessary resources to gather the data correctly, and within the specified time frame. Employers will need to identify which part of the business will 'own' the task—for example, will it sit with HR, reward or compliance? The data gathering and calculation exercises will take time, particularly for very large employers with complex reward structures. The employer will need to consider whether it has sufficient resources to service the project.

The data gathering exercise may also be complicated. Some global employers may have to grapple with the preliminary issue of whether an employee can be said to be 'ordinarily working in Great Britain' at the relevant time. Next, employers will need to identify the correct pay periods for each employee, making sure that all components of pay received during that period are counted and valued correctly. Ensuring that the data is robust is of the highest importance, given that a director of the company (or equivalent) must certify that it is accurate.

Finally, employers must grapple with the issue of whether to voluntarily provide more granular pay gap figures (eg breaking down by hours or job grade), in order to present a more favourable picture. Similarly, care will need to be taken to ensure that any contextual narrative delivers the right message and outlines realistic remedial steps. This is critical both from an employee and public relations perspective. An internal communications strategy will also have to be considered at an early stage.

### **What does all this mean for lawyers and their clients? What should they do next?**

Although the first reporting deadline is some way off, many affected employers will wish to understand their pay gap figures now. Where the figures are high, the employer may wish to break the figures down further to present a more favourable picture overall. Of course, these additional figures will require additional work for the employer.

Understanding the pay gap figures now will also help employers to focus on possible remedial strategies at an early stage. Where an employer wishes to conduct a pay gap audit now, they should consider instructing lawyers to advise them on this process to ensure that the results are privileged.

Lawyers need to understand the proposed regulations and update their clients on the outcome of the further consultation on the Regulations (due to close on 11 March 2016). Once the final position is known, lawyers may wish to offer training

to their clients and advise on any preliminary data gathering exercise. Once completed, further advice may be required on any risk areas.

### **How does this fit in with other developments in this area?**

Gender pay gap reporting is just one part of a wider package of measures designed to help close the gender pay gap in the UK.

The government is working to widen young girls' aspirations and support women returning to work after having children to help tackle the so-called 'motherhood penalty'. For example, the government has made significant investment in the teaching of STEM subjects, the establishment of training programmes to develop women engineers and better careers guidance. Shared parental leave was introduced in 2015 and is due to be extended to working grandparents by 2018. The right to request flexible working has also been extended.

In future, it's possible that the threshold for gender pay gap reporting will be lowered, perhaps to 150 employees. The current threshold of 250 employees has been criticised for bringing too few employers within scope (fewer than 8,000 employers are affected).

Further, it is possible that pay gap reporting will be extended beyond gender lines. The TUC recently reported on the pay gap affecting black workers, which widens as they achieve more qualifications. The research revealed a 23% pay gap between black and white university graduates.

*Interviewed by Anne Bruce.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor*



CLICK HERE FOR  
A FREE TRIAL OF  
LEXIS®PSL

About LexisNexis | Terms & Conditions | Privacy & Cookies Policy  
Copyright © 2015 LexisNexis. All rights reserved.