

The wait is over! Yesterday the UK government issued the revised version of [the Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#). Technically the regulations are still in draft (as they have yet to be approved by Parliament), but the content should not change between now and when they are due to come into force on 6 April 2017.

So, what's new? As anticipated, the overall nature of the new reporting obligations has not changed, but the revised regulations are longer, much more complicated to read and go into a lot more detail about how to calculate things such as an employee's hourly rate of pay, number of working hours in a week, bonus pay, etc. The government has clearly sought to address criticisms of its earlier drafting, but in doing so it has made the whole reporting exercise much more complicated.

We will be preparing a detailed briefing note on the new reporting obligations, but in the meantime key points to note are:

- a. **Scope of the regulations** – All employers in Great Britain (excluding certain public authorities) with at least 250 employees, on 5 April of a given year, will be required to publish information showing whether there are differences in pay between their male and female employees. According to the Explanatory Note (the wording in the regulations is less clear), the definition of employment has been widened to reflect the definition in the Equality Act 2010, so it will catch workers (including casual workers) and some self-employed individuals if they provide their services personally, as well as regular employees. Interestingly, though, there is now scope for employers to exclude those individuals employed under a contract personally to do work (i.e. workers and some self-employed individuals) when calculating their gender pay statistics if they do not have, and it is not reasonably practicable for them to obtain, the data about them.
- b. **Information to be published** – There have been some slight changes to the information that will have to be published. Employers will now be required to publish:
  - i. The difference in mean and median pay between male and female "full-pay relevant employees", i.e. excluding those employees who are absent from work on leave (including maternity leave, adoption leave, sick leave, etc.) if they are not in receipt of their full pay.
  - ii. The difference in mean and median bonus pay between male and female "relevant employees" during the period of 12 months ending with the snapshot date of 5 April.
  - iii. The proportions of male and female "relevant employees" who were paid bonus pay.

- iv. The proportions of male and female "full-pay relevant employees" in the lower, lower middle, upper middle and upper quartile pay bands. We now have a step-by-step approach for calculating quartile pay bands – apparently employers will have to take the hourly rate of pay for each male and female "full-pay relevant employee", rank them in order from lowest paid to highest paid and then divide them into four sections each comprising (so far as possible) an equal number of employees. Employers should then work out the proportion of male and female "full-pay relevant employees" in each pay band.
- c. The relevant information will have to be published within the period of 12 months beginning with the snapshot date of 5 April each year.
- d. Employers will still be able to provide a voluntary narrative to accompany the information.
- e. The required information will still have to be signed off by a senior person at the employer and published on the employer's website for a period of at least three years. Employers will also have to upload the information to a government website.
- f. A failure to comply with the reporting obligations will now constitute an "unlawful act" which means that the Equality and Human Rights Commission will have the power to take enforcement action against employers who fail to comply. This is different, although query what practical difference it will make.

The government will be publishing guidance for employers, but we will not see this until after Parliament has approved the regulations, which is likely to be in early 2017.

In terms of the new reporting obligations on large public sector employers in England, it seems that we might have to wait until next year before we see the revised regulations, but they will in any event mirror the reporting obligations for private sector employers.

We will shortly be running a webinar on the new reporting obligations, so keep an eye out for the invitation.

## Contacts



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