

## GENDER PAY GAP

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### Is your business up to speed with its Gender Pay Gap reporting requirements?



On **6 April 2017**, new regulations will come into force requiring employers with 250 or more employees to publicly report a range of gender pay information outlining differences in pay between male and female employees. The information collected must be published annually and retained for a minimum of 3 years.

If your business falls in scope, failure to comply with the requirements could lead to serious reputational damage if the government "names and shames" your business. Equally, failure to comply could lead to adverse reactions within your workforce itself and also deter new talent, investors and even customers from engaging with your business. You, therefore, need to get it right.

#### Who is covered?

The rule apply to all private and voluntary sector employers with at least 250 employees in Great Britain on the snapshot date of 5 April each year.

They apply to each separate legal entity within a group of companies which meets the 250 employee threshold. Corporate groups may voluntarily supplement this by reporting on a group-wide basis if they wish to do so in order to provide context to the results of each employing entity.

#### Who's in scope?

Once within the scope of the regulations, employers must produce and report gender pay information for their "relevant employees" only.

Partners and LLP members are expressly excluded from this definition (but may count as employees for the purposes of triggering the application of the rules in the first place).

"*Relevant employees*" includes those employed under a contract of employment or apprenticeship or a "*contract personally to do work*". This brings into scope those who are deemed to be workers but not employees. It will also include independent contractors who contract directly to provide their work personally (where the contractor cannot subcontract or employ their own staff to do the work), unless the employer does not have, and it is not "reasonably practicable" to obtain, the data relating to that individual. Agency workers and those contracting via a personal service company will generally be excluded: it will depend on who their contract of employment is with.

## What to report?

If your business is within scope you will be required to report on the following four items:

- ▶ Gender pay gap between the hourly rates of pay of male and female full-pay relevant employees, calculated by reference to the specified pay period which falls in April each year. This covers both mean and median hourly rates of pay.
- ▶ Gender bonus gap between the bonus pay paid to male and female relevant employees, calculated by reference to a specified 12-month period. This covers both mean and median bonus pay.
- ▶ The percentage of male and female relevant employees who received a bonus in a specified 12-month period.
- ▶ The percentage of male and female full-pay relevant employees who fell within four pay quartiles bands.

## When to report?

If your business is in scope, you are obliged to perform the data analysis by reference to the 5 April 2017 pay period (and the preceding 12-month period for the purposes of the bonus gap).

Results must be reported within 12 months of 5 April each year i.e. by 4 April each year. The first reporting date will be on (or before) 4 April 2018.

## Where to report?

Affected employers must publish gender pay and bonus gap information on their website in English and in a manner that is accessible to all employees and the public. The information must be retained online for 3 years. In addition, employers will be required to send evidence of compliance with the reporting regulations to a Government-sponsored website.

## How to report?

The gender pay information must be accompanied by a written statement which confirms that the information is accurate and be signed by an appropriate person. The signatory will depend on the legal status of your business. For a corporate body like yours – relevant signatory is a director or equivalent.

## Risks of non-compliance

Employers won't be subjected to any civil or criminal penalties if they fail to comply with the regulations. However, this will be kept under review in light of rates of compliance by employers in the first few years of implementation. The Government has indicated that it will conduct periodic spot checks to assess for non-compliance and that it will 'name and shame' employers who fail to comply.

In addition, the Explanatory Notes to the regulations confirm that it is the Government's view that a failure to comply with the reporting obligations will constitute an unlawful act within the meaning of section 34 of the Equality Act 2006 which empowers the Equality and Human Rights Commission to take enforcement action.

## How can we help?

You may already be alive to the issue of Gender Pay Gap reporting, but are you prepared for the new requirements? We are experts in this field and are currently working with affected employers across a wide range of sectors and size, providing bespoke training and advice on Gender Pay Gap reporting. We are also helping businesses with some of the tricky questions such as:

- ▶ which companies within your group need to report;
- ▶ the meaning of a "relevant employee" for reporting purposes;
- ▶ the meaning of "ordinary pay" and "bonus pay";
- ▶ how to work out the "relevant pay period"; and
- ▶ how to publish the report.

From a more practical point of view, we can assist in:

- ▶ compiling the data required under the new rules;
- ▶ analysing the data;
- ▶ advising on any need for remedial action;
- ▶ advising on how to communicate the results internally and externally; and
- ▶ assisting with the preparation of a narrative to accompany the data- whilst this is not required under the regulations, we believe that providing one can be an important tool for setting your business apart from your competitors.

Please get in touch if we can help your business. In certain circumstances, using our services in this way, could also mean that any information collated attracts legal privilege, which may be beneficial if you choose to do a dry run first.

### SALLY HULSTON

Partner

+44 (0)113 209 7740



### AMANDA STEADMAN

Professional Support Lawyer

+44 (0)20 7160 3310



10-9300631-1

[addleshawgoddard.com](http://addleshawgoddard.com)

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