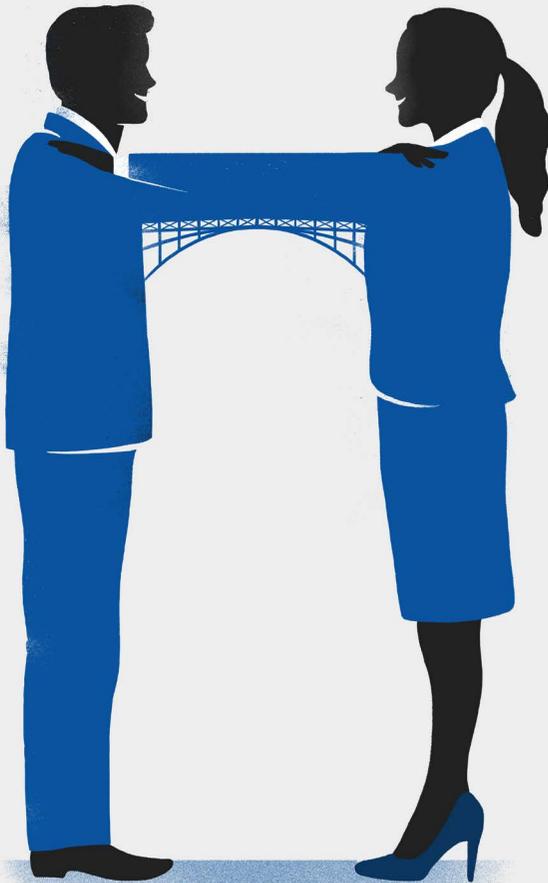


# Gender Pay Reporting

## Our seven point action plan

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## Gender Pay Reporting: Taking Action

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The mandatory gender pay reporting regime is now up and running.

All employers with 250 or more employees are now required to publish annual figures showing the pay gaps between their male and female employees.

So far, the regime has been controversial. It has been simultaneously accused of going too far and not far enough to address the challenge of pay inequality.

The regime is designed with no direct enforcement mechanism. The data (or absence of data) will undoubtedly be used in discrimination and equal pay claims, but the primary consequences of failing to comply are not legal, they are reputational. Equally, the reputational consequences for employers with large gender pay gaps could be significant, especially in the key areas of retention and recruitment.

On the surface, compliance with the new regime is based on the operation of complex payroll tools for calculating hourly pay across multiple staffing structures.

However, gender pay reporting isn't just about statistics and data. It is also about the narrative behind the figures and how those figures fit into an employer's broader diversity picture. With a proper understanding of the underlying data and a clear narrative, the potential negative impact of reporting the data can be minimised.

The enclosed seven-point action plan is designed to focus on some of the key practical aspects of gender pay reporting. I hope you find it helpful.

Greg Campbell  
Mishcon de Reya LLP

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## Action Point 1

Ensure that you have identified all in-scope staff – which will include workers and may include some consultants and contractors.

- The Government opted for the wider definition of employee – it covers anyone contracted to do work personally.
- If you have a group company structure, check who contracts with staff – the 250 threshold applies per employer but not everyone who counts towards the threshold will also be “in scope” for the pay gap calculation.
- Complete an audit of everyone on the books first – sort them into categories. Watch out for excluded categories.
- Is there anyone for whom it is impossible to obtain details of their working hours/ pay data?

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## Action Point 2

Compile all of the required data around pay and normal working hours. The potentially complex areas include long-term absence, bonuses which are paid in April and the value of certain flexible benefit schemes.

- Check any third party payroll agents have the structures in place to deal with the reporting process.
- Remember many forms of leave including partial sick pay and family-related leave, payments in lieu and overtime are excluded.
- Think about the challenges of non-standard working hours.
- Beware of the problems of double counting.
- Make sure you have correctly identified your four quartiles – small mistakes can create big distortions in data.



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### Action Point 3

Collate data separately for bonuses, as you will need to show figures for absolute numbers of males and females who receive bonuses, as well as the gaps.

- Think about your bonus plan and when awards are made.
- Look at both the mean and the median data for bonuses – the difference can be surprising.
- Put a value on non-monetary compensation such as options.
- Options and similar securities are deemed paid at the point they become taxable.
- Where individual executives are in receipt of long-term incentive plans which reflect performance over several years, the total payment still needs to be included in the calculation for one year.

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### Action Point 4

Carry out a dry run of all metrics, even if you do not plan to release the information now.

- No one likes surprises - doing a dry run will enable you to identify areas of vulnerability early.
- A dry run will allow you to resolve inevitable glitches/problems in your own payroll system.
- If your legal advisers carry out this practice audit, the results and advice may be covered by legal professional privilege.

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## Action Point 5

If the information for prior years is available, it may be worthwhile running that data to see if there is a positive pattern which can be identified.

- The current year's gender pay gap may appear to be wide, but if you can show that it is a closing gap as a result of measures already taken, it is possible to cast the data in a more positive light when you come to prepare your narrative.
- Conversely, if this year's data looks worse than previous years, you may be able to explain it by reference to specific issues within your current year's work force, i.e. multiple senior maternity leaves within a short period of time.
- The supposedly optional narrative is key to explaining your company's evolution and story.

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## Action Point 6

Employers have until 4 April 2018 to disclose their pay gaps. You should give proper consideration to the most appropriate timing for them.

- Be proactive – look at peaks and troughs in the company's HR cycle.
- Look around – what are your competitors doing? Study any narratives already published.
- It's already started – 80 and counting [www.gender-pay-gap.service.gov.uk](http://www.gender-pay-gap.service.gov.uk).

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## Action Point 7

Identify a senior individual who is going to sign off on this documentation and be identified on the website as having confirmed the accuracy of the data.

- As in other areas the Government is looking for senior leaders to take ownership of the problem to avoid a repeat of the lack of accountability following the 2008 financial crash.
- Knowledge and accountability is key – the person signing the statement needs to know the data inside out.
- Presenting the data to your own workforce in a positive way is as important as the public perception of it. Don't leave your staff to learn of your gap in gender pay through the media or by word of mouth.

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## Key contacts



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Greg is a Partner in the Employment department, with over 20 years' experience in employment law. He is experienced in all aspects of contentious and non-contentious employment law, advising employers on workplace disputes, defence of whistleblowing and discrimination claims, major restructures and day to day queries. Greg has also been involved in conducting gender pay audits for corporate clients who are subject to employment regulations and reporting requirements. Greg is the subject of excellent reviews, with legal directories noting his "pragmatic" approach (Legal 500 2017) and is a regular speaker at internal and external seminars and on television and radio on employment issues.



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Beth is a Managing Associate in the Employment Department. Her practice is divided between companies and individuals in financial services, art, property, fashion and media, as well as acting for charities and not-for-profit organisations.

Discrimination, gender and equality of pay are particular themes in Beth's work and she has represented many senior female executives (including lawyers) in such cases. Her key interests include her work on equality, remuneration and flexible working in the City.

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