



Legal update — December 2016

Employment and pensions The finalised gender pay gap regulations are here

Pioneering — Bahrain — Construction — Public sector — Energy — Real estate — London — Tax — IT — Dubai — Manchester — Connecting — Knowledge — Pragmatic — Malaysia — Exeter — Thought leadership — Housing — Agile — Creative — Connecting — Pri...
Local government — Manchester — Environment — Focused — Islamic finance — Projects — Abu Dhabi — Corporate finance — Passionate — G...
Employment — Regulation — Procurement — Expertise — Specialist — Planning — Investment — Committed — Delivery — IT — G...
IP — Corporate — Infrastructure — Value — Development — Private wealth — Oman — Governance — Birmingham — Corporate finance...
Dynamic — Pensions — Dispute resolution — Insight — Banking and finance — Arbitration — Diverse — Regeneration — Care — Commun...

Section 78 of the Equality Act 2010 (EqA 2010) gives the government power to make regulations requiring private and third sector employers to publish information relating to differences between the pay of male and female employees across their organisations. A consultation, 'Closing the Gender Pay Gap' was published in July 2015. It was followed in February 2016 by a second consultation on the draft Equality Act 2010 (Gender Pay Gap Information) Regulations 2016.



Source: Fotolia

It was originally anticipated that the Regulations would come into force on 1 October 2016. However, this deadline slipped and the finalised Regulations, which were published last week, will come into force (subject to Parliamentary approval) on 6 April 2017.

So what does gender pay reporting entail?

The new reporting regime will apply to private or voluntary sector employers with at least 250 employees on the "snapshot date". Public sector employers are expressly outside the scope of the Regulations, however the Government plans to introduce similar reporting obligations for public sector employers within the same timeframe.

The "snapshot date" is the 5th April each year (it was originally going to be the 30th April). Employers will be required to publish their first gender pay gap reports by 4 April 2018.

Employers will be required to:

- Publish overall gender pay figures calculated using both the mean and the median. The median is thought to be the best representation of the typical difference between the genders as it is not distorted by the small number of very high earners.
- Report on the number of men and women in each of four salary quartiles, based on the employer's overall pay range. This will show how

the gender pay gap differs across the organisation, at different levels of seniority.

- Publish separate information on the gender pay gap relating to bonuses. The Regulations only require the mean bonus payments to be analysed separately, not the median.
- Employers will have the option to include a narrative explaining any pay gaps and setting out what action they plan to take. The provision of a narrative will be strongly encouraged, but it will not be mandatory, as the Government feels this would be overly burdensome.

The Government will publish supporting non-statutory guidance.

The finalised Regulations

There have been various changes to the original draft Regulations.

- Clarification on salary quartiles

The Regulations make it clear that each of the four salary quartiles should contain the same number of employees. Employers will put employees in order of their pay, from lowest to highest, then divide the employees into four equal groups. The proportion of male or female employees in each quartile will be calculated by dividing the number of male or female

Published by
Trowers & Hamblins

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

www.trowers.com

Trowers & Hamblins LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamblins LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamblins LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamblins LLP's affiliated undertakings. A list of the members of Trowers & Hamblins LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamblins LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive. Trowers & Hamblins LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

employees in the quartile by the total number of employees in the quartile and multiplying by 100.

- Definition of a "relevant employee"

A "relevant employee" is "a person who has been employed by the employer on the relevant snapshot date". "Employment" is defined using the definition in the EqA 2010, and includes workers and employees.

- Calculating mean and median gender pay gaps and pay quartiles

Employers will base their calculations only on "full-pay relevant employees". In other words employees who are not, during the relevant pay period, being paid at a reduced rate as a result of being on leave will be excluded. "Leave" includes annual leave, maternity, paternity, adoption or shared parental leave, sick leave and special leave.

- Calculation of "gross hourly rate of pay"

This was previously defined as "the weekly pay divided by weekly basic paid hours for each relevant employee". This definition has now been replaced with a method for calculation which uses an employee's normal working hours where applicable, and adopting a 12-week reference period for employees whose working hours vary from week to week.

- Calculation of bonus pay

As it is common practice for bonuses in respect of a whole year to be paid in a single payment (and therefore to lead to a distortion in figures if the payment falls within the relevant pay period for calculating the gender pay gap), the Government's requirement to include bonus pay in the calculation of an employer's mean and median gender pay gap has been criticised. This concern has been addressed by providing that only a portion of the bonus payment that is proportionate to the relevant pay period should be included in the calculation of an employee's gross hourly pay for the purposes of determining the mean and median gender pay gap.

The definition of "bonus pay" has also been amended. It clarifies that elements of bonus that are awarded as securities, securities options and interests in securities are to be treated as paid at the point in time when they would give rise to taxable earnings or taxable specific income under the Income Tax (Earnings and Pensions) Act 2003.

- Exceptions from the reporting duty

The finalised Regulations make it clear that those in respect of whom the employer does not have the relevant data, and where it is not reasonably practicable for the employer to obtain that data, will fall outside the duty to report.

What happens if employers fail to comply with the Regulations?

A failure to comply with the Regulations will constitute an "unlawful act" within the meaning of section 34 of the Equality Act 2006, empowering the Equality and Human Rights Commission to take enforcement action.

The Government has also suggested a "naming and shaming" approach may be taken, although no details have been published.

December 2016 © Trowers & Hamblins

For more information please contact

Emma Burrows
Partner
t +44 (0)20 7423 8347
e eburrows@trowers.com

Richie Alder
Partner
t +44 (0)20 7423 8593
e ralder@trowers.com

Nicola Ihnatowicz
Partner
t +44 (0)20 7423 8565
e nihnatowicz@trowers.com

Rebecca McGuirk
Partner
t +44 (0)121 214 8821
e rmcguirk@trowers.com

John Turnbull
Partner
t +44 (0)1392 612370
e jturnbull@trowers.com

Helen Cookson
Senior Associate
t +44 (0)161 838 2081
e hcookson@trowers.com