

Gender Pay Reporting: Ready to Press Go?

Employers' concerns around gender pay reporting ("GPR") can be broken down into 4 main areas

1. Do the Regulations apply to me?
2. What do I have to do?
3. How do I do it?
4. What does it matter?

We will look at each of those in turn.

1) Do the Regulations apply to me?

The Regulations apply to any private sector organisation employing 250 or more employees on 5 April each year. 5 April is now the 'snapshot date' (note this is a change from the originally intended 30 April). A separate set of regulations will apply to public sector employers but, for the purposes of these Regulations, Registered Providers are classified as private sector.

The Regulations use a wider definition of "employee" than you will use internally, which is broad enough to include casual workers/ zero hour workers/bank staff. Whether or not such staff are counted depends on the type of contract that they are engaged under and the extent of the 'mutuality of obligations' between you. Some contractors may also count towards your 250 threshold, depending upon their ability to subcontract and whether they are engaged through a service company or not. However agency staff will not count towards your 250 threshold.

The status of Board Members for the purposes of the Regulations is a grey area.

Each company in a Group structure which employs 250 or more employees must produce its own gender pay report. For those Group structures where joint contracts are utilised, it is not clear whether each jointly employed employee counts for each joint employer or whether they can be 'allocated' for these purposes to a single employer, whether the parent company or the de facto employer.

2) What do I have to do?

The first task is to calculate the hourly rate paid to each of your employees.

You then have to use that data to produce 5 statistics:-

1. Mean gender pay gap (hourly pay)
2. Median gender pay gap (hourly pay)
3. Mean and median gender bonus pay gap
4. Proportion of male and female employees receiving bonus pay
5. Quartile pay gender distribution

("the Statistics")

This information then needs to be published on your website by 4 April of the following year (and retained there for 3 years) and

uploaded to a Government portal (details of which are yet to be released). A director must confirm that the Statistics are accurate. It is at your discretion as to whether you just publish the Statistics or provide some form of explanation or commentary to go with it.

3) How do I do it?

You might think that the most complex part is calculating the 5 Statistics. But before you can attempt that, you have to calculate the average hourly rate of each employee – and it isn't simply: amount paid through payroll divided by hours as per the contract – and the total bonus pay paid per employee.

Calculating the hourly rate

Again, the relevant date is 5 April. You will have to work out the average hourly rate of each employee in the relevant pay period (being whatever pay period (weekly, fortnightly or monthly as you usually operate) includes 5 April).

But whilst for the purposes of determining whether the Regulations apply you count employees who are absent on 5 April, at this stage you exclude anyone who was absent in the relevant pay period and not receiving full pay at the time, for example an employee on reduced sick pay or statutory maternity pay. This is a new approach, introduced following the consultation after concerns were raised that counting employees on reduced pay during maternity leave, for example, would reduce the average hourly pay of female staff.

So what counts as pay?

- Basic pay
- Allowances, including car allowance, allowances for ancillary duties (e.g. acting as fire warden, being on-call or on standby), and location allowances (including London Weighting)
- Pay for piecework
- Fully paid leave, for example holidays
- Shift premium pay
- Bonus pay (if paid in the pay period which includes 5 April but then prorated to the pay period if actually paid in respect of a longer period) – see below for definition of "bonus pay"

Gross figures should always be used.

And what doesn't count as pay?

- Overtime pay
- Benefits in kind
- Bonus pay paid in any pay period other than that including 5 April
- Value of salary sacrifice arrangements
- Pay in lieu of leave
- Redundancy or termination payments
- Expenses
- Arrears of pay

You'll note from the above that there are some areas where discrepancies could arise: whether an employee gets a car allowance or a company car, and whether or not they salary sacrifice for pension contributions.

And what hours get taken into account?

If an employee has normal working hours that don't vary week to week then their contractual working hours count. If an employee has no normal working hours or they vary week to week then you should calculate an average over a 12 week reference period.

There are two particular areas of uncertainty around hours: how you treat someone who works regular unpaid overtime (i.e. do they have normal working hours?) and whether you count hours spent asleep on a sleep-in shift (you'd expect to, given the NMW rules, but the Government's guidance suggests that this may not be the case).

How do you use what you've collated to calculate average hourly rate?

There is a statutory method for turning the information on pay and hours that you have gathered (by following the above) into an average hourly rate for each employee. You have to convert what in most cases will be a pay figure for a month into something which can be divided by weekly working hours. So you multiply the pay figure by 7 divided by the number of days in the relevant pay period (7 if a week, 14 if a fortnight, always 30.44 days if a month). Then you divide that by the weekly working hours number.

Example:

Employee is paid monthly. The monthly total for all the relevant pay elements is £3,300.00 and the employee works a 35 hour week

$$= \frac{3300 \times (7/30.44)}{35} = £21.68 \text{ per hour}$$

Only then (!) can you calculate Statistics 1, 2 and 5.

Calculating bonus pay

Statistics 3 and 4 depend upon the amount paid by way of bonuses in the preceding 12 months (regardless of the period for which the bonus is paid). "Bonus pay" is defined in the Regulations as remuneration in the form of money, vouchers, securities, securities options or interest in securities which relations to profit sharing, productivity, performance, incentive or commission.

You have to calculate the mean and median bonus pay paid to male and female employees to be then able to calculate the difference between them, and the proportion of male employees receiving a bonus and the proportion of female employees receiving a bonus.

Calculating means and medians

The mean and median differences for both the gender pay gap and the gender bonus pay gap (so Statistics 1, 2, and 3) are always calculated as: male figure – female figure, then divided by male figure, then multiplied by 100 to give a percentage

e.g.

$$\frac{\text{Mean male hourly rate} - \text{Mean female hourly rate}}{\text{Mean male hourly rate}} \times 100$$

If you get a negative figure, it means the mean (or median) for men is lower than that for women – which would be bucking the trend so just double-check your calculation is right!

What about this quartile distribution thing?

It isn't as complicated as it sounds.

You list your employees in order of their hourly rate. Then divide that list into groups of 4 equal sizes by number of employees (even if that means that some employees on the same hourly rate are put into different groups – but if you have to do that then make sure that the gender distribution is equal between who goes into each group). Then work out what percentage of each group is male and what percentage is female.

You only have to publish the proportion of male and female in each group, not the rate of pay which each group covers (it is sufficient to label the groups as: lower, lower middle, upper middle and upper).

4) What does it matter?

There is currently no penalty for not complying with the GPR obligations but the HCA's Governance and Financial Viability Standards requires the Board to ensure that an RP is adhering to all relevant laws.

To the extent that you do publish, the information will be publically available so your employees (and unions) will be able to see it. The Government is also intending to publish league tables of the best and worst employers.

Tendering for local authority contracts below the OJEU threshold may now require bidders to answer questions about their gender pay gap (although even a 0% gender pay gap isn't going to make you automatically appointable), but higher value tenders to which the OJEU procurement rules apply are unlikely to include any specific questions on the issue because of the required use of a standard form Pre-Qualification Questionnaire.

The fact that your statistics show that you have a gender pay gap does not mean that your organisation is doing anything unlawful (having a gender pay problem does not automatically mean that you have an equal pay problem), nor does it put you under a positive obligation to do anything about it. The reasons for a gender pay gap are multifarious. Influencing factors can be the amount of overtime worked, who is taking up salary sacrifice benefits, TUPE protected terms and regional pay differences. But having a gender pay gap could increase your risk of equal pay challenges (whether valid or not) and have an impact on recruitment.

However because the statistics that you publish in April 2018 are based on data from April 2017, there isn't an opportunity over the next 12 months to try and tackle a gender pay gap to give you a better report. That isn't to say that there is no point in tackling a gender pay gap which you identify on April 2017 data, because your efforts should hopefully lead to improved statistics in April 2019 and it gives you something which you could put into accompanying commentary in 2018 to show that you are taking the matter seriously.

The GPR necessitate the pulling together of a lot of information and calculations and, if you decide to provide a narrative, a degree of soul-searching over how a gap has come about and how it should be addressed. It will be interesting to track whether the GPR rules do in fact achieve a reduction in the current 18.1% gender pay gap.