The background image shows a lighthouse on a rocky island. In the foreground, a stone wall is being hit by large, white-capped waves. The sky is overcast and grey. The lighthouse is a tall, cylindrical structure with a white lantern room on top.

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Gender Pay Gap Guide

CMS guide

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Publishing the gender pay gap

In December 2016 the government published what we expect will be the final Equality Act 2010 (Gender Pay Gap Information) Regulations (the Regulations). These Regulations contain a number of significant changes from the Government's earlier version. Employers who had put plans in place based on the previous version will need to amend these. In this guide we highlight the recent changes, and practical steps employers should follow to publish their gender pay gap. Additional background information on the gender pay gap is contained in the FAQ section.

What has changed?

- The snapshot date to carry out the data analysis is now 5th April 2017. Employers have one year from this date to publish the data.
- When it comes to calculating the pay gap figure, the Regulations apply to full pay relevant employees. If an employee receives less than full pay because of taking leave, and is receiving statutory maternity pay or where they are in receipt of reduced pay whilst absent on sick leave, they should not be counted. However relevant employees should still be included for the purposes of the bonus pay gap.
- The bonus pay gap should be calculated according to the mean and median figures (previously it was just the mean).
- Non-cash bonuses such as securities and cash values of shares should be included in the calculations at the point when the payment becomes liable to tax. There were concerns that the previous version of the Regulations referred to bonuses being "received and earned" which raised concerns about double counting in relation to the award of the bonus and the payment of it.
- The gender pay gap calculation should include ordinary pay plus the pro-rated amount of the bonus payment. So for example where salary is paid monthly and the bonus is paid annually, 1/12th of the bonus payment should be added to the ordinary pay before calculating the gross hourly rate.
- It is only employees who are in employment on the snapshot date who should be counted. Concerns had been raised about the bonus period covering 12 months and whether this would include bonuses awarded during the 12 months, where employees have also left the business.
- The Regulations apply to the wider definition of employee under s.83 of the Equality Act 2010 to include individuals who perform their services personally, such as workers and some categories of contractors.
- Partners and LLP partners are excluded from the definition of "relevant employee" in the Regulations. There is some debate that LLP members may still be classified as an employee meaning they should be included when assessing whether the 250 employee threshold has been reached.
- It is now clear that pay quartiles involve dividing the workforce into 4 equal parts based on hourly pay.
- While the previous version of the Regulations was silent on enforcement, the explanatory notes make it clear that a failure to comply with the publication duty may amount to an unlawful act, which could prompt an investigation and possibly enforcement action from the EHRC.

Who is in scope?

The Regulations apply to private and voluntary sector businesses that employ 250 employees at the relevant data snapshot date, the first of which is 5 April 2017. Separate Regulations will be published which cover public sector employees in England and Wales. Scottish public sector employers that are covered by the specific equality duties have been obliged to publish their gender pay gap since 2013.

Employers will not be required to publish any information until 4 April 2018 at the latest but the first data gathering exercise (or data snapshot) should take place on 5 April 2017, and annually thereafter.

Employers who are in scope will be required to publish:

- The median and the mean gender pay gap figure for pay
- The mean and median gender pay gap figure for bonuses
- The percentage proportion of men and women receiving a bonus
- The number of men and women in each quartile of their pay distribution

Which employees should be counted?

Employees should be included, but also casual workers, and some categories of contractors if they are required to perform the work personally and cannot delegate it or employ their own staff to do it. The Regulations will also cover some employees who work abroad but satisfy the close connection test to Great Britain.

Employers will have to take a practical common sense view whether to including individuals who may sit at the margins of the definitions. The Regulations explain that an employer is not obliged to include an individual if they do not hold the data on the worker, and where it is not reasonably practicable for them to do so.

Calculating your gender pay gap

The gender pay gap is based on the definition of gross hourly pay which is made up of ordinary pay plus bonus pay. Ordinary pay is assessed with reference to the relevant pay period, whether that is weekly, monthly or quarterly. The Regulations are prescriptive in the approach employers should take. Employers should take the following steps:

- Identify all employees who are in scope and identify all relevant full pay employees, and all relevant employees (since relevant employees should still be included in the bonus pay gap calculations)
- Assess what is included/excluded in ordinary pay
- Identify all bonuses paid to full pay relevant employees in the 12 month period and pro-rate this to the same pay period as the ordinary pay (see the formula in the Regulations)
- Assess the weekly working hours of the relevant full pay employees
- Identify the hourly rate of pay for men and women who are receiving full pay

— Analyse the mean and the median pay figures

What is ordinary pay?

Not all pay is included when calculating the ordinary pay figure and the rules in relation to this are not entirely logical. So, benefits like car and housing allowance should be included, in addition to shift premiums, but overtime should not. Pay is calculated using gross figures, before any deductions for PAYE, national insurance contributions, pension contributions, student loan repayments and voluntary deductions. The following table sets out what is and is not included:

Includes	Excludes
Basic pay	Overtime pay
Paid leave	Expenses
Maternity pay	Benefits in kind
Sick pay	Redundancy pay
Area allowances	Value of salary sacrifice arrangements
Shift pay	Pay in lieu of leave
Bonus pay	Pension
On call and standby allowances	

The idea is that the information should contain a snapshot of data each April, but this will not be as simple as extracting data based on the actual payroll.

Adjustments will require to be made to ensure the relevant components of pay are included/excluded. In addition any employee who is not in receipt of full pay – even for one day during the pay period – should be excluded as they are not a relevant full pay employee.

Assessing weekly hours

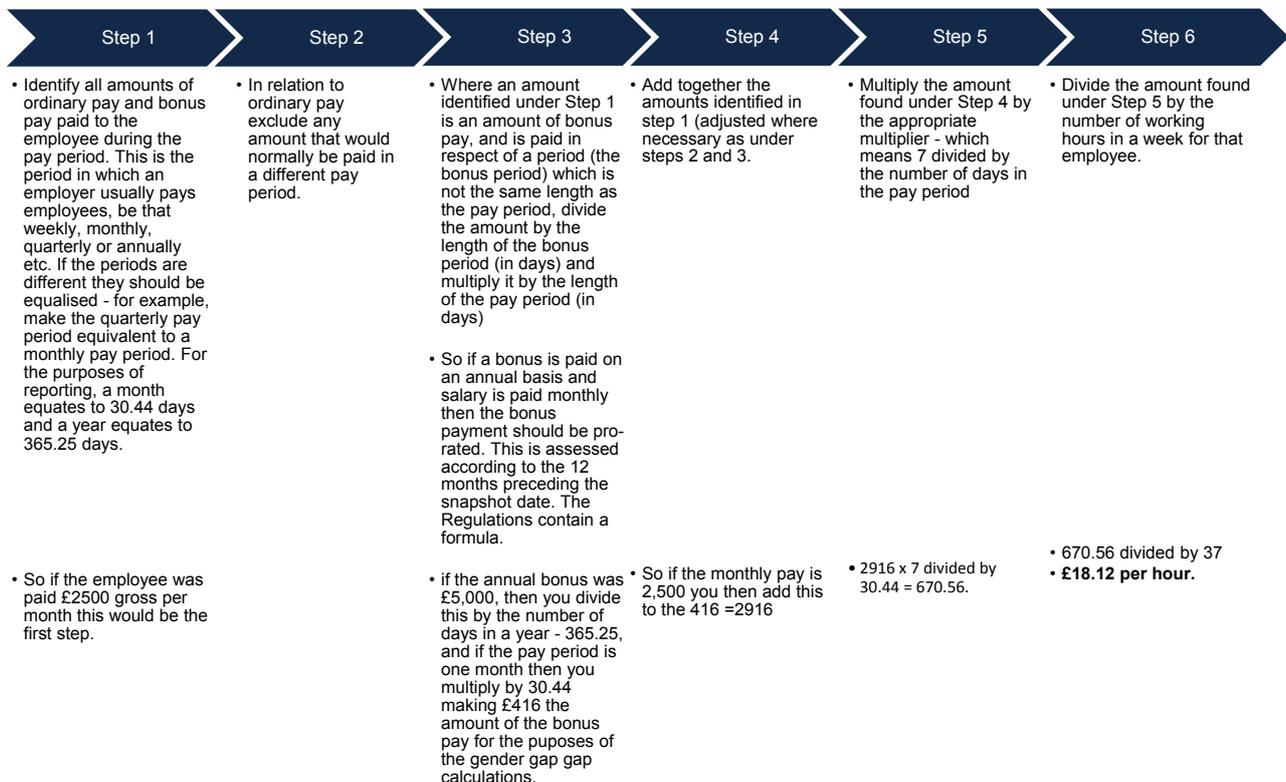
Once the pay details have been assessed employers will need to assess the weekly working hours. If an employee has set hours every week then this is straightforward: their hours are determined by what is stipulated in their contract of employment at the snapshot date. Overtime hours should not be included in this calculation.

If the employee does not have normal working hours, or the number of normal working hours differs from week to week, or over a longer period, then the Regulations adopt the 12 week average hours approach adopted in the Employment Rights Act. This involves taking the 12 weeks that ends with the last complete week of the pay period.

If the employee has not worked for 12 weeks or there is some reason the 12 week period cannot be used then employers should provide a number that fairly represents the hours worked in a week. Additional rules apply for pieceworkers.

The Hourly Rate

The following chart sets out the steps to follow (set out in Regulation 6) to determine the hourly rate for a full pay relevant employee:



Calculating mean and median figures

Mean

Once you have calculated the hourly rate for each full pay relevant employee, employers should then calculate the total of the hourly rates for all full pay relevant female employees, and divide by the number of employees. And then do the same exercise for male employees.

In order to find the mean gender pay gap figure the Regulations then specify the steps to take.

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

where—

- A is the mean hourly rate of pay of all male full-pay relevant employees; and
- B is the mean hourly rate of pay of all female full-pay relevant employees.

Median

The median figure shows the difference in the middle rate of pay when men and women's pay is sorted in ascending order. So employers will need to put all the women's pay hourly rates in numerical order and identify the mid-point, and then carry out the same exercise with the men. The median gender pay gap figure is then assessed as a percentage.

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

where—

- A is the median hourly rate of pay of all male full-pay relevant employees; and
- B is the median hourly rate of pay of all female full-pay relevant employees.

Calculating your bonus pay gap

Employers are required to report on the mean and median bonus pay gap figure in addition to reporting on the proportion of men and women who receive a bonus. Unlike the gender pay gap, this is not defined by reference to average hourly rates, and deals with the total amount of bonus, rather than assessing the amount of bonus relative to total pay. Since many more women work part-time, it is likely that workplaces with higher numbers of part-time workers will have a larger bonus gap figure.

Bonus payments include anything that relates to profit sharing, productivity, performance, incentive and commission. It also includes vouchers, securities, securities options and interests in securities.

In the final version of the Regulations it is clear that in order to determine the value of bonuses which are paid in securities, employers should assess this at the same time that the payment incurs a charge to income tax. Bonus payments which are made in the 12 month period prior to 5th April will be caught in the

calculation, provided the employees are still employed on the relevant date. This means that employees who receive bonuses and leave in the 12 months prior to 5 April should not be included.

Unlike the gender pay gap calculations all relevant employees should be included in this exercise regardless of whether they receive full pay. Bonuses are not pro-rated to refer to FTE equivalent, employers should assess the total bonus pay in the 12 month period and then calculate the mean/median bonus pay figures.

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

- A is the mean/median bonus pay of all relevant male employees in a 12 month period then subtract
- B is the mean/median bonus pay of all female relevant employees during the 12 month period and divide this by A - the mean/median pay of men x 100 to get the percentage.

In addition to the mean and median figures, employers must also publish the percentage of women and men who received a bonus.

For example in a workforce there are 460 men and 321 received a bonus, and there are 300 women with 197 who received a bonus, then employers should also report that:

- 70% of relevant male employees received a bonus
- 66% of relevant female employees received a bonus

Quartiles

Employers will be required to report on the number of men and women in each of four pay bands or quartiles:

- Pay band A is from the lowest pay to the first quartile
- Pay band B is from the first quartile to the second quartile
- Pay band C is from the second quartile to the third quartile
- Pay band D is from the third quartile to the highest pay

This involves dividing the workforce into four equal sized groups. These four groups will be separated according to the hourly pay rate, starting from lowest paid to the highest paid. Therefore in a workforce of 1000 this would involve 4 quartiles of 250 employees. The aim, according to the government, is “to identify if there are particular areas of concentration by gender and if there are any blockages to progression.”

Publication

Publication is to be on the company website, must be publicly available for three years and should be accompanied by a written statement of accuracy by a company director or equivalent. Employers must also submit information to the government who will publish the gender pay gap information in league tables.

The supporting statement

While there is no legal requirement to do so, the government recommend that employers produce a narrative explaining the background behind their gender pay gap figure and any distortions which may have affected this average figure. The narrative is incredibly important as it puts the information in context and sets out any actions which will be taken to address the pay gap. A number of companies who have been early adopters of gender pay reporting also produce adjusted gender pay gap figures to provide a better way of explaining the pay gap within their organisation.

Enforcement

There is no enforcement mechanism for employers who fail to produce their gender pay gap information. However the explanatory notes to the final Regulations do say that failure to publish would amount to an unlawful act and could merit further investigation by the EHRC.

The government has also indicated that they may take a “naming and shaming” approach to those employers who fail to comply. The government is hoping that internal pressure from employees and external reputational pressure will drive change and ensure compliance.

Next steps

We would advise employers to review payroll systems with a view to conducting a trial run before April 2017. This will involve:

- Assessing who is in scope as a relevant employee – how will you deal with contractors or overseas employees?
- Setting up a system to exclude employees who do not receive full pay – for the purpose of the gender pay gap calculation
- Understanding the definition of pay and what is included in ordinary pay
- Assessing bonus pay and understanding how to include this in the gender pay gap figure
- Calculating the value of non-cash bonuses
- Drafting a narrative or supporting statement and understanding what action should be taken to report on the gender pay gap
- Identifying a project team to deal with this involving HR, reward and communications and identifying who will sign the written statement of accuracy

FAQ's

What is the gender pay gap?

The gender pay gap is the difference between men and women's average hourly earnings. The UK average figure is 18.1%. The figure varies considerably across ages and sectors, for example in the UK the pay gap is almost negligible for women under 40 but over that age it increases substantially. The gender pay gap is not the same as unequal pay. If you have more men at the top of an organisation and more women at the bottom you will have a gender pay gap, but it does not necessarily indicate that this is because of pay discrimination.

What are the causes of the gender pay gap?

There are a number of factors which influence the gender pay gap. Pay discrimination, motherhood and an unequal division in caring responsibilities, women clustering in low paid roles (horizontal occupational segregation) and low female participation in senior roles (vertical occupational segregation) all play their part. Career expectations at an early age, particularly in careers dependent on STEM qualifications, also has an impact.

We also know that part-time working has a significant impact on the gender pay gap. For example, there is no requirement in the Regulations for employers to compare the pay of part-time and full-time employees, or to disclose the number of men and women working part-time. The publication of these figures would be much more telling than the inclusion of a bonus figure which disregards the number of hours that an employee works. According to a recent report by the Women and Equalities Committee into the gender pay gap in the UK, 41% of female employees work part-time compared to 12% of male employees and hourly wages are lower for part-time workers compared to those working full time. Just looking at female employees, the pay gap between part-time and full-time women workers currently stands at 32%.

What information could be included in a narrative?

Whilst there is no obligation to include this information, the government strongly encourages employers to do so. The type of information which may be included could be:

- Gender pay gap sector average
- Reasons for any high pay gap in a particular area – which may affect the overall figure – for example part time workers, bonus payments, overtime
- Historical pay discrepancies such as red circling
- Steps which have been taken to reduce the gender pay gap to date
- Objectives to tackle the pay gap going forward

What is the adjusted pay gap?

This is where an organisation decides to go further than the statutory pay gap reporting process and provides an additional method of calculating their pay gap, often using figures which are like for like, such as comparisons at grade level. One of the difficulties with the pay gap figure is that everyone from different areas of a business will be included in the same calculation. When you adopt a more granular approach you often obtain a clearer picture. In addition to using grade level comparisons other ways of adjusting the figure may involve:

- Comparing the full time pay gap and part time pay gap
- Focusing on certain areas of the business by isolating certain occupational groups within the business
- Isolating the gap by looking at it geographically if you have a significant number of highly paid men working in one geographical area which is distorting the figures
- Looking at the pay gap by age

What sort of steps could an employer put in place to reduce their pay gap?

Reducing any pay gap will generally depend on the cause of the pay gap. For example is this a workforce where there is low female participation at senior levels and high numbers at a lower level? Or is it about attracting more female candidates across all levels of the workforce?

Generic measures which would need to be adapted depending on where your pay gap hotspots are, could involve some of the following:

Pay

- Carrying out an equal pay audit
- Reviewing pay practices generally to determine pay levels for external recruits and the procedure for annual pay reviews

Progression

- Introducing returnships to increase women back into roles after career breaks or maternity leave
- Introducing mentoring schemes to increase the numbers of women in senior roles

Recruitment

- Reviewing recruitment practices to determine whether roles are targeted at men and reviewing the language used in recruitment literature
- Providing unconscious bias training for those carrying out interviews
- If there is an under-representation issue, then employers may wish to consider actively targeting women to apply for certain roles by making use of the positive action provisions within the Equality Act 2010. Legal advice should be taken before proceeding on this basis

Flexibility

- Increasing the availability of quality part-time working at senior levels
- Encouraging different forms of flexible working

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