

A guide to gender pay gap reporting



The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (“Regulations”) compel all employers with more than 250 employees to publish details of their gender pay gap. We previously published a detailed note on the draft regulations. Many issues and concerns raised during the consultation have been addressed in the Regulations. There are some welcome changes and more detail provided, for instance on how to calculate pay, although some areas of uncertainty remain.

Snapshot date

Although the Regulations came into force on 6 April 2017, the snapshot date for the purposes of measuring the gender pay gap is 5 April 2017 and annually thereafter, to align with the end of the tax year. The required information must be published within a year of the snapshot date of 5 April 2017 i.e. by 4 April 2018. The Regulations require you to take a ‘snapshot’ of your gender pay gap on 5 April 2017 and bonus pay details for the 12 months preceding 5 April 2017 i.e. from 6 April 2016 to 5 April 2017.

Who will be affected?

The gender pay gap reporting requirements apply to all employers in the private and voluntary sectors with at least 250 employees. However, in a change to the draft regulations, the specific reference to UK employees has been omitted in the Regulations leading to speculation amongst commentators that employers who do not have 250 employees in the UK but do have 250 employees internationally could still be obliged to report on their gender pay gap. It is not clear whether this omission was an intentional amendment which should lead to an alternative interpretation of the Regulations. If it was, the Regulations could now apply to employers with a large number of international employees.

Smaller employers may also need to consider whether they should review their gender pay gap in case they are asked for such information, for instance when tendering for work for larger organisations or the public sector.

Public sector organisations are excluded from the Regulations, but there are separate regulations which introduce a virtually identical obligation to report the gender pay gap for public sector bodies (see separate detail later in this guide).

What information should be published?

You need to publish results based on the following key calculations:

- The mean gender pay gap
- The median gender pay gap
- The mean gender bonus gap
- The median gender bonus gap
- The proportion of men and women who received bonuses
- Salary quartiles.

Which employees are included?

The duty to report applies to employees only. However, the explanatory notes to the Regulations confirm that the definition of employee is that contained in section 83 of the Equality Act 2010, which is a wider definition than the one found in the Employment Rights Act 1996 for unfair dismissal purposes. For gender pay reporting purposes, an employee includes anyone employed under a contract of employment, a contract of apprenticeship or a contract personally to do work. Workers will therefore be included, however partners and LLP members are specifically excluded.

Those who are employed “under a contract personally to do work” i.e. contractors are excluded from the requirement to report on pay data if it is not reasonably practicable for employers to obtain the required data for them. This is intended to address the difficulties that employers face when obtaining the necessary data from those engaged on a casual or consultancy basis.

The Regulations include a new definition of “full-pay relevant employee”. This removes the requirement to include those in the salary quartiles and hourly pay comparison who, during the relevant pay period, are being paid at a reduced rate or nil as a result of the employee being on leave. This was a point made during the consultation about the potential effect of including employees on maternity or sick leave. However, as a result of the introduction of the “full-pay relevant employee” definition the Regulations now exclude these employees from the reporting

duty entirely. It may have been preferable, and have provided more accurate data, to include them but to use their substantive salary (i.e. that would apply if they were not on leave) for gender pay reporting purposes. Employees on leave are included in the calculation of the gender bonus gap.

The Regulations apply to each individual employee so there is no requirement to consider “full-time equivalents”. Each part-time or job share employee counts as one employee for gender pay reporting purposes. Once you have identified the total number of affected employees you will need to divide them into two groups of males and females.

Defining pay

Pay is calculated using gross figures, before any deductions for PAYE, national insurance contributions, pension contributions, student loan repayments and voluntary deductions (such as for a season ticket loan or gym membership). The value of salary sacrifice schemes is excluded from the definition of pay.

The definition of pay contained in the Regulations says that “ordinary pay” includes basic pay, allowances, piecework pay, leave pay and shift premium. There are further specific definitions and detail contained in the Regulations as to what is and is not meant by piecework, shift premium pay and allowances.

Pay does not include payment referable to overtime, redundancy or termination of employment, payment in lieu of leave or remuneration provided otherwise than in money.

You need to calculate a gross hourly rate for each individual employee. This is calculated using an employee’s normal working hours (where applicable) or by adopting a 12 week reference period for those whose working hours vary from week to week.

Calculating the mean gender pay gap

For each gender specific group, add up the gross hourly rate and divide by the number of either male or female employees in the relevant group. For example, if the total gross hourly rate for all of your female employees adds up to £4,000 and you have 400 female employees then the mean gross hourly rate for all female employees will be £10 (Figure B). Using the same calculation, if the total gross weekly hourly rate for all male employees adds up to £6,000 and you have 200 male employees the mean gross hourly rate for all male employees will be £30 (Figure A). Using these figures the mean gender pay gap will then be worked out as follows:

$$\frac{(A-B)}{A} \times 100 \quad \frac{(30-10)}{30} \times 100$$

66% is the gender pay gap which means that an average woman earns 33% of whatever an average man earns in your business.

“ For gender pay reporting purposes, an employee includes anyone employed under a contract of employment, a contract of apprenticeship or a contract personally to do work.

Calculating the overall median gender pay gap

To calculate the overall median gender pay gap arrange your gross hourly rates for all female employees starting with the lowest and ending with the highest level of hourly pay. The median figure is the employee who falls in the middle, for example, if you have 400 female employees then the medium gross hourly rate will be the average pay of employee number 200. The same calculation should be carried out for all male employees and the difference between the two should be expressed as a percentage in the same way as calculated above for the mean gender pay gap.

Calculating the gender bonus gap

Bonus pay is defined as:

- Any remuneration that is in the form of money, vouchers, securities, securities options, interests in securities; or
- Remuneration which relates to profit sharing, productivity, performance, incentive or commission.

Bonus pay does not include ordinary pay, remuneration referable to overtime, or remuneration referable to redundancy or termination of employment.

You are required to publish the following pieces of data in respect of bonuses:

- The difference in both the mean and median bonus pay received during the period of 12 months preceding the relevant date (5 April 2017) by male and female employees which is expressed as a percentage. This can be calculated using the same formula for the headline gender pay gap calculation but instead of using gross hourly rates replace this with the mean and median bonus pay for male and female employees. For businesses who pay annual bonuses in respect of the whole year, Regulation 6 now confirms that the bonus amount can be calculated pro rata to the relevant pay period. So for an annual bonus only 1/12th would need to be included.
- The proportion of male and female employees who received bonus pay during the same 12 month period. This requires two separate percentage figures to be published e.g. 50% of men received a bonus and 35% of women received a bonus.

Reporting on the bonus pay is to the end of the tax year prior to the snapshot date. So for the first year, it will be any bonus paid in the year from 6 April 2016 to 5 April 2017.

It is important to note that this applies to all relevant employees, which means anyone who is employed by the employer on the snapshot date, so employees on maternity or sick leave should be included for bonus gap reporting purposes.

Salary quartiles

You are also required to report on the number of men and women in each pay quartile (four equally divided bands of pay from lowest to highest). Employers will calculate their own quartiles based on the overall pay range of their workforce. The purpose of this calculation is to identify the numbers of women and men in each quartile and is intended to help employers consider where women are concentrated in terms of their remuneration and any apparent blocks to their progression. The Regulations require you to list each full-pay relevant employee in order of their gross hourly rate of pay. The ordered list of hourly rates is then divided into four quartiles: the lower, lower middle, upper middle and upper quartile pay bands.

So far as possible, equal numbers of employees should be within each quartile. You will then need to publish how many men and women are included in each quartile and give a total figure for each quartile.

For example, if an employer pays from £10 per hour up to £500 per hour their quartile information could look like this:

Brand	Quartile pay	Male (%)	Female (%)	Total employees
Lower	£10 - £15.99	20	80	100
Lower middle	£16 - £49.99	26	74	100
Upper middle	£50 - £99.99	40	60	100
Upper	£100 - £500	45	55	100

“ The Regulations require you to list each full-pay relevant employee in order of their gross hourly rate of pay. The ordered list of hourly rates is then divided into four quartiles: the lower, lower middle, upper middle and upper quartile pay bands.

The public sector

The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 extend the duty to publish annual paygap reports to public sector organisations with over 250 employees. These broadly reflect the Regulations.

The main differences between the two sets of regulations are:-

- The public sector duty takes effect as part of the existing public-sector equality duty; and
- The ‘snapshot’ date is 31 March for public sector employees as opposed to 5 April for private sector employees, so data must be published by 30 March 2018.

Where the information should be published?

You must publish your gender pay gap information within one year of the relevant snapshot date on your own website and must retain the information online for three years. The figures must be accompanied by a written statement of accuracy, signed by a director, partner or equivalent. The information must be presented in a manner that is accessible to all employees and the public. You are also required to submit this data for publication on a Government sponsored website.

Penalties for non-compliance

The Government has not created any additional civil penalties for failure to publish the required information. However, it is proposed that this will be kept under review and in the future a name and shaming policy similar to that used in connection with the national minimum wage could be introduced. The explanatory notes indicate that failure to comply with the Regulations will constitute an “unlawful act” within the meaning of section 20 of the Equality Act 2006, which empowers the Equality and Human Rights Commission (EHRC) to take enforcement action. However, whilst the EHRC has acknowledged this, it has previously stated that it would require additional powers and resources to enable it to enforce compliance with the Regulations.

Context and narrative

Whilst legal enforcement may not be a serious risk at present, there are other risks associated with failing to publish your gender pay data. A failure to publish may be a point raised by claimants or those seeking to pursue equal pay or sex discrimination cases. It may be inferred by employees and unions that you have something to hide if you are not transparent about the results.

You should consider the outcome of your gender pay review and decide whether to add some explanation and context to the results. Although this is not a legal requirement, inevitably employees and unions will examine the results closely. We would therefore suggest some explanation and context is provided when publishing the required information on your website.

Contact

For further information please [get in touch](#) or contact your usual DWF representative.