

**Briefing number 045** – April 2017

## Gender Pay Gap Reporting

The regulations requiring employers with 250 or more employees have now been introduced, with effect from 6 April 2017. [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) apply to **private and voluntary sector organisations**.

[The Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#) apply to **public bodies** with 250 or more employees and these came into effect on 31 March 2017. The regulations cover public authorities in England, Wales and Scotland, but not Northern Ireland. The regulations covering public bodies are intended to mirror those for the private and voluntary sector organisations but also to take into account the existing public sector equality duties.

Although the gender pay gap reporting requirements are relatively weak, they do provide a good opportunity in unionised workplaces to open up a more rigorous discussion about the gender pay gap and the general fairness of the organisation's pay practices. As we know that in many organisations women are likely to be disproportionately represented in lower grades, it is highly likely that an overall comparison of average pay rates will demonstrate a gender pay gap in favour of men. As in any equal pay review, this will prompt questions as to the reason for this disparity and what action is needed to address it.

This briefing suggests negotiating points that branches and reps can take to utilise these new requirements to make a real difference on achieving equal pay in their workplaces. It also details the requirements that these regulations place on employers. Finally it considers the position of public sector employers.

### Negotiating Points

Publishing the data should not be an end in itself - it is an opportunity for employers and unions to work together to examine pay structures, policies and practices throughout the organisation to ensure equality, equal pay and eliminate discrimination i.e. using the gender pay gap reporting requirements as a mainstream bargaining tool. You may want to consider:

- Encouraging employers to publish the data even if they do not have 250 employees on the reporting (or snapshot) date. You could use some of the business benefits for publishing the information in your arguments, including:

- eliminating the gender pay gap
  - enhancing the organisation's reputation and thereby being more attractive to potential recruits
  - improving retention of valued employees
  - have more confidence that they have a transparent and fair pay structure, particularly following an equal pay review
  - you can also use the [myth buster](#) that ACAS has produced, if your employer is reluctant to take action (also see below).
- Encouraging employers to publish additional narrative information about the organisation's gender pay gap, to put the information into context and to set out what actions they are taking to address the pay gap within their organisation. Even if employers are unwilling to publish this information, it should be used as lever for opening dialogue about the causes of the gap and action needed to resolve it.
  - Using the new reporting requirement as a basis for a more thorough equal pay audit, including publishing the data by grade/pay band and occupational group. See the [Prospect Negotiators' Guide to Equal Pay](#)
  - Pressing for data on the gender and hourly pay of part-time employees as compared to full-time employees. This may identify issues relating to low pay, pay structures and occupational gender segregation.
  - Using it as a basis for joint examination of recruitment and promotion processes and access to training and development opportunities.
  - Using the good practice guidance produced collaboratively by Prospect with The Institution of Engineering and Technology on encouraging a return to STEM careers: [Supporting the Step Back to STEM Careers](#), and also on best practice guidance for employers on [Progressing Women in STEM Roles](#) Although these two publications concentrate on the STEM sector, the good practice guidance contained in them can be used by any employer and is designed to be practical and achievable for organisations of all sizes.

## **Regulations in detail**

### **Which organisations are covered?**

All employers with 250 or more employees are covered by the regulations. If employers have fluctuating workforce numbers then they will be covered if they have 250 or more employees on the "snapshot date" each year (see below). For the purposes of the regulations, the definition of employee is the same as that within the Equality Act 2010, so it includes those on zero hours contracts, apprentices and some self-employed people. Agency workers would be covered by their own agency's report.

There is a Schedule listing the public sector organisations covered by the regulations, but if an organisation is not in the list then it will be covered by the private and voluntary sector regulations.

Private and voluntary sector organisations must publish their first report by 5 April 2018 and public sector organisations must publish their first report by 30 March 2018. Thereafter the reporting dates will be 5 April and 30 March respectively - this is the "snapshot date". The reports must be published on the organisation's own website and remain there for at least three years. There is also a requirement to publish to a government website.

## **What should be published?**

The following pay data must be collected and published:

- The difference between average hourly rates of pay for women and men
- The difference between average bonuses for women and men
- The proportions of women and men who were paid bonus pay
- The proportions of women and men in each quartile of the overall pay range

For average figures the employer must provide both the mean and median averages and the differences in pay must be expressed as percentages. The regulations state that the information must be provided in respect of "full pay" employees, which means that those on reduced or nil pay during maternity, parental or sick leave are excluded. Part-time and fixed term workers must be included in the data.

The definition of "ordinary pay" within the regulations means: basic pay, allowances, pay for piecework, pay for leave and shift premium pay. Exclusions are: overtime pay, redundancy pay and pay in lieu of leave.

"Bonus pay" means pay in the form of money, vouchers, securities and pay that relates to profit sharing, productivity, performance, incentive or commission. Nonconsolidated bonuses are also included.

There are detailed instructions within the regulations on how the figures should be calculated, and guidance has also been produced for employers by ACAS and the CIPD (see below).

Private and voluntary sector organisations must have sign off by a senior person within the organisation to verify the accuracy of the report. Public sector organisations, however, are not required to do this.

## **Enforcement**

There are no specific enforcement mechanisms within the regulations but the Equality and Human Rights Commission could investigate where there has been a failure to comply. In addition, an employment tribunal could be asked to draw an inference if an employer has failed to publish the data.

## **Public sector**

Although these regulations are different from the public sector equality duties, it is intended that they are an extension of them, rather than a standalone requirement. Therefore any attempts by public sector employers to restrict their duties to address the gender pay gap by only publishing the pay gap figure for the whole workforce, should be resisted. Public sector employers with over 150 employees should already be taking action to address inequalities within their organisation, including pay, as part of the public sector equality duties.

Government Departments that are responsible for Agencies and NDPBs are not required to publish the gender pay gap information separately, but it would be more helpful, and good practice, to do so.

Public sector employers are encouraged to publish their objective(s), as already required by the public sector equality duties every four years, at the same time as publishing the gender pay gap information. Employers should be encouraged to include an action plan to address the gender pay gap within their organisation.

It would also show greater commitment towards dealing with their gender pay gap if a senior person within the organisation were to sign off the report, as is required for private and voluntary sector organisations, and to make a statement to ensure action to deal with the gender pay gap.

## **Resources:**

Prospect [Negotiators' Guide to Equal Pay](#)

Prospect and IET: [Supporting the Step Back to STEM Careers](#), and [Progressing Women in STEM Roles](#)

For Employers:

[ACAS guidance: Gender pay gap reporting](#), which includes templates, factsheets and a myth buster.

EHRC: [Gender pay gap reporting requirements](#)

CIPD: [Guide on Gender pay gap reporting](#)

If you need any further advice or guidance, or training on equal pay auditing, please don't hesitate to contact us.

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