



THE GENDER PAY GAP – WHAT YOU NEED TO KNOW

Recognising that a diverse workforce is good for individuals, employers and the wider economy, the UK government has introduced new legislation requiring companies with 250 or more employees to publish their gender pay gap data.

The 'gender pay gap' is the difference in average pay between all men and women in a workforce. This is not the same as equal pay, which makes it illegal to pay men and women differently for equal or similar work. According to the Office for National Statistics, the UK gender pay gap is 18.1% for all workers and 9.4% for full-time staff. Factors that can influence the gender pay gap include age, education, part-time working, the size of the employer as well as 'occupational segregation', that is areas in which women are under-represented.

The new rules are designed to provide greater transparency on gender inequality in the workplace, and assist employers in identifying where women are concentrated in terms of their remuneration and whether there are any blockages to their progression. However the requirement to produce an annual gender pay gap report presents a number of challenges for businesses, from gathering the data, calculating the gap through to communicating the results.

GENDER PAY GAP REPORTING – WHO MUST COMPLY?

All private businesses and charities employing 250 or more people must calculate a snapshot of their employee pay as at 5 April 2017, and publish their first gender pay gap report on their website before 4 April 2018. Separate rules will apply for public authorities for whom the snapshot date is 31 March 2017 and the first report is due to be published before 30 March 2018.

The obligations are set out in detail in the [Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) (the Regulations).

WHO MUST COMPLY?

All organisations (public, private and voluntary sector) with 250 or more employees on the snapshot date, starting on 5 April 2017 (and 5 April in subsequent years) must comply with the Regulations. This includes companies, LLPs, partnerships, limited partnerships, unincorporated bodies or any other type of employing entity. 'Employee' means anyone employed under a contract of service, a contract of apprenticeship or a contract personally to do work. This will include employees, workers and some casual workers and contractors.

Employers who are at or near the 250 employee threshold will need to make an assessment each April as to whether the Regulations apply to them. This may be difficult if the number of staff fluctuates depending on demand or depending on the type of contract casual staff have with an employer.

For group companies, each company in a group is considered a separate employer. Groups of companies may therefore have to produce several reports, or could fall outside the reporting requirement altogether if no one company employs more than 250 employees.

WHAT DO EMPLOYERS NEED TO DISCLOSE?

Employers who are obliged to publish a gender pay gap report must state:

- overall gender pay gap figures for relevant employees, using both the mean and the median hourly pay rate;
- the proportion of men and women in each of four pay bands (the quartiles), such bands to be set by employers by listing their employees in ascending order of hourly pay rate and dividing the list into four equal parts;
- the mean and the median gender bonus gap (the difference between men and women's bonuses) paid over a 12 month period; and
- the proportion of men and women receiving a bonus over a 12 month period.



The overall gender pay gap and quartile calculations require employers to calculate an hourly pay rate for all employees, including any bonus or rewards paid out during the pay period in which the snapshot date falls, but adjusted to reflect an hourly rate.

WHAT IS PAY?

- Pay includes ordinary pay and bonus pay
- Ordinary pay includes gross basic pay, allowances, pay for leave and shift premium pay but excludes:
 - overtime pay
 - redundancy pay
 - pay in lieu of leave
 - benefits in kind;
- The pay period to be used is the individual pay period in which the snap shot date falls eg for a weekly paid employee, the pay period will be the week in which the 5 April 2017 falls;
- Calculations should be based on normal working hours and do not include overtime or paid hours. Specific rules apply for those with irregular hours.

WHAT IS A BONUS?

Bonuses are any remuneration in the form of money, vouchers, securities or options or other interests in securities which relate to profit share, performance, productivity, incentive or commission and which are paid in the 12 months prior to the snap shot date (for example, 6 April 2016 - 5 April 2017).

Non-cash bonus awards (in the form of shares, share options and interests in securities) are deemed paid at the time they give rise to taxable earnings income. This means whether any non-cash awards will count towards the employer's gender pay gap or not will depend on the type of security awarded, how it is taxed, and when that tax charge arises. Please contact us if you need any guidance on this.

PRESENTING THE DATA

Employers won't have the onerous task of publishing all the information about pay by each grade or job type. The overall figures should give an accurate representation of the pay differential between male and female staff in management roles (which would typically fall within the top quartile), and junior roles which fall in the lower quartiles. Employers will have

the option to include a narrative explaining any pay gaps or other disparities, and to set out what action, if any, they plan to take to address them. The real issue is therefore presenting the information and deciding upon and communicating any strategy for addressing diversity issues. The provision of a narrative is encouraged, but it is not mandatory. The option to include a narrative does however mean that employers can choose to explain the gender pay gap. The narrative could be used, for example, to group figures together in a different way for example by job grade, job type or pay band such that the pay gap was dramatically reduced or even vanishes within these groups. Doing this may allow for more meaningful comparisons which, in turn, may reduce the risk of adverse publicity. If however the gender pay gap is still bad with a different data set the narrative may be better used to make commitments to reduce the gaps which do exist.

To date, gender pay gap reports vary from making commitments to close the gap by a given date, to providing more detail about why this is not possible. Some companies are just increasing female salaries by the percentage of the pay gap, but that in itself can cause issues with discrimination.

RECOMMENDED APPROACH

- **Phase 1: data collection**
 - Understand what is required
 - Decide who is in scope: employees? Workers? Other?
 - Explore any relevant exemptions (e.g. is it reasonably practicable to obtain the data to measure hourly pay for your contractors/workers?)
 - Identify the data you need for your calculation
 - Extract the data
- **Phase 2: analysis**
 - Run the calculations results
 - Determine if there are anomalies (eg overtime)
 - Calculate the pay gap
 - Analyse why there is a pay gap and how it can be closed
 - Analyse whether alternative gender pay gap calculations should be included in the narrative



■ **Phase 3: strategy and communication**

- Develop communication message
- Decide who should sign off the report
- Produce and publish report

HOW WE CAN HELP?

Data gathering and calculating the gender pay gap can be a complex process for an organisation. In order to assist employers we have developed the Penningtons Manches Gender Pay Gap Calculator (“the Calculator”) to calculate both mean and median pay and bonus figures. The Calculator allows you to get an accurate figure on the pay gaps in your organisation.

We also provide legal advice to ensure that you collect and input the data required to comply with the Regulations.

Once accurate data has been run through the Calculator to determine your gender pay gap, we are also able to work with you to decide not only what you present to your companies and how, but also what steps you can take to close any pay gaps which may exist and what to include in any voluntary narrative.

Where the results of your gender pay gap require further analysis, we can also work with you to carry out privileged equal pay audits in order to help frame the narrative in the way which best suits your company.

| | The Calculator | Legal advice | Price (excluding VAT) |
|--------------------|----------------|---|--|
| Standard product | ✓ | <ul style="list-style-type: none"> ■ One hour legal advice on <ul style="list-style-type: none"> - which data to include in the Calculator | £500 |
| Enterprise product | ✓ | <ul style="list-style-type: none"> ■ Legal advice on <ul style="list-style-type: none"> - who is caught within the definition of employee on the snapshot date - which data to include in the Calculator - how to calculate hourly rates including for those with irregular working hours - what ordinary pay to include - which bonuses to include - who is included in which quartile | Fewer than 350 employees: £2,000 350 – 499 employees: £3,500 500-1,000 employees: £5,000 |

FIND OUT MORE

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