

Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 published



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The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the 'Regulations') have been published and are now subject to parliamentary approval. The Regulations are guidance for how employers should calculate and report on the gender pay gap within their organisation from April 2017.

The Key obligations

- Reporting applies to all private sector employers with 250 or more employees;
- Mean and median hourly gender pay gaps must be published each year inclusive of any bonuses;
- The annual mean and median gender bonus gap must be reported, which includes commission and securities;
- Obligation to publish numbers of men and women in each of four quartile pay bands;
- April 2017 marks the first calculation date with data published on the employer's website by April 2018 where it will remain for three years.

Enforcement

At present there is no enforcement mechanism in place but data is to be submitted to the Secretary of State with the possibility of creation of league tables for specific industries.

Final Regulations v The Original

The final Regulations prove quite different from the original draft, most probably in response to the consultation process. A summary of the key changes is listed below:

The snapshot date

This is the specific date in April each year which marks the start of the period of 12 months within which employers must publish the information required by the Regulations.

The snapshot date is now 5 April, having been changed from the original 30 April. To monthly-paid employees this will make little difference as the relevant pay period will still be the whole of April each year. Employers that pay weekly or fortnightly may find a difference, particularly in respect of annual bonuses which if paid at the beginning of April will now need to be included.

Employees

The broad definition of employee from the Equality Act 2010 is now used i.e. someone working under an employment contract or a contract to do work personally. This could potentially cover those who are self-employed but engaged directly by employers as consultants, independent contractors etc. It has the potential to widen the coverage scope as these workers could count towards the 250-employee threshold and could also cause problems in terms of gathering data as many are not formally on the pay roll.

Exception to pay data

Actual data may not need to be included for employees where it is not reasonably practicable to obtain the data. This is particularly focussed on those mentioned above such as those that are not on an employer's pay roll.

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Partners

Partners, including LLP members are now specifically excluded in the Regulations.

Pay

The Regulations have clarified that only 'full-pay' relevant employees should be included in the calculations. Reduced pay employees are not to be included, for example: women on maternity leave receiving reduced maternity pay.

Hourly rate of pay

Six steps are set out to assist:

1. Identify all amounts of ordinary pay and bonus pay paid to the employee during the relevant pay period;
2. Exclude from ordinary pay any amount that would normally fall to be paid in a different pay period;
3. Bonus pay paid in respect of a bonus period which is not the same length as the relevant pay period should be divided by the length of the bonus period and multiplied by the length of the relevant pay period;
4. Step 1 amounts to be added together;
5. Multiply by the appropriate multiplier (7 divided by the number of days in the relevant pay period);
6. And finally divide the amount by the number of working hours in a week for that employee.

Bonus pay

Remuneration in the form of securities, securities options and interests in securities are included within the definition of bonus pay. They are to be treated as paid at the time they give rise to taxable earnings of income.

Pay quartiles

The workforce must be split into four equal-sized groups organised according to hourly pay rate. The groups are then ranked in ascending order. Where there are large numbers of employees with the same hourly pay rate, the employer should ensure the relative proportion of men and women is the same in each pay band.

Preparing for the change

Employers should use this time before the change to carry out a dry run. It would help to identify any problem areas to ensure that they are eradicated and the report is presented in the best light.

Brachers can assist with any questions you may have about the new rules. If you would like to talk to us, please contact Catherine Daw, Head of Employment on 01622 690691 or email at catherinedaw@brachers.co.uk.

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