

MIND THE GENDER PAY GAP by Nick Hurley, Employment Law Partner, Charles Russell Speechlys

The Government published on Friday 12 February its long-awaited draft Gender Pay Gap Information Regulations which they consulted on until 11 March.

Although originally expected to be effective from Spring 2016, the Regulations will not come into force until 1 October 2016 at the earliest. In April 2017 employers will be required to take a preliminary snapshot of their pay data from a specific pay period and then have a further 12 months, until April 2018, in which to analyse and then publish the required information for the first time.

Who will be affected?

The gender pay gap reporting requirements will apply to all employers in the private and voluntary sectors with at least 250 'employees'. On the current draft Regulations, it appears that only employees are caught but we understand that the Government has already indicated that in the final Regulations this will include the wider categories of worker and the self-employed. This will make the task more onerous for employers if this change comes to pass.

What is included in pay?

Pay will include basic pay, paid leave, maternity pay, sick pay, shift premiums and bonuses. It does not include aspects such as overtime, expenses, the value of salary sacrifice schemes, benefits in kind or redundancy pay.

When should the information be published?

The Regulations set a specific date (30 April each year starting April 2017) for employers to take a preliminary snapshot of data about a particular pay period (the period the employer usually pays the employee i.e. weekly, monthly). The proposed annual reporting cycle is intended to allow employers to analyse and publish the information any time within 12 months of the data snapshot on a date of their choice. The first date for publishing the reporting information is by April 2018 and annually after this.

What information should be published?

There are four ways in which pay must be reported on:

- the overall mean gender pay gap
- the overall median gender pay gap
- gender bonus gap
- salary quartiles

The comparison will be done using average earnings figures which are unaffected by the number of hours worked so employers will need to calculate an hourly rate for each employee. The Government has decided that there is no need for employers to report on the gender pay gap by reference to job titles or grades or similar. However, reporting on the mean and median will make it more difficult for the employer to reduce the impact of unfavourable figures entirely. Linking the guidelines to Table 1 below, the reporting required is as follows:-

(a) Difference in mean pay

Employers must report on the difference in mean pay between male and female employees as this will reflect the full earnings distribution. The Government considers this is useful because women are often over-represented at the low earning extreme and men over-represented at the high earning extreme.

(b) Difference in median pay

Employers must also report on the difference in median pay between male and female employees which will identify the wage of the middle earner. The Government considers this is the best representation of the "typical" difference and is unaffected by a small number of very high earners.

(c) and (d) Bonus gap

The reporting requirements in respect of bonuses are:

- the difference between the mean bonus payments paid to men and women for those who receive bonuses; and
- the proportion of male and female employees who receive a bonus

(e) Salary Quartiles

Employers must also report on the number of men and women in each quartile of pay (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 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 blocks to their progression.

Andrew MacLeod, Associate Partner at McLagan, illustrates the audit requirements in Table 1.

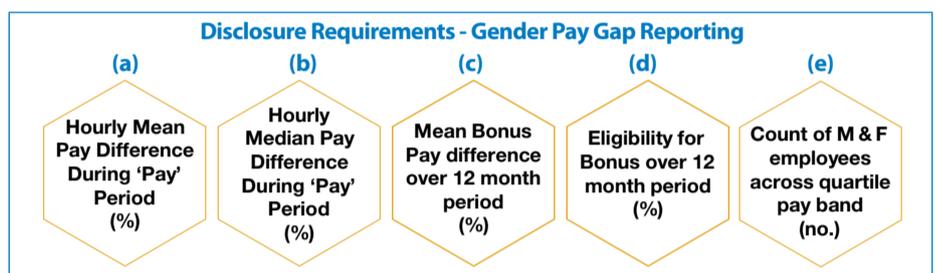


Table 1

(Illustration Source: McLagan 2016)

Where should the information be published?

The information must be published:

- on the employer's searchable UK website so that it is accessible to both employees and the public. It should remain there for three years and be accompanied by a statement confirming it is accurate and signed by an appropriate senior person in the organisation; and
- on a government-sponsored website.

What is the penalty for any failure to publish?

- The Government has decided that it will not create any additional civil penalties for failure to publish the required information. However, it is intending to produce publicly displayed tables by sector of employers' reported pay gaps. It will identify and highlight employers publishing full and explanatory information and may also publicise those known not to have complied.
- The lack of a penalty for failure to comply is likely to result in pressure groups naming and shaming in an attempt to cause as much reputational damage as possible. The Government will be closely monitoring compliance and will keep the position on penalties under review.

Will there be further guidance?

The Government will publish guidance this year to help employers implement the Regulations. It will set out how to account for the different governance structures (such as subsidiaries and parent companies) and give advice on providing a voluntary narrative to explain any pay gaps and what actions the employer is taking. The Government considers that contextualising any gender pay gap with a voluntary narrative should mitigate the risk of reputational damage.

What should employers do now?

Employers have been given a much longer breathing space to prepare than originally expected. But to conduct a full and proper review and manage any equal pay issues that may arise will take time and a commitment from senior management to the process. In particular, we recommend employers should take action as soon as possible.

Andrew MacLeod concludes that employers may want to consider conducting an Equal Pay Audit and in this scenario sets out the proposed steps in Table 2.

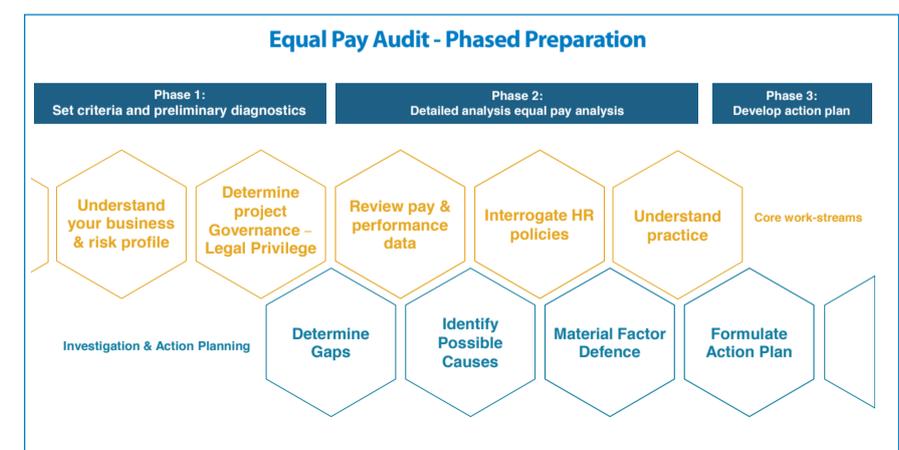


Table 2

(Illustration Source: McLagan 2016)

Nick Hurley, Employment Law Partner, Charles Russell Speechlys and **Andrew MacLeod**, Associate Partner, McLagan