

Spotlight on the gender pay gap in the UK

GENDER PAY GAP SERIES - NO. 2



In this latest article, we assess the UK's recent legislation requiring employers to make public disclosures of their gender pay gap, which came into force on 5 April 2017. What lessons can we learn now that the first year's reports are in?

Outcome of the first year of gender pay gap reporting

Recent UK legislation required employers to publish details of their gender pay gap by 4 April 2018 (see the **summary of the UK gender pay gap reporting requirements** for an overview of the legal requirements). More than 10,400 employers have now uploaded their data to a central government website, where it is available for public use. In this article, we look at what lessons we can learn from the first year of gender pay gap reporting in the UK.

Slow start to reporting, with most employers publishing at the end of the reporting year

Employers were required to publish their first year's data (relating to April 2017) between 5 April 2017 and 4 April 2018.

Most employers waited until the end of the reporting year before publishing their data, with half of all employers publishing in the final week (as confirmed by the BBC). Reluctance to publish earlier in the reporting year was due, in part if not mostly, to the intense media scrutiny of the earliest reports (see below).

Developments in Northern Ireland

The gender pay gap reporting requirements described in this article do not extend to Northern Ireland, where regulation on discrimination is devolved to the local Northern Irish government. Northern Ireland is unusual in having a reversed gender pay gap (i.e., women are on average paid more than men), yet it is still proposing its own legislation to require gender pay reporting, which is currently on hold. The draft legislation would require employers to report on their ethnicity pay gap as well as their gender pay gap. In 2017, Theresa May indicated that the Conservative Party would introduce an ethnicity pay gap reporting for large employers throughout Great Britain although these plans have not been pursued.



Media focus on the gender pay gap

The gender pay gap became a headline story in the UK. Media focus tended to be on the size of the published pay gaps, but the Financial Times in particular also reported on the [implausibility of some of the data](#).

In most organizations, the gender pay gap is driven by a complex mix of factors, in particular the under-representation of women in senior or technical roles. That in itself may be driven by a range of reasons, including lack of career progression and career choices. The gender pay gap is not the same as a breach of equal pay laws, although a breach of equal pay law will certainly contribute to a gender pay gap. Despite various explainers of these differences, we saw multiple examples of the two issues being confused. It was common, for example, to see reports that women at a particular organization are paid less than men, and an (incorrect) implication that this applied to women and men in comparable jobs.



Extent of the gender pay gap

According to analysis by the Financial Times, 78% of employers publishing reports have a pay gap in favor of men, and the median gap in median hourly pay is 9.7%.

This is lower than the gap between men and women in the UK economy as a whole (which is currently 18.4% according to the UK Office for National Statistics), but the figures are not truly comparable since, without access to the underlying individual pay data, any averaging of the pay gap data published by each employer cannot take account of whether that data represents, for example, 250 or 20,000 employees.

Pay gaps are largest in the construction, finance and insurance sectors, and lowest in the health, accommodation and food sectors. However, meaningful comparisons between individual organizations are hard to draw, since differences in group structures and workforces mean that peer comparisons are not necessarily like for like.

Although the spotlight has mainly been on the published gender pay gaps in hourly pay and bonus pay, in fact the pay quartile data has proven to be just as, if not more, revealing. This shows the distribution of women within an organization's pay scales and so tends to get closer to the crux of the challenge. As other governments around the globe look to step up efforts to address the gender pay gap, it will be interesting to see if any of them adopt a methodology similar to the pay quartile approach.



Action against non-compliant employers

There are no civil or criminal penalties for employers who fail to publish their gender pay gap reports. The UK Equality and Human Rights Commission (EHRC) has reported that it wrote to around 1,500 organizations it believed to be within the scope of the reporting requirements but which missed the deadline for reporting, giving them 28 days to reply or face further action. Many have since filed their reports.

The EHRC has confirmed that it intends to invoke its enforcement powers against non-compliant employers. It has stated that it has the means to identify employers who submit statistically improbable data and that it will consider taking action against them, although in reality the EHRC has limited resources and it has accepted that, at least initially, it will target its enforcement action against organizations who do not file any reports.

Company gender pay gap reports - what did they say?

Typically, organizations invested significant time in putting together the gender pay reports they published on their own websites, and used them to explain the key drivers of their gap and set it into context. Almost invariably, organizations reported how the single biggest cause of their gap was the lack of women in senior roles. Some employers pointed to the challenges of recruiting women into certain occupations, in particular those involving STEM (science, technology, engineering, mathematics) qualifications. A number commented on how their data was skewed by the calculation approach required by the regulations, especially the requirement to include unadjusted bonus figures for part-time workers (i.e., without adjusting them to full-time equivalent figures) and other factors such as the treatment of salary sacrifice schemes.

A common discussion point for companies before they published their reports was whether to calculate and publish additional or adjusted data showing the gap between employees at the same grade or within the same pay quartiles. This is typically a much smaller gap or occasionally a reversed gap. Carrying out this deeper analysis requires considerable investment beyond mere compliance. However, the attraction of publishing this analysis is that it backs up any statement that the organization's aggregate gender pay gap is down to gender imbalance at senior levels rather than discrimination. Organizations that have chosen to publish in-quartile or in-grade gaps are typically disclosing very small gaps. There is a risk, though, that publishing any statistically significant gaps in favor of either gender raises questions needing explanation.

A number of companies made other voluntary disclosures, such as consolidated data for all companies within their group, or data relating to out-of-scope colleagues or companies (e.g., partners, employees in Northern Ireland, group companies with fewer than 250 employees).

Future of gender pay gap reporting

Reviewing the gender pay gap reports published by major companies shows how many of them are already committed to a range of initiatives aimed at getting more women through to senior management. However, our clients typically say they expect slow progress in narrowing their gap over the next five years. Yet governments, investors and employees are making it clear that they expect employers to address the issue. Ahead of publishing their year 2 data, organizations are beginning to focus more intensively on what will narrow their gender pay gap and allow them to keep pace with, or outstrip their peers. We are seeing an uptick in clients asking about equal pay audits (which are the subject of a later article in our series).

A parliamentary committee is currently reviewing compliance with the gender pay gap reporting regulations (along with controls on excessive executive pay) and another parliamentary committee recently called for radical reform of the UK's parental leave system to encourage more fathers to take time off, pointing out how parental leave and the gender pay gap are closely linked. However, further regulation is unlikely in the near future as the new gender pay gap reporting requirements bed in.

SUMMARY OF THE UK GENDER PAY GAP REPORTING REQUIREMENTS

Which employers are within the scope of the requirement?

Gender pay gap reporting is mandatory for all companies, firms and other legal entities with at least 250 employees working in, or sufficiently connected to, Great Britain.

In a group of companies, each company of the group with at least 250 in-scope employees must produce a separate report.

A business, which is incorporated outside the UK, will be in scope of the reporting requirement if it has at least 250 employees working in, or sufficiently connected to, Great Britain.

What pay data must be reported?

Employers must publish six different metrics:



the percentage difference in the mean and median hourly pay of women compared to the mean and median hourly pay of men. Employers must base the calculation on hourly pay rates over the employer's pay period (e.g., pay week or month) which includes 5 April each year.



the percentage difference in the mean and median bonus paid to women compared to men, based on all bonuses paid in the 12 months up to 5 April each year



the percentage of men and women who received bonus



the percentage of women and men in each pay quartile. Employers must rank employees in order of hourly pay, then split them into four equal groups and report on the percentage of women compared to men at each of the four pay quartiles.

Hourly pay is widely defined to include all pay and allowances, and even a pro-rated portion of any bonus which is paid in the relevant pay period. However, it does not include overtime or the value of benefits in kind.

Bonus includes income from shares as well as cash bonuses and commission.

The published data must include consultants with personal work contracts where the employer has, or can reasonably obtain the data for them, but does not include members of a legal partnership.

Despite lengthy government guidance on the calculation approach, there are many grey areas such as the treatment of inbound and outbound expats, certain bonus plans and flexible benefit schemes. Since there is no scope for civil action, these issues will not be resolved by case law and employers need to make judgment calls.



Publication and sign-off requirements

Employers must upload the data to a [government website](#), where the public can search for data relating to individual companies and to companies within identified sectors.

Employers must also publish the data on their own website, typically in a more detailed report, which includes a narrative explaining their figures and setting them into context.

The data must be signed off as accurate by a director, or equivalent in organizations that are not companies.

Key features of the UK approach

For global employers who are familiar with pay equity or reporting requirements in other jurisdictions, the key distinguishing features of the UK approach are that:

- The hourly pay and bonus comparison is between all men and women organization-wide — not just those doing the same or similar work. An organization's gender pay gap will generally be caused by under-representation of women in senior or technical, more highly paid, positions rather than unequal pay or pay equity issues.
- The six published metrics are made fully available for public use.

Our gender pay gap series

The Baker McKenzie Gender Pay Gap series will be spotlighting gender pay gap regulations in key jurisdictions and exploring the central issues, including how to narrow the gap.

For more on the global picture and how our global network of over 700 labor and employment lawyers are helping clients address this issue see the [Gender Pay Gap and Pay Equity brochure](#).

Next in the series: Spotlight on the gender pay gap in the United States.

