Mind the gap

Reporting under the UK Gender Pay Gap Regulations is off to a slow start. Urgency is now mounting for companies to meet the fast approaching deadline.

Introduction to the UK Gender Pay Gap Regulations

Gender pay gap shows the differences in the average pay between men and women. According to the Office for National Statistics, the UK gender pay gap in 2016 was 9.4% for full-time workers, or 18.1% for all staff. When looking at senior positions, it widens hugely. Common root causes for the gap include an under-representation of women at senior levels; fewer women working in highly-paid professions and a lack of well-paid part-time/flexible work.

A voluntary approach to employer disclosures has not led to sufficient progress. The UK Government has, therefore, introduced mandatory reporting requirements in the form of the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the ‘Regulations’) which came into force on 6 April 2017.

These Regulations impose obligations on employers with 250 or more employees to publish information relating to the gender pay gap in their organisation in a bid to tackle workplace discrimination. The Prime Minister, Theresa May has also called on smaller companies with fewer than 250 staff to publish their gender pay gap voluntarily.

Reporting requirements

The Regulations mandate companies to annually report against six statutory disclosures, using information based on a 'snapshot' of pay information taken on 5 April each year.

The first statutory disclosures will have to be publicly reported on the company website, in a place where the information can be reasonably expected to be found, for a minimum of three years. The information must also be added to the designated Government site no later than 4 April 2018. This gives companies just over three months to source vast amounts of data, perform the calculations, agree on internal and external communications and secure internal sign-offs.

The six disclosure areas are:

- Mean gender pay gap in hourly pay
- Median gender pay gap in hourly pay
- Mean bonus gender pay gap
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- Proportion of males and females receiving a bonus payment
- Proportion of males and females in each pay quartile
The disclosures must be accompanied by a written statement, which is authorised by an appropriate senior person and confirms the accuracy of the information. Organisations should supply additional information in a supporting narrative that accompanies the published disclosures.

Failure to report
It is a legal requirement for all employers that meet the criteria of the Regulations to publish their Gender Pay Gap report. The Equality and Human Rights Commission (EHRC) has the power to enforce any failure to comply with the Regulations. While there is some debate around whether the EHRC actually has the specific powers or resources to take action, the real risks are damage to reputation and employment relations. It is important for companies to keep in mind that, in many cases, the suspicions behind why they failed to publish their gender pay gap could have a negative impact and be far worse than what the report would have shown.

Insights into emerging market practice

Timing of reporting
As at the end of November, only around 3% of the employers affected by the Regulations had published their reports, seven of which were in the FTSE 100.

We have worked with a few employers that have published their data ahead of the 4 April deadline. They each had different reasons for doing so, ranging from believing they had a smaller pay gap than the wider industry and thereby seeking to show their credentials by publishing early, to having experienced stakeholder pressure regarding gender pay transparency, or wanting to take a leading position on gender parity by tackling any pay gaps identified earlier on.

While the majority of disclosures are still due to be published, our analysis of selected reports indicates that they tend to fall into one of the following categories.

- **Minimalist approach**
  Companies that published regulatory figures via the Government website but failed to provide a link to their website detailing pay gap figures, or a written statement confirming their accuracy (as mandated by the regulations).

- **Moderate approach**
  Companies that published regulatory figures via the Government website, provided a link to their website detailing pay gap figures and issued a written statement confirming their accuracy, but did not provide a detailed accompanying narrative.

- **Heavily invested approach**
  Companies that published regulatory figures via the Government and own websites, issued a written statement confirming their accuracy, and provided a detailed accompanying narrative which outlined how the gender pay gap initiative aligned with their corporate vision, the perceived underlying causes of any gaps, and actions or targets that they have set to ‘move the needle’.

However, many employers will publish in the final few weeks, perhaps in the hope that their announcements are lost among the thousands of other disclosures around the same time. Of the companies who have not yet published results, a variety of explanations have been given including:

- Challenges gathering the data and interpreting the regulations
- Concerns about negative publicity and falling ‘outside the pack’ among sector peers
- Need for consistency of internal and external messaging, requiring extra work
- Wanting to publish the disclosures as part of annual remuneration reporting
- Desire by management to be confident that the gender pay gap identified doesn’t amount to a breach of equal pay laws

Some of the most common areas of query that we have come across in our gender pay gap reporting engagement are:

- Whether the Regulations apply to overseas employees of a Great Britain based company
- Under what circumstances an employee is deemed not to be a ‘full-pay relevant employee’
- Whether bonus payments paid out as recognition vouchers need to be included within the bonus calculations
- Whether contractual pay can be used to calculate ordinary pay in instances where companies are not confident in the accuracy of payroll data
- Treatment of employees who leave/join or change their working hours during the relevant pay period (April) and how their hourly pay is calculated

Common issues our clients are grappling with
We find that many companies underestimate the complexity of the Regulations and the internal resources required to source the data and perform the calculations. Many also struggle to interpret the Regulations’ many grey areas. A Financial Times analysis has found that one in 20 UK companies that have submitted gender pay gap data to the Government have reported numbers that are statistically improbable and therefore almost certainly inaccurate.

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What do employers tell us about their expected gender pay gap?

Results from a recent EY poll\(^\text{6}\) indicate that the majority of organisations expect their gender pay gap to fall between 0% – 40%, with most also feeling that they could be missing opportunities to make the most of their work in the area.

Waiting to report will not change those figures and the more interesting question arising from the calculations and published results will be, ‘what are you going to do about it’? Transparency is an important step in terms of raising awareness, analysing the drivers behind the gender pay gap, and exploring the extent to which policies and practices may have contributed to that gap. However, the focus needs to be on action to close the gender pay gap.

Actions to address the pay gap

From our experience, the most common actions that companies plan to adopt in order to address their gender pay gap tend to focus around the three key areas:

1. Flexible/family-friendly working, for example making it available to those in senior roles, encouraging more men to work flexibly and supporting women returning to work.
2. Supporting women with further career development through mentoring and a variety of development programmes.
3. Review and enhancement of recruitment practices to attract a wider talent pool, for example unconscious bias training, introduction of a requirement to have at least \(X\) number of women shortlisted for senior roles.

Why is closing the gender pay gap important?

As well as helping to create a more equal society, closing the gender pay gap, as part of a broader commitment to gender parity, makes good business sense. It helps companies to:

- Recruit and retain the best employees;
- Create a positive work environment and gain the confidence of their employees;
- Make the best use of human resources and improve productivity and competitiveness;
- Produce better, more accurate results as diverse teams are more likely to challenge each other and established ways of thinking, ask more questions, focus more on facts and make fewer assumptions; and
- Have a better public image and higher shareholder value\(^\text{9}\) and a wider and more satisfied customer base.

Underuse of women’s skills is a waste for individual women, the businesses they work for and society alike and has a vast negative bearing on the growth, competitiveness and future-readiness of economies and businesses worldwide.
How we can help

We can advise companies on all aspects of gender pay gap reporting, including:

- Assisting in understanding the Regulations, the supporting guidance, and good practice reporting.
- Providing assurance over the gender pay gap calculations, checking that underlying data is accurate and complete, and the supporting narrative.
- Helping to understand underlying reasons for gender pay gap and come up with strategies for improving diversity across the organisation.
- We also run the National Equality Standard (NES), which aims to define a standard that brings together all elements of the Equality Act 2010. Participation in a NES assessment supports long term sustainable change, a beneficial impact in productivity and growth, and provides a detailed roadmap with recommendations to help implement those areas requiring improvement.

References

1. This is different to equal pay that deals with the pay differences between men and women who carry out the same jobs, similar jobs or work of equal value. It is against the law in the UK to pay people unequally based solely on their gender. The current gender pay gap means women effectively stop earning relative to men on a day in November, a day referred to as Equal Pay Day. In 2017, Equal Pay Day was on Friday 10th November - the same day as last year.
2. This article focuses on the employers subject to the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. Separate Regulations are in place covering certain public authorities including most Government departments, the armed forces, local authorities and NHS bodies (The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017).
3. For any corporate body other than a limited liability partnership, this will be a director (or equivalent).
5. The ‘Managing gender pay reporting’ guidelines issued by the Government Equalities Office and ACAS also stipulate that ‘[… employers should aim to publish their results as soon after the snapshot date as is reasonable for them to do’.
6. We analysed gender pay gap information as reported by 285 employers at https://gender-pay-gap.service.gov.uk and selected reports for 167 employers that reported as at 30 November 2017.
7. Please see article in the Financial Times, published on 7 Dec, titled ‘Cluster of UK companies reports highly improbable gender pay gap’.
8. EY Survey 20 September 2017 during gender pay webcast with 200 attendees.
9. An EY survey of global executives, ‘The power of many: how companies use teams to drive superior corporate performance’, showed that companies with diverse teams also report higher earnings before interest, taxes, depreciation and amortization (EBITDA) growth rates.
10. The output is an assurance statement for inclusion in external gender pay gap reporting (as an example, please see a recent statement that we issued for the BBC Public Service (pages 9-10): EY Assurance Statement for the BBC).
11. For more information, please visit: http://www.nationalequalitystandard.com/