



Insights From The UK's First Mandatory Gender Pay Gap Disclosures

Insights

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U.K. companies were recently required to submit their first mandatory report providing statistics on their gender pay gap. We have now seen what the first round of reporting looks like and how employers have dealt with reports that indicate there is a gender pay gap problem. Without getting into a statistical analysis of the data, suffice it to say the statistics submitted so far by 10,503 companies confirm the gender pay gap is a real problem. Now that employers understand that there are inequalities in pay, it remains to be seen how these companies will implement measures to address the causes of these inequalities.

Background: “Name And Shame” Regulations Took Effect In 2018

As we reported last November, many businesses in the UK are required to publicly report differences in pay between men and women on their own websites and also to upload such information to a government-sponsored website. Under the Equality Act 2010 (EA 2010), all private and voluntary sector employers with 250 or more employees in England, Wales, and Scotland must now publish such information by April 4, 2018 and annually thereafter. The threshold of 250 employees is determined on the basis of the employment legal entity. If a U.S. company has a U.K. subsidiary that meets the regulation’s definition of a relevant employer, the subsidiary will be subject to the gender pay reporting obligation.

What Information Must Be Reported?

Employers must report certain information to be in compliance with EA 2010. The information to include is as follows:

- Mean gender pay gap;
- Median gender pay gap;
- Mean bonus gender pay gap;
- Median bonus gender pay gap;
- Proportion of males and females receiving a bonus payment; and
- Proportion of males and females in each pay quartile.

The figures must be calculated using a specific reference date, which is referred to as the “snapshot date.” The snapshot date each year is March 31 for public sector organizations and April 5 for

businesses and charities. Organizations subject to the requirement must publish within a year of the relevant snapshot date – March 30 for public sector organizations and April 4 for businesses and charities. If the organization runs multiple payrolls (different departments or business functions), the organization must merge relevant data from all payrolls and report one set of figures for the organization.

Organizations must report the data on the company's public-facing website and directly to the government using its dedicated online reporting service. With respect to the employer's website, the employer must publish their gender pay gap data along with a written statement confirming the accuracy of the calculations.

The definition of "employee" for reporting requirements purposes includes people who have a contract of employment, workers and agency workers (those with a contract to do work or provide services), and some self-employed people (where they must personally perform the work). If your organization uses agency workers or service companies, they count as part of the headcount of the agency or service company that provides them - not your organization. You must include self-employed people in your organization's calculations if they must personally perform work for you and you have the data available, for example where a project initiation document exists or a schedule of fees is in place. Each part-time worker counts as an employee and employees who job-share are counted as two employees.

The Written Statement Component

The written statement component must confirm that the published information is accurate and must be signed by an "appropriate person," which will vary depending on the type of employer involved (e.g., for a corporate body other than a limited liability partnership, it would be the director (or equivalent)). Although there is no specific rule regarding the order in which a company provides the gender pay gap information and written statement, they should both be filed at the same time each year.

Companies have the option of adding a supporting narrative to explain any gap and how the company intends to close the gap. The Advisory, Conciliation and Arbitration Service ("Acas") provides the following guidance for written statements:

- Make the most of a supporting narrative for your organization's reputation;
- Analyze and improve your gender pay gap;
- Communicate to employees about the gender pay gap; and
- Get training and support on gender pay gap reporting.

Insight From Inaugural Round Of Reporting

Looking at the information released in the first round of reporting is insightful and provides context behind the data. Some examples from the first release are important to highlight:

- **Apple UK:** “Apple believes strongly that equal work deserves equal pay. Every year, we examine the compensation employees receive and make adjustments where necessary to ensure we maintain pay equity. And we have achieved this in every country – women at our company earn the same as men when you factor in similar roles, markets and performance. As part of our commitment to eliminating pay disparities from the first day at Apple, later this year we’ll also stop asking candidates about their salary history.”
- **Barclays PLC:** “Through a range of extensive internal and external initiatives and programmes that drive the necessary cultural change, we continue to build a workplace environment that supports and empowers women to succeed. These initiatives include senior leadership gender diversity targets, creating new career opportunities, ensuring there is no bias in our talent management and leadership development processes, progressive policies, and strategic external partnerships to support societal change.”
- **Hilton:** “We welcome the opportunity to highlight our existing efforts and the programmes we have developed to encourage diversity. We have made significant progress in recent years; our female talent pipeline has never been stronger, and I was delighted to join almost 500 female leaders from Hilton’s UK&I business at last month’s Women in Leadership conference – one of a number of events we’re holding throughout Europe, the Middle East and Africa. But we recognise that there is still work to be done to completely close the gender pay gap at every level of our business. This report outlines our approach to doing so.”

Penalties for Non-Compliance

Under the EA 2010, failure to comply with the gender pay gap reporting obligations is considered an “unlawful act” and violations fall within the existing enforcement powers of the Equality and Human Rights Commission (EHRC). The EHRC, the equality regulator with responsibility for enforcing the in accordance with its statutory duties as set out in the Equality Act 2006 (EA 2006), outlines the key steps in its enforcement process, which includes sending an initial letter, initiating an investigation, initiating an unlawful act notice, applying for a court order, and seeking a conviction for breach of court order (no maximum limit for the fine). Claimants and unions could then use any steps taken to address violations by the EHRC as supporting evidence in their equal pay claims.

1,500 companies failed to report by the April 4, 2018 deadline, some of which have since complied or have been found not to be covered by the legislation. The EHRC is investigating a significant number of these companies.

What Employers Should Do After the First Round of Data Has Been Published

Now that the first round of data has been published, employers should consider doing the following:

- Consider ways to address any problems that were highlighted by the reported data;
- Reevaluate internal policies and procedures;
- Consider changing hiring practices (e.g., stop asking for salary history); and

- Reevaluate bonus programs in place with a particular focus on what aspects disproportionately benefit men.

Service Focus

Pay Equity and Transparency