



European Employment Law ALERT

UK Gender Pay Gap Reporting — The Last Chance Saloon

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The final version of the draft Gender Pay Gap Regulations have now been published and are expected to come into force on 6 April 2017. The latest version of the Regulations set out a number of changes from the previous version which we reported on in our [December alert](#). We have highlighted the key differences below, and recapped the new rules. The date on which pay information is taken has now been brought forward from 30 April to 5 April, so UK employers now have just a few weeks to review their data and make any changes.

The Regulations require employers with 250 or more UK employees (which is assessed separately by employing entity, so affiliates are not aggregated) to analyse and publish details of the salary and bonus paid to their female when compared with their male staff (i.e. the gender pay gap).

This gender pay gap report must set out:

- The employer's overall 'gender pay gap' figures (i.e. the difference between male and female pay) using both the mean and median average **hourly pay**. This is based only on data from the pay period in which 5 April falls (i.e. for most monthly paid employees, April payroll). This is then a 'snapshot', taken on a once a year basis. The revised regulations provide detailed guidance on how to calculate average hourly pay, although working out what hours an employee works is likely to be no more than an estimate for professional or senior employees who do not "clock off" at 5pm.
- The **proportion of men and women in each of four pay bands**, described as 'quartiles', which is set by taking the highest and lowest paid employees in the organization and setting quartiles between those points, each containing the same number of employees. This clarifies previous uncertainty as whether the quartiles would instead be set by splitting the total pay range into equal quarters. The revised regulations provide detailed guidance on how to determine the quartile pay bands. Note that there is no requirement to publish either the number of employees in each quartile or the actual monetary range but just to identify them as lower, lower middle, upper middle and upper and the gender pay gap in each expressed as a percentage.
- The overall difference, expressed as a percentage, between men and women's mean and median **bonus** pay. This is assessed over a 12-month period from April 2017 rather than on a one-month 'snapshot' figure as with the hourly pay data. The requirement to publish 'median' data as well as mean data is a change from the previous draft.
- The **proportion**, again expressed as a percentage, **of male and female employees who received a bonus** in the same 12-month period as above.

Pay includes basic pay, bonuses, allowances and shift premiums. The revised regulations now exclude employees on reduced pay, addressing the concern that the data could be unfairly affected by those on, for example, maternity or sick leave and receiving reduced pay. It does not include overtime pay, expenses, benefits in kind or the value of salary sacrifice schemes.

It is worth emphasising that pay information is taken on a 'snapshot' basis for the month of April in each year, whereas bonus information (which includes LTIPs and the value of shares granted when they are deemed to be paid, being the time, and in the amount in respect of which, they give rise to taxable earnings income - this is a clarification from the previous draft regulations) covers payments made in the previous 12 months. The snapshot date has now been confirmed to be 5 April, a change from the previously stated date of 30 April.

The information needs to be published on the employer's website and a government website within 12 months (i.e. by 4 April 2018 for the first report), and must remain publicly available for 3 years. There is currently no requirement for employers to have the information audited before publication.

A written statement confirming that the gender pay gap information is accurate must also be published. This must be signed by a director or equivalent senior individual.

In respect of enforcement, there are currently no sanctions for non-compliance. However, the government has now stated that the Equality and Human Rights Commission will be able to use its powers of enforcement. Additionally, the government has stated that it intends to run periodic checks to monitor compliance and may name and shame non-complying employers. Pressure groups are also expected to take an interest.

The government has stated that it will also publish supporting guidance to assist organisations to comply with their obligations once the regulations have been finalized.

Action Points

We expect these revised new rules to be finalized shortly, meaning that the first data grab will need to take place this coming 5 April, 2017 and the data published by no later than 4 April 2018. Obtaining, analyzing and presenting the pay information all present challenges and we strongly recommend that impacted employers prepare now. The key actions we previously identified remained relevant, namely:

- Who will "own" the process (HR, Legal, Compliance, etc.), and who will sign the report that is published?
- Is the information available? Tricky areas include identifying whether overseas employees are caught (for example, UK employees seconded overseas) and casual workers such as contractors who are not employees, but need to be included in the data because they work on a 'personal services' basis.

The revised Regulations helpfully provide an exception to the obligation to provide data where the employer does not have the data and it is 'not reasonably practicable to obtain it', which may be the case for some contractors or casual workers.

- Will the timing of pay and bonus rounds skew the data and, if so, can they be changed? Although bonuses need to be captured across the full 12 months, bonus paid in the 'snapshot' month leading up to 5 April will be included in the 'headline' hourly pay gap comparison. Can awards be brought forward or pushed back?
- Although not mandatory, the government guidance strongly encourages employers to provide a 'narrative' explaining the results and setting them in context? If there is a significant pay gap between men and women, can steps be taken to reduce the gap or, perhaps more likely, to prepare a statement explain the differences in pay and explaining what general steps the employer is taking to promote diversity.

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