



Gender Pay Gap Reporting Guidance for Gathering Source Data

This guidance presupposes that you would like mpm to help you to calculate the figures that the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (Regulations) require you to report on. This means that it does not contain detailed guidance on how to calculate the figures, but it does set out some background information to help you gather the data we need to support you with the calculations and also highlights how you will need to report the figures that your organisation's data produces.

1. Does my organisation need to report on our gender pay gap?

If you have 250 or more employees within a separate legal entity on 5 April 2017 then yes, the gender pay gap reporting obligations apply to you.

2. What is an employee?

The definition of an employee for the purposes of gender pay gap reporting is wider than you might think. It covers employment under:

- a contract of employment;
- a contract of apprenticeship; and
- a contract personally to do work.

In practice, as well as covering a 'normal' employee, also covers:

- a casual worker on an umbrella or zero hours contract;
- contractors who are obliged to perform work personally and may not sub-contract.

However, there is a potential get out clause in relation to contractors in that employers are exempt from including data where they do not have and it would not be reasonably practicable to obtain the relevant data.

3. Are all employees (within the wider definition) included?

Yes and no. The Regulations require employers to report on pay for 'full-pay relevant' employees. This means that you can exclude anyone who is being paid reduced or nil pay because they are on leave (for example sick leave or maternity/paternity/adoption/shared parental leave) when calculating pay.

However, when reporting on bonus, all employees should be included, whether or not they are on reduced or nil pay.

4. What if an employee is working abroad on the snapshot date?

The position is not entirely clear, but it is safest to assume that anyone who is an employee of the reporting entity is covered, even if they are working abroad on the snapshot date.

5. What period do I have to use for gender pay gap reporting?

This hinges on the snapshot date of 5 April 2017. Whether you pay your employees monthly, fortnightly, weekly or otherwise, the 'relevant pay period' is the month, fortnight, week or other period in which the snapshot date falls. So, for example, if you pay monthly, on the last working day of the month, in arrears, you will report on the pay period from 1-30 April 2017.

6. What do I need to report?

You need to report on six different items:

- The difference between the mean hourly rate of pay for male and female full pay relevant employees;
- The difference between the median hourly rate of pay for male and female full pay relevant employees;
- The difference between the mean bonus pay paid to male and female employees (note their inclusion here even if they are on reduced or nil pay);
- The difference between the median bonus pay paid to male and female employees (note their inclusion here even if they are on reduced or nil pay);
- The proportions of male and female employees who were paid bonus pay; and
- The proportions of male and female full-pay relevant employees in each of four quartiles from lowest to highest.

7. What is pay?

Pay is divided into ordinary pay and bonus pay.

8. What is ordinary pay?

Ordinary pay includes basic pay, allowances (of all sorts including for additional duties, secondments, car allowance etc.), piecework, full pay for leave (because employees on reduced or nil pay will not have their ordinary pay reported on) and shift premiums.

It specifically excludes overtime, any kind of severance pay, pay in lieu of leave or non-cash remuneration (e.g. salary sacrifice) and expenses.

9. What is bonus pay?

Bonus pay includes cash, vouchers, securities (including interests in securities and options) that relates to profit sharing, productivity, performance, incentive or commission.

Reporting is only necessary where the 'bonus' is or has become taxable earnings or taxable specific income during the relevant pay period and (for the purposes of calculating the mean and media bonus and the proportions of employees paid bonus pay) during the year ending 5 April 2017. This could include deferred cash payments awarded in previous years, or in the case of Long Term Incentives, the inclusion of an amount intended to cover more than one year (since there is no option for pro-ration to cover the period from 6 April 2016 to 5 April 2017).

10. What working hours are used to calculate the hourly rate of pay?

If the employee has normal weekly working hours as part of their employment terms in force on the snapshot date of 5 April 2017, these will be used.

However, if there are no normal weekly working hours, you will need to calculate the average hours worked over a 12 week reference period ending with the last week of the relevant pay period (unless they have not worked for long enough, or there is some other reason why you cannot do this, in which case you will have to make a reasonable guesstimate taking into consideration the average number of hours the employee could expect under their employment terms and the average number of working hours of comparable employees).

11. What will I need to produce to comply with the Regulations?

The obligation is to publish the information set out at question 6 above. This information has to be accompanied by a written statement confirming its accuracy, which has to be signed by (as relevant) a statutory director, a partner or designated member or the most senior employee.

12. Where will this information be published?

The information must be published on your website in a manner that is accessible to all employees and the public for at least three years beginning with the date of publication (which must be by 4 April 2018) and on a government website, details of which are yet to be released.

13. Why should I comply?

The Regulations do not contain a specific enforcement mechanism, although the government has allowed for periodic checks for non-compliance, for publishing tables by sector of those employers who have reported on their pay gap (so candidates will be able to check whether or not you have reported) and possibly a database of compliant employers and has also said that it will highlight those employers who provide particularly full and explanatory information (we assume with approval!). There is also the possibility of EHRC enforcement action, although at this stage we are not sure how serious a threat that really is.

However, in our view the world is changing as are the requirements of talent coming up through the workforce when they are looking for new opportunities. For that reason, we think that there is real reputational risk for employers who do not comply with the requirements, and who do not explain their results (and if they are concerning, what steps they are taking to improve the position). You may think it doesn't matter now, and perhaps you are right, but as the world moves on we think that position will become increasingly untenable and risk key talent passing over those organisations who seemingly do not care about the bigger issues that these Regulations are intended, in part, to address.

Who to contact?

If you wish to discuss any of these issues, please contact:

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