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UK GOVERNMENT PUBLISHES DRAFT GENDER PAY REPORTING REGULATIONS

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The proposed regulations will require businesses to calculate their gender pay gap starting April 2017 and publish the details by April 2018.

On 12 February, the UK government published draft regulations^[1] that set out the framework for the new gender pay reporting requirements. The draft Equality Act 2010 (Gender Pay Gap Information) Regulations (the Regulations) require private- and voluntary-sector businesses with at least 250 employees to publish certain information about the businesses' gender pay gap (i.e., the difference in pay between male and female employees). The aim of the proposed requirements is to provide greater transparency of pay practices.

BACKGROUND

According to the Office for National Statistics women on average earn about 80 pence for every £1 earned by a man.

In 2010, the UK government attempted to address the ongoing discrepancy in pay between men and women by introducing an "option" that required private employers with at least 250 employees to publish information on any differences in pay between male and female employees. However, the government did not adopt the option, and instead, gender pay reporting was introduced on a voluntary basis in 2011 under the Think, Act, Report initiative. Although 250 companies signed up for the initiative, a report in August 2014 showed that only four companies had published their gender gap information through the program, indicating that the scheme's voluntary nature may have undermined its effectiveness.

The UK government attempted to resolve the gender pay gap issue by introducing a sanction (effective 1 October 2014) that employment tribunals can impose to require any company that has been found guilty of an equal pay breach to carry out an equal pay audit and to make the results public.

In 2015, the government set out its goal to close the gender pay gap "in a generation". It announced a commitment to introducing compulsory pay reporting for all large businesses and launched a consultation that sought views about the details of these reports. The results of this consultation,^[2] which were also published on 12 February, have now been reflected in the draft Regulations.

PROPOSALS

The reporting requirements are intended to apply to all employers, regardless of whether they are registered in the UK or otherwise, as long as an employer engages at least 250 employees in England, Wales, and Scotland.

Under the draft Regulations, employers will be required to publish the following information in their gender pay reports:

- › The mean and median pay gaps between men and women
- › The number of men and women in each quartile of a company's pay distribution
- › The difference between the mean bonus payments to men and women and the proportion of male and female employees who have received a bonus

To report on mean and median gender pay gaps, employers will be required to take a "snapshot" of what their employees are being paid on 30 April each year, the first such snapshot to reflect pay practices on 30 April 2017. Similarly, the draft Regulations envisage that employers will divide their pay distribution into four bands and show a snapshot of the number of men and women in each quartile on 30 April each year. The aim is to highlight where women are concentrated in terms of their remuneration and whether anything is blocking their progress. Meanwhile, to report on gender bonus gaps, employers need to look at bonuses paid over a 12-month period before 30 April, rather than taken from a snapshot.

Employers must publish the relevant information on their websites every year and leave it online for at least three years. The report may be supported with a narrative to explain the figures and any steps that an employer is taking, but this is not a legal requirement. Employers will also be required to upload the information to a government website, which will list examples of compliant and noncompliant companies.

The final version of the Regulations is expected to take effect on 1 October 2016. This gives employers six months before they must take the first snapshot of pay gaps and salary quartiles as at 30 April 2017. Employers will only be required to publish their first report, reflecting the 30 April 2017 figures, in or around April 2018. However, employers should keep in mind that the bonuses they pay from 30 April 2016 to 30 April 2017 may be reflected in the April 2018 report.

The draft Regulations are open for further consultation until 11 March 2016 and is therefore subject to change. At this stage, the government does not intend any civil or criminal penalties for noncompliance with the Regulations. The main incentive for employers to comply with the new rules is therefore to avoid the reputational risk of being "named and shamed" by the government as being noncompliant.

PRACTICAL STEPS

Employers may wish to take the following practical steps before the reporting requirements take effect:

- › Gather information on current pay practices and rates
- › Consider gender pay gaps that exist on a departmental, geographical, or functional level, and compare these with the workforce composition
- › Consider whether any changes should be made to information technology systems and administrative processes to improve gender pay reporting capabilities
- › Advise on closing any gaps, such as considering expanding part-time/flexible working opportunities, improving parental leave pay, and dealing with any gender stereotypes in the recruitment for specific

➤ roles

Employers may wish to consider providing contextual information alongside gender pay information to clear up any misleading impression and to avoid any negative publicity. A pay gap does not necessarily signify unlawful discrimination. This will be particularly important to keep up a positive image compared with competitors. Although providing narrative may be helpful in some instances, if it becomes the trend to provide lengthy narrative, this may have a detrimental effect on actually decreasing the gender pay gap (because it will become the norm to rationalise any gender pay gap).

Employers may also wish to undertake an internal equal pay audit in advance of being required to publish the results in the public domain. If discrepancies between the pay of men and women come to light, and equal pay claims are threatened by employees, a business may be influenced to settle equal pay claims to avoid any negative publicity. If any new complaints or grievances come to light in respect of pay discrepancies between men and women, an employer's human resources department and management should work together to provide a consistent approach to such complaints or claims. Employers may also wish to provide training to management about the requirements under these regulations and to update policies where necessary.

CONTACTS

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

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[1] View the government's announcement [here](#).

[2] View the government's response [here](#).